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6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 CENTER FOR BIOLOGICAL DIVERSITY  
and AMARGOSA CONSERVANCY,

Case No: 2:23-cv-1049

10 Plaintiffs,

11 vs.

**COMPLAINT FOR VACATUR,  
DECLARATORY AND INJUNCTIVE  
RELIEF**

12 DEBRA HAALAND in her official capacity  
13 as Secretary of the Interior, TRACY STONE-  
14 MANNING in her official capacity as the  
15 Director of the Bureau of Land Management,  
16 U.S DEPARTMENT OF THE INTERIOR,  
17 BUREAU OF LAND MANAGEMENT, and  
18 NICHOLAS B. PAY in his official capacity  
as Field Manager of the Bureau of Land  
Management Pahrump Field Office,

19 Defendants.

20  
21 **INTRODUCTION**

22 1. Plaintiffs Center for Biological Diversity (the Center), and Amargosa Conservancy  
23 (the Conservancy) (collectively Plaintiffs) challenge the decisions of Defendants Debra Haaland,  
24 Tracy Stone-Manning, U.S. Department of the Interior (Interior), Bureau of Land Management  
25 (BLM), and Nicholas B. Pay (collectively Defendants) authorizing and allowing the Let’s Go  
26 Lithium mineral exploration project (the Project) on federal lands in central Nevada. The Project  
27 is located in BLM’s Pahrump Planning Area, within Nye County, adjacent to Ash Meadows

1 National Wildlife Refuge (the Refuge), with activities taking place within and around the Ash  
2 Meadows Area of Critical Environmental Concern (ACEC) and the Amargosa Mesquite ACEC.  
3 BLM’s decision allowing the Project to go forward fails to adequately protect these ecologically  
4 critical areas and in doing so violates the Federal Land Policy and Management Act (FLPMA), §§  
5 1701 *et seq.*, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4331 *et seq.*, and the  
6 Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, as well as the implementing  
7 regulations of these laws, including BLM’s regulations governing mineral exploration on federal  
8 public lands.

9         2.         BLM’s actions in this case threaten one of the most unique and biologically diverse  
10 areas in the United States, and possibly the world. The Refuge is a place of unparalleled beauty  
11 and natural wonder, where spring-fed wetlands draw a stark contrast to the surrounding desert  
12 shrublands and woodlands. Because of its isolation within the vast Mojave Desert, the Refuge  
13 harbors one of the most remarkable assemblages of rare and endemic species in the world,  
14 including a dozen species protected as “threatened” or “endangered” under the Endangered  
15 Species Act (ESA). The rare and endemic species at the Refuge, and the ecosystem that sustains  
16 them, depend entirely on springflows that originate in the groundwater aquifer. As such, any  
17 disturbance to this aquifer has long been recognized as a threat to Ash Meadows and the species  
18 that live there.

19         3.         In addition to providing an irreplaceable refuge for the area’s biodiversity, Ash  
20 Meadows is an integral component of the human community in the Amargosa Basin, and is highly  
21 valued by the area’s inhabitants, including the Timbisha Shoshone Tribe—who have lived in the  
22 area from time immemorial—and residents of the nearby towns of Beatty, Nevada, Amargosa  
23 Valley, Nevada, and Shoshone, California.

24         4.         The Project involves drilling up to 30 boreholes in close proximity to Ash Meadows  
25 and multiple groundwater-fed springs known to harbor threatened and endangered species.  
26 According to the Project proponent, Rover Metals (USA), Inc., (Rover), all boreholes will  
27 encounter the groundwater aquifer. Despite the risk to the species and ecosystems of Ash Meadows

1 posed by this exploratory drilling, BLM failed to take actions necessary to prevent unnecessary  
2 and undue degradation of the Refuge and surrounding public lands. BLM also applied its  
3 regulations in an arbitrary, capricious, and unlawful manner, thereby failing to ensure the robust  
4 environmental review and public participation that FLPMA and BLM's own regulations require  
5 in these circumstances. Because of BLM's actions, the area's residents, including Plaintiffs'  
6 members, have been provided no notice and no opportunity to weigh in on actions that will likely  
7 permanently and irreparably alter this unique and treasured landscape.

8         5. In addition to violating FLPMA, NEPA, and its own regulations governing public-  
9 lands mining exploration, BLM has failed to comply with the ESA, which requires BLM to consult  
10 with the U.S. Fish and Wildlife Service (FWS) to "insure that any action" it "authorize[s], fund[s],  
11 or carrie[s] . . . is not likely to jeopardize the continued existence of any endangered species or  
12 threatened species or result in the destruction or adverse modification" of that species' designated  
13 critical habitat. 16 U.S.C. §1536(a)(2). Mineral operations on public lands, regardless of whether  
14 they are properly considered "notice" or "plan" operations, are subject to this consultation  
15 requirement. *See Karuk Tribe of Cal. v. United States Forest Serv.*, 681 F.3d 1006, 1030 (9th Cir.  
16 2012) (*en banc*). Because the proposed drilling operations will intersect groundwater aquifers in  
17 locations adjacent to the Refuge, they may affect groundwater-dependent threatened and  
18 endangered species, and their designated critical habitat, within the Refuge. BLM did not consult  
19 with FWS before allowing the proposed exploration activities, and thus violated the ESA.

20         6. On May 26, 2023, Plaintiffs sent Defendants 60-day notice of intent to sue pursuant  
21 to ESA Section 11(g)(2)(A), 16 U.S.C. § 1540(g)(2)(A). Under that provision, Plaintiffs may not  
22 sue for declaratory and injunctive relief "prior to sixty days after written notice of the violation has  
23 been given to the Secretary [of the Interior], and to any alleged violator of any such provision or  
24 regulation." The Secretary, BLM, and other Defendants received Plaintiffs' notice electronically  
25 on May 26, 2023. Accordingly, the 60-day notice period runs on July 25, 2025. Plaintiffs intend  
26 to amend this Complaint on or after that date, pursuant to Fed. R. Civ. P. 15(a)(1), to seek vacatur,  
27 declaratory relief, and injunctive relief for BLM's violations of the ESA. Anticipating Plaintiffs'

1 future amendment as-of-right, the following contains background legal and factual information on  
2 the consultation requirements of the ESA and BLM’s violations thereof.

3 **FACTUAL BACKGROUND**

4 **Ash Meadows National Wildlife Refuge**

5 7. Ash Meadows National Wildlife Refuge consists of over 24,000 acres of Mojave  
6 Desert wetland and upland habitat in southeastern Nye County, Nevada, near the town of  
7 Amargosa Valley. It is managed by FWS for the conservation and recovery of the numerous  
8 threatened, endangered, and sensitive plant and animal species that live there.

9 8. Ash Meadows is essentially a watered island amidst the expansive Mojave Desert.  
10 Groundwater-fed springs within the Refuge support the existence of relict plants and animals  
11 which originally migrated into the region during wetter climactic periods. Because Ash Meadows  
12 has been isolated by miles of arid desert, many of the plants and animals there have evolved into  
13 distinct species, and are currently found nowhere else on Earth. Ash Meadows is also one of the  
14 last remaining oases in the Mojave Desert that is frequented by a wide diversity of neotropical and  
15 migratory birds.

16 9. The Refuge was established on June 18, 1984, from a combination of private land  
17 acquired from The Nature Conservancy and additional land transferred from the BLM to the FWS  
18 in order to protect and restore the endemic, endangered, and rare plants and animals found there.

19 10. Ash Meadows is a biodiversity hotspot of global significance. In 1986, Ash  
20 Meadows became the fourth designated Ramsar Convention Wetland of International Importance  
21 in the United States, described by Ramsar as “an area exhibiting the greatest biological endemism  
22 in the USA.”<sup>1</sup>

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25 <sup>1</sup> Ramsar sites are designated under the authority of the Convention on Wetlands, an  
26 intergovernmental treaty adopted in Ramsar, Iran in 1971. The Convention on Wetlands is the  
27 oldest of the modern global intergovernmental environmental agreements. Designated Wetlands  
of International Importance such as Ash Meadows “are recognized as being of significant value

1           11.     According to FWS: “The Refuge was created to conserve and protect the habitats  
2 and populations of endemic, resident, and migratory species. The Refuge is an area of exceptional  
3 biological diversity resulting from a unique combination of limited water resources and an isolated  
4 desert environment. At least twenty-five species of plants and animals are restricted to the local  
5 geographic area, one of the highest concentrations of endemic species found in the United States.”  
6 U.S. Fish and Wildlife Service, *Ash Meadows National Wildlife Refuge, Water Resource Inventory  
7 and Assessment* (January 2014), at 7 (hereinafter, “FWS 2014 Water Report”).

8           12.     The Refuge’s springs and associated surface-water flows create diverse wetland  
9 habitats that support several endangered and threatened species, most of which, as noted, exist  
10 nowhere else on Earth, and all of which are fully dependent upon groundwater. The following  
11 species endemic or near-endemic to the Refuge are protected under the ESA:

- 12           a.     Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*), endangered;
- 13           b.     Ash Meadows speckled dace (*Rinichtys osculus nevadensis*), endangered;
- 14           c.     Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*), endangered;
- 15           d.     Devil’s Hole pupfish (*Cyprinodon diabolis*), endangered;
- 16           e.     Ash Meadows blazing star (*Mentzelia leuciphylla*), threatened;
- 17           f.     Amargosa niterwort (*Nitrophila Mohavensis*), endangered;
- 18           g.     Ash Meadows milkvetch (*Astragalus phoenix*), threatened;
- 19           h.     Ash Meadows sunray (*Enceliopsis nudicaulis corrugata*), threatened;
- 20           i.     Ash Meadows gumplant (*Grindelia fraxinoperatensis*), threatened;
- 21           j.     Ash Meadows ivesia (*Ivesia Kingii var. eremica*), threatened;
- 22           k.     Spring-loving centaury (*Zeltnera namophila*), threatened;
- 23           l.     Ash Meadows naucorid bug (*Ambysus amargosus*), threatened;

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not only for the country or the countries in which they are located, but for humanity as a whole.”  
See <https://www.ramsar.org/about-the-convention-on-wetlands-0>.

1           13.     Within the boundaries of the Refuge is the Devil’s Hole unit of Death Valley  
2 National Park, home of the endangered Devil’s Hole pupfish, one of the world’s rarest fishes,  
3 which lives only at that one location, in a waterhole near the Project site fed by the regional aquifer  
4 system.

5           14.     The Refuge has seven springs which historically have discharged at rates greater  
6 than 500 gallons per minute (1.1 cubic feet per second). There are an additional 25-50 springs  
7 discharging less than 500 gallons per minute. Combined, these springs discharge about 17,000  
8 acre-feet per year of surface water and form one of the most ecologically significant areas of  
9 surface water in the Mojave Desert. *See FWS 2014 Water Report* at 5.

10          15.     “Almost all species at Ash Meadows are critically dependent on the water resources  
11 of the Refuge.” *FWS 2014 Water Report* at 7.

12          16.     Three major springs on the north part of the Refuge and closest to the proposed  
13 drilling into groundwater—Fairbanks, Rogers, and Longstreet—are relatively cool compared with  
14 other springs in the refuge, suggesting they receive flow from the shallow groundwater aquifer  
15 from the north or northeast, within the Project area. *See FWS 2014 Water Report* at 22.

16          17.     Fairbanks Spring is a spring in the northernmost portion of the Refuge, closest to  
17 the Project’s drilling into the groundwater, which contributes substantial surface flow to the overall  
18 Ash Meadows flow system. Fairbanks Spring is home to, and crucial habitat for, the endangered  
19 Ash Meadows Amargosa pupfish. 46 Fed. Reg. 40178-86. It has also been the site of intensive  
20 habitat restoration efforts by the FWS to restore and enhance the populations of this rare endemic  
21 species.

22          18.     FWS has designated critical habitat for all of the threatened and endangered species  
23 at the Refuge (except the Warm Springs pupfish) encompassing all of the areas where the species  
24 are found. 46 Fed. Reg. 40178-86; 50 Fed. Reg. 20777-94. Designated critical habitat thus includes  
25 the Refuge springs and their associated surface flows. *See id.*



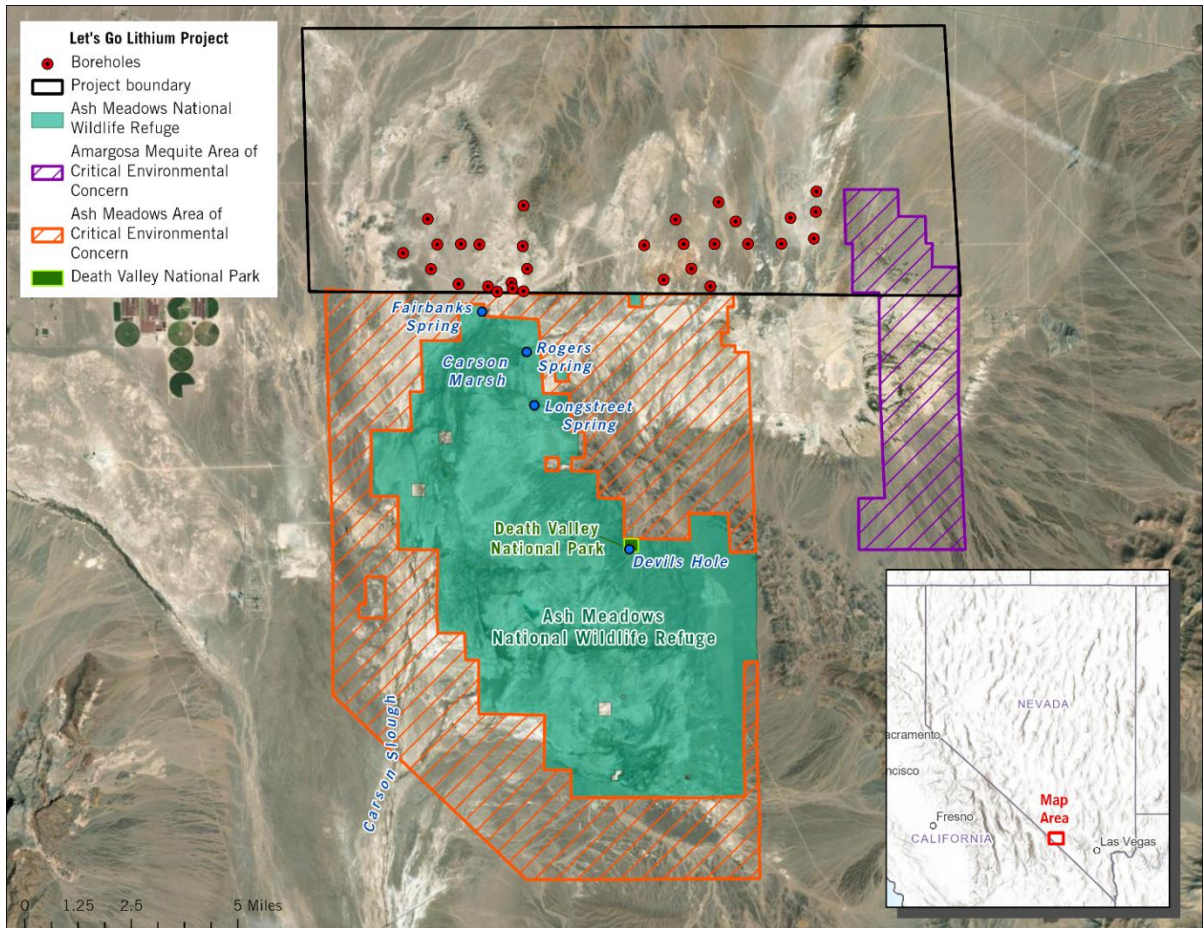
**The “Let’s Go Lithium” Project**

19. Rover is a Canadian mining company with an office in Reno, Nevada that is proposing development of a hardrock lithium open-pit mining operation on federal public lands in Amargosa Valley in Southern Nevada adjacent to the Refuge, the Ash Meadows ACEC, and the Amargosa Mesquite ACEC. This project is known as the Let’s Go Lithium Project.

20. As a precursor to actual mining, on January 20, 2023, Rover filed a Notice of Intent (NOI) pursuant to 43 C.F.R. § 3809.21 to conduct mineral exploration drilling in the Ash Meadows area. Rover’s intent, as stated in the NOI, was to “test alluvium and bedrock for lithium content.”

21. After discussions with BLM, Rover submitted a revised NOI on March 22, 2023.

22. As shown on the map below, Rover’s March 22 NOI, as approved by BLM, includes up to 30 drilling sites. The Project area is adjacent to the Refuge and drilling is proposed



**Figure 1: Map of Ash Meadows and the Let’s Go Lithium Project**

1 within 2,000 feet of Fairbanks Spring. The NOI acknowledges that “[a]ll drill holes will be  
2 expected to intersect ground water.” NOI at 4; *see also id.* at 6 (“[G]roundwater is expected to be  
3 encountered in each drill hole.”). The “drill holes [are] planned to [be] 250 to 300 feet deep each.”  
4 *Id.* at 4. According to the NOI, boreholes from exploratory drilling will be “plugged according to  
5 State of Nevada requirements,” *id.* at 8, but the NOI contains no specific information on whether  
6 or how Rover intends to avoid, minimize, or mitigate any impacts caused by puncturing the  
7 groundwater aquifer.

8         23. To dispose of the waste generated by the drilling operations, the Project will involve  
9 the excavation of open-air pits, called sumps, for each of the 30 proposed boreholes. *See id.* at 4.  
10 The NOI does not include any mitigation measures to control the waste from the drilling, such as  
11 lining the sumps to prevent groundwater contamination. Nor does the NOI explain what drilling  
12 chemicals or compounds will be used.

13         24. On April 5, 2023, the BLM accepted Rover’s modified NOI and ordered the  
14 company to pay a minimal bond of \$30,003.00. On May 18, 2023, in response to an inquiry from  
15 the Center, BLM stated: “Rover has not submitted the bond and therefor [sic] they are not currently  
16 authorized to begin work.”

17         25. On June 29, 2023 the nearby Town of Beatty, Nevada sent BLM a letter formally  
18 registering its opposition to the Project—and specifically to BLM’s hasty approval of Rover’s  
19 NOI—due to the likelihood of irreversible impacts to the water resources of the area. The Town’s  
20 letter stated: “Allowing Rover Metals, or any company to conduct this type of potentially  
21 destructive, water intensive and invasive[] activity so close to a declared refuge and ACEC seems  
22 to contradict the goal of sustaining the health and diversity of our public lands for the use and  
23 enjoyment of present and future generations of all species.” Letter from Erika Gerling, Beatty  
24 Town Advisory Board Chair, to Nicholas B. Pay, BLM Field Manager, Pahrump Field Office  
25 (June 29, 2023), at 1.

26         26. The Town further requested that BLM “initiat[e] formal consultation with the U.S.  
27 Fish and Wildlife Service regarding the potential impacts of the project, requir[e] a Plan of



1 Operations from Rover Metals for the project, and conduct[] an environmental review of the Plan  
2 of Operations in accordance with NEPA to include an Environmental Assessment or an  
3 Environmental Impact Statement as appropriate.” *Id.* at 2. The Town specifically asked that BLM  
4 “halt this exploration project until the proper environmental, hydrological, and other applicable  
5 studies can be completed.” *Id.*

6 27. On June 30, 2023, in response to an inquiry from the Center, BLM stated: “Rover  
7 Metals is actively working with the Nevada State Office to get their Financial Guarantee in place  
8 in accordance with the regulations found in 43 CFR 3809. Once that financial guarantee has been  
9 adjudicated by the team at the State Office they will send out an acceptance letter to the operator.  
10 Once the financial guarantee has been accepted then the operator is able to carry out the work  
11 identified in their notice consistent with the Mining Law of 1872 (30 U.S.C. 22 et seq.) and the  
12 implementing regulations found in 43 CFR 3809.”

13 28. Rover has stated publicly that it will “start drilling in mid-July.”<sup>2</sup> On information  
14 and belief, Rover intends to start drilling on July 17, 2023.

15 29. The Project directly threatens the springs, fish, terrestrial wildlife, plants, and  
16 ecosystems of the Refuge, the Ash Meadows ACEC, and the Amargosa Mesquite ACEC.

17 30. Rover’s NOI does not describe how the company will “prevent unnecessary and  
18 undue degradation” to public lands and resources resources—including the springs, fish, wildlife  
19 and habitats that depend upon these waters—from impacts to groundwater hydrology and/or  
20 springflows, as required by FLPMA. 43 U.S.C. §1732(b).

21 31. BLM has not consulted with FWS pursuant to Section 7(a)(2) of the ESA to ensure  
22 that the proposed drilling operations do not jeopardize the continued existence of any threatened  
23 or endangered species or adversely modify designated critical habitat. 16 U.S.C. § 1536(a)(2).

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27 <sup>2</sup> <https://stockhouse.com/news/the-market-herald-news/2023/06/27/rover-metals-ready-to-drill>.

1           32. On information and belief, BLM did not contact FWS, or otherwise inform FWS  
2 of the project and its potential impacts, before allowing the Project to go forward.

3 **Potential Impacts to the Refuge and Federally Listed Threatened and Endangered Species**

4           33. FWS, which administers the Refuge, has recognized that protecting the  
5 groundwater aquifer in the Amargosa Basin is critical to conserving the many threatened,  
6 endangered, and endemic species at Ash Meadows. According to FWS, “[a]ctivities that may cause  
7 adverse [e]ffects [to listed species] include those that alter spring discharge quantities and routes,  
8 stable soil conditions (including drainage patterns from surrounding topography), and native  
9 vegetation.” Don W. Sada, U.S. Fish and Wildlife Service, *Recovery Plan for the Threatened and*  
10 *Endangered Species of Ash Meadows, Nevada* (Sept. 28, 1990), at 27.

11           34. Similarly, “[s]ubstantial evidence” collected by the U.S. Geological Survey “shows  
12 that spring discharge [in the Refuge] is intimately related to the viability of the . . . aquifer.” *Id.* at  
13 38-39.

14           35. Changes in groundwater flow and elevation—including changes in shallow  
15 subsurface water and the basin-fill aquifer—could affect the flow, temperature, and chemical  
16 content of springs to which endemic species in the Refuge are adapted. U.S. Fish and Wildlife  
17 Service, *Five-Year Review and Evaluation for the Ash Meadows Amargosa Pupfish (Cyprinodon*  
18 *nevadensis mionectes)* (March 17, 2010), at 15. All of the threatened and endangered species  
19 within the Refuge depend on spring systems arising from a regional groundwater flow system  
20 called the “carbonate aquifer,” as well as its nexus with the basin fill and other local subsurface  
21 water. *See id.* Disruptions to the surface and subsurface hydrology are recognized as particularly  
22 acute threats to groundwater dependent species such as the Ash Meadows Amargosa pupfish. *Id.*

23           36. Mining and mining exploration are well-recognized threats to the threatened and  
24 endangered species at Ash Meadows. *See id.* at 17-18. According to FWS, “[n]ew mineral claims  
25 and subsequent mining could cause direct loss of . . . fish habitat, as well as indirect impacts by  
26 diverting or draining water away from occupied habitat.” *Id.* Because if their potential impacts,  
27 mineral operations are incompatible with the Refuge’s purposes. *Id.* at 18.

1           37. As acknowledged by Rover, drilling within the Project area will intersect  
2 groundwater that is in hydrologic communication with the Refuge springs. Rover NOI at 6.  
3 Accordingly, it is likely that drilling will impact the groundwater aquifer that supplies water at  
4 these springs and harm the threatened and endangered animals and plants in the Refuge that depend  
5 on springflow. At least two wells drilled within the Project area—one by the U.S. Geological  
6 Survey and one by the U.S. Department of Energy—have produced artesian flow, meaning they  
7 encountered pressurized groundwater. Neither BLM nor Rover have proposed or analyzed  
8 measures to contain artesian flows and pressures.

9           38. Although the exact hydrogeology of the Project area is not fully known, Rover’s  
10 proposed drilling presents a likelihood of irreparable harm to groundwater-dependent species and  
11 ecosystems in the Refuge, as demonstrated by the historical case of “the Borehole” or “Borehole  
12 Spring.” The site on the Amargosa River south of Ash Meadows in Tecopa, California, now known  
13 as “the Borehole” or “Borehole Spring,” was created by mineral exploration drilling in the 1960s  
14 that encountered artesian flow at a depth of 360 feet. Attempts to plug the Borehole failed and the  
15 resulting artesian flow continues to the present day. Creation of the Borehole depressurized the  
16 surrounding aquifer, lowering groundwater levels, decreasing spring discharge, and causing at  
17 least one nearby spring to dry up completely. Hydrologic impacts from the creation of the Borehole  
18 have been observed several miles away from the site itself.

19           39. The Project will also disturb previously undisturbed upland habitats with heavy  
20 equipment, drilling rigs, and the creation of new access routes. Affected habitats include creosote  
21 shrublands and mesquite woodlands, which will be disturbed, de-vegetated, and irreparably  
22 damaged by Rover’s proposed activities. These areas provide important wildlife habitat and are  
23 contiguous with protected habitats within the Amargosa Mesquite ACEC, the Ash Meadows  
24 ACEC, and the Refuge.

25           40. To access its drilling sites with vehicles and heavy equipment, Rover will utilize  
26 access routes that run through the Ash Meadows ACEC and/or the Amargosa Mesquite ACEC.  
27

1 Rover will also utilize access routes through the Ash Meadows ACEC to provide water for drilling  
2 operations.

3 41. Despite the potential impacts to threatened and endangered species and sensitive  
4 wildlife habitats, and despite the fact that Rover's NOI contains no information on whether or how  
5 Rover intends to avoid, minimize, or mitigate any direct, indirect, or cumulative impacts from its  
6 proposed drilling operations—especially to the area's unique and invaluable groundwater  
7 resources and springs—BLM accepted Rover's notice and did not require the company to submit  
8 a Plan of Operations or conduct the appropriate level of NEPA and FLPMA analysis as required  
9 by its own regulations at 43 C.F.R. §§ 3809.11 and 3809.411, and NEPA at 42 U.S.C. § 4332.

#### 10 JURISDICTION AND VENUE

11 42. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question), 28  
12 U.S.C. § 1346 (United States as defendant), and 5 U.S.C. §§ 551-706 (Administrative Procedure  
13 Act), because this action involves the United States as a defendant and arises under the laws of the  
14 United States, including FLPMA, 43 U.S.C. §§ 1701 *et seq.*, NEPA, 42 U.S.C. § 4331 *et seq.*, and  
15 the APA, 5 U.S.C. §§ 551-706. An actual justiciable controversy exists between Plaintiffs and  
16 Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 (Declaratory  
17 Judgment Act) and 5 U.S.C. §§ 705 and 706 (Administrative Procedure Act). The challenged  
18 agency actions are final and subject to this Court's review under 5 U.S.C. §§ 702, 704, and 706  
19 (APA).

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

24 44. Venue is proper in the Southern Division of this District, as the challenge involves  
25 federal lands and resources in Nye County. L.R. 1A 1-6.

**PARTIES**

1  
2 45. The Center is a tax-exempt, non-profit, membership organization with 84,324  
3 members, including 666 members in Nevada. The Center's main office is in Tucson, Arizona. The  
4 Center works through science, law, and creative media to secure a future for all species, great or  
5 small, hovering on the brink of extinction. The Center has an extensive history of working to  
6 protect Nevada's ecosystems, species, water, and climate from groundwater over-appropriation.

7 46. The Center's members' diverse interests span natural history, ecology,  
8 conservation, wildlife and native plant observation, nature photography, hiking, camping,  
9 backpacking, quiet and solitude in nature, dark skies, spiritual renewal, and a love of the Great  
10 Basin's natural landscapes. Center members derive benefit from engaging with landscapes and the  
11 endangered species that reside there. The Center's members expect and rely upon federal and state  
12 regulatory agencies, such as BLM, to protect the species, habitats, viewsheds, and air and water  
13 quality of these lands.

14 47. The Amargosa Conservancy is a 501(c)(3) not-for-profit organization based in  
15 Shoshone, California. It was incorporated in 2004. The Conservancy's mission is to work toward  
16 a sustainable future for the Amargosa Basin through science, stewardship and advocacy. The  
17 Conservancy is managed by a Board of Directors composed of 10 individuals from California and  
18 Nevada with passion and expertise related to the natural and cultural resources and human  
19 communities of the Amargosa Basin. The Conservancy has been the leading voice for conservation  
20 in the Amargosa Basin for almost twenty years. The Conservancy's accomplishments include:  
21 successfully advocating for the designation of the Amargosa Wild and Scenic River in 2009, and  
22 the expansion of same in 2019; building a new trailhead for the Amargosa River Trail at China  
23 Ranch in Tecopa; partnering with numerous organizations to create habitat for the endangered  
24 Amargosa vole in Shoshone; and facilitating a long-term hydrological monitoring program which  
25 has proven vital to understanding the complex hydrology of the region.

26 48. The Conservancy has 563 paying members and 1,702 supporters. The  
27 Conservancy's members' diverse interests span natural history, ecology, conservation, wildlife



1 and native plant observation, nature photography, hiking, camping, soaking in hot springs, quiet  
2 and solitude in nature, and spiritual renewal—all centered on the public lands of the Amargosa  
3 Basin, including Ash Meadows and the Project area. The Conservancy’s members expect and rely  
4 upon federal and state regulatory agencies, such as BLM, to protect the species, habitats,  
5 viewsheds, and air and water quality of these lands.

6 49. Plaintiffs bring this action on their own behalf, and on behalf of their members.  
7 Plaintiffs and/or their members regularly use and enjoy the federal public lands managed by the  
8 BLM within the Pahrump Planning Area, including the lands within the Refuge and lands near and  
9 within the Project Area.

10 50. Center member and Great Basin Director Patrick Donnelly has lived in the  
11 Amargosa Basin for nine years. Mr. Donnelly currently lives in Shoshone, California, roughly 40  
12 miles from the Refuge. He regularly recreates and seeks spiritual renewal on public lands and  
13 federally protected areas in Nevada, including at Ash Meadows and in uplands within the Project  
14 Area. Mr. Donnelly has a particular interest in rare and endemic desert species, including the  
15 threatened and endangered species found within and around the Refuge. He has visited the Refuge  
16 more times than he can count, most recently on June 25, 2023. He often stops by Fairbanks Spring  
17 on these visits to view wildlife (including the endangered Ash Meadows Amargosa pupfish), take  
18 photographs, and seek solitude and spiritual renewal amidst the desert landscape.

19 51. Conservancy members, including Executive Director Mason Voehl, derive benefit  
20 from engaging with the landscapes of the Amargosa Basin and the many wildlife species that reside  
21 there, including threatened and endangered species. Mr. Voehl is an environmental writer, hiker,  
22 and photographer who has spent considerable time drawing inspiration from public lands in  
23 Nevada, particularly in the Death Valley ecoregion that includes Ash Meadows. Mr. Voehl  
24 regularly visits Ash Meadows, most recently it June 29, 2023—a visit which included Fairbanks  
25 Spring. Mr. Voehl enjoys observing the endangered species at Fairbanks Spring and elsewhere in  
26 the Refuge, including the Ash Meadows Amargosa pupfish, and drawing inspiration from the  
27 spectacular desert landscape that includes the Project area.

1           52.     Both Mr. Donnelly and Mr. Voehl plan to visit Ash Meadows and Fairbanks Spring,  
2 as well as the Project area, regularly into the foreseeable future, including during the Summer of  
3 2023, to enjoy these areas and pursue their interests.

4           53.     By authorizing the Project, Defendants approved actions that will significantly and  
5 irreparably harm Plaintiffs' interest in Ash Meadows and the specific Project area. The legal  
6 violations alleged in this Complaint cause direct injury to Plaintiffs' health, recreational,  
7 inspirational, religious, scientific, educational, and aesthetic interests. Plaintiffs and their members  
8 have been and will continue to be adversely affected and irreparably harmed if Defendants'  
9 ongoing violations of the ESA, FLPMA, NEPA, and the APA continue. These are actual, concrete  
10 injuries caused by the BLM's violations of the ESA, FLPMA, NEPA, and the APA. Plaintiffs and  
11 their members' injuries will be redressed by the relief sought.

12           54.     Defendants' failure to comply with NEPA and FLPMA additionally harms  
13 Plaintiffs and their members by denying them the right to informed decisionmaking and full  
14 disclosure under NEPA and FLPMA, as well as the right to meaningfully participate in the  
15 decisionmaking process.

16           55.     Interior is a cabinet-level executive agency responsible for, among other things,  
17 managing federally-owned lands, wildlife, and public natural resources throughout the United  
18 States. Interior has the ultimate responsibility to administer and implement FLPMA, and to comply  
19 with all other applicable federal laws, including NEPA.

20           56.     Defendant Debra Haaland, U.S. Secretary of the Interior, is the highest-ranking  
21 official within Interior, and in that capacity has ultimate responsibility for the administration of  
22 federal public lands and implementation of the statutes applicable thereto, including FLPMA and  
23 NEPA. Secretary Haaland is sued in her official capacity.

24           57.     BLM is an agency within the U.S. Department of the Interior. BLM and its officers  
25 are responsible for administering federally-owned public lands and natural resources, under all  
26 federal laws applicable thereto, including NEPA and FLPMA.

27

1 58. Defendant Tracy Stone-Manning is the Director of BLM and as such is the highest-  
2 ranking official within the agency. Director Stone-Manning is sued in her official capacity.

3 59. Defendant Nicholas B. Pay is the Field Office Manager for BLM’s Pahrump Field  
4 Office. As Field Office Manager, Mr. Pay is responsible for administering and managing public  
5 lands and resources within the Pahrump Planning Area, including lands and resources located  
6 within and around the Project area. Mr. Pay accepted Rover’s NOI, which allowed the company  
7 to commence mineral exploration activities. He is sued in his official capacity.

8 **LEGAL BACKGROUND**

9 **The Federal Land Policy and Management Act of 1976 (FLPMA)**

10 60. FLPMA is the “organic act” of BLM and governs the agency’s management of  
11 public lands and resources. In FLPMA, Congress declared that is the policy of the United States  
12 to manage the public lands “in a manner that will protect the quality of scientific, scenic, historical,  
13 ecological, environmental, air and atmospheric, water resource, and archeological values” and that,  
14 “where appropriate, will preserve and protect certain public lands in their natural condition.” 43  
15 U.S.C. § 1701(a)(8).

16 61. FLPMA requires that BLM, in managing the public lands, “by regulation or  
17 otherwise, take any action necessary to prevent unnecessary or undue degradation [UUD] of the  
18 lands.” 43 U.S.C. § 1732(b). This is known as the “prevent UUD” standard.

19 62. BLM has promulgated regulations intended to prevent UUD by operations  
20 authorized by the mining laws. *See* 43 C.F.R. § 3809.1(a).

21 63. For regulatory purposes, BLM divided mineral operations into three categories  
22 according to the size and location of the operations. 43 C.F.R. § 3809.10.

23 64. Mineral exploration operations that will result in only negligible disturbance of  
24 federal lands, and do not involve the use of mechanized earth-moving equipment, truck-mounted  
25 drilling equipment, or explosives, are identified as “casual” use operations. 43 C.F.R. § 3809.5.

26 65. “Notice” mineral exploration operations are those that will cause a cumulative  
27 surface disturbance of five acres or less, 43 C.F.R. § 3809.21, and do not take place in certain

1 “special status areas” where Section 3809.21 does not apply, including ACECs and “lands or  
2 waters known to contain Federally proposed or listed threatened or endangered species or their  
3 proposed or designated critical habitat.” 43 C.F.R. § 3809.11.

4 66. Prior to commencing “notice” mineral exploration operations, the operator must  
5 provide an NOI the BLM that describes the proposed activities. 43 C.F.R. § 3809.301.  
6 Additionally, the NOI must provide that reclamation of disturbed areas will be completed, and that  
7 measures will be taken to prevent UUD of the lands during operations. *Id.*

8 67. After BLM has received an NOI for a mineral exploration operation, the agency  
9 reviews the NOI to see if it is complete. 43 C.F.R. § 3809.311(a). If the NOI is incomplete, BLM  
10 will inform the operator in writing of the additional information that it must submit to BLM. 43  
11 C.F.R. § 3809.311(b). If the operator does not demonstrate that it will prevent UUD, BLM cannot  
12 approve or allow the operations. 43 C.F.R. § 3809.311(c).

13 68. For mining or mineral exploration operations that will cause a cumulative surface  
14 disturbance of more than five acres, and for operations proposed in specifically designated “special  
15 status areas,” the operator must provide a “Plan of Operations,” that must be approved by BLM.  
16 43 C.F.R. § 3809.11. Prior to approving the Plan of Operations, BLM must prepare an  
17 Environmental Assessment or Environmental Impact Statement pursuant to NEPA. 43 C.F.R. §  
18 3809.411; BLM Handbook H-3809-1, § 4.4.1.3.2 (NEPA Analysis); 42 U.S.C. § 4332(C).

19 69. Both “notice” and “plan” operations must prevent UUD by adhering to BLM’s  
20 regulatory performance standards at 43 C.F.R. § 3809.420. *See* 43 C.F.R. § 3809.415. Specifically,  
21 BLM and mining operators must, among other things, “take such action as may be needed to  
22 prevent adverse impacts to threatened or endangered species, and their habitat which may be  
23 affected by operations,” 43 C.F.R. § 3809.420(b)(7), and “conduct all operations in a manner that  
24 complies with all pertinent Federal and state laws,” including NEPA and the ESA, 43 C.F.R. §  
25 3809.420(a)(6).

26 70. According to BLM policy, “[m]itigation measures fall squarely within the actions  
27 [BLM] can direct to prevent unnecessary or undue degradation of the public lands. An impact that

1 can be mitigated, but is not, is clearly unnecessary.” 65 Fed. Reg. 69998, 70052 (Nov. 21, 2000)  
 2 (preamble to rule section that remains in force); *see also* M-37039, The Bureau of Land  
 3 Management’s Authority to Address Impacts of its Land Use Authorizations through Mitigation,  
 4 19-20 (Dec. 21, 2016).<sup>3</sup>

5 71. In detailing part of BLM’s duty to prevent UUD under FLPMA, the Interior  
 6 Solicitor recently reaffirmed that:

7 [I]t is well established that the UUD provision under FLPMA provides another  
 8 basis for requiring mitigation in those circumstances where impacts in the absence  
 9 of mitigation would be unnecessary or undue. Although mitigation may contribute  
 10 in some instances to the avoidance of UUD, in other cases, the impacts to resources  
 11 may be of a nature or magnitude such that they cannot be mitigated sufficiently to  
 12 prevent UUD. **For example, the destruction of unique habitat in a particular  
 13 place might not be adequately compensated by post-use restoration or  
 14 protection of lesser habitat elsewhere. In such a case, where mitigation cannot  
 15 prevent UUD, the BLM has authority to reject the application for approval of  
 16 the public land use based on the proponent’s inability to prevent UUD.** The  
 17 obligation to avoid UUD is a complementary but distinct source of authority for  
 18 requiring mitigation under FLPMA.

19 M-37039 (reinstated by M-37075) (April 15, 2022) (emphasis added).

20 **The National Environmental Policy Act (NEPA)**

21 72. NEPA is “basic national charter for protection of the environment.” *Ctr. for*  
 22 *Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020). In passing NEPA, Congress  
 23 “recogniz[ed] the profound impact of man’s activity on the interrelations of all components of the  
 24 natural environment” and set out “to create and maintain conditions under which man and nature  
 25 can exist in productive harmony.” 42 U.S.C. § 4331(a).

26 73. NEPA serves twin goals. *Robertson v. Methow Valley Citizens Council*, 490 U.S.  
 27 332, 349 (1989). First, it aims to ensure that federal agencies carefully consider detailed

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<sup>3</sup> M-37039 was temporarily revoked in 2017, but was recently reinstated by the Solicitor. M-37075, Withdrawal of M-37046 and Reinstatement of M-37039 (April 15, 2022). This new Opinion noted that the 2017 Opinion (M-37046) “expresses no views regarding the merits of the legal analysis or conclusions contained in the [2016 Opinion].” M-37075 at 2.



1 information regarding the environmental impact of a proposed action before reaching a decision  
2 on the action. *Id.* Second, it ensures that information about a proposal’s environmental impact is  
3 made available to members of the public so that they may play a role in the decision-making  
4 process. *Id.* NEPA ensures that important effects will not be overlooked or underestimated, only  
5 to be discovered after resources have been committed or the die is otherwise already cast. *Id.*

6 74. NEPA and its implementing regulations require federal agencies to prepare an  
7 environmental impact statement (EIS) for all “major Federal actions significantly affecting the  
8 quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3. An agency may  
9 first prepare an environmental assessment (EA) to determine whether an EIS is necessary. 40  
10 C.F.R. § 1501.5. If, after preparing an EA, the agency decides that an EIS is not necessary, the  
11 agency must prepare an explanatory finding of no significant impact (FONSI) which “briefly  
12 present[s] the reasons why an action . . . will not have a significant effect on the human  
13 environment.” 40 C.F.R. § 1508.1.

14 75. In considering whether the effects of a proposed action are significant, agencies  
15 “should consider, as appropriate to the specific action, the affected area (national, regional, or  
16 local) and its resources, such as listed species and designated critical habitat under the Endangered  
17 Species Act.” 40 C.F.R. § 1501.3.

18 76. Whether the agency prepares an EA or an EIS, the agency must take a “hard look”  
19 at all direct, indirect, and cumulative environmental impacts of the proposed action and reasonable  
20 alternatives thereto. *Kern v. United States BLM*, 284 F.3d 1062, 1071 (9th Cir. 2002). To fulfill its  
21 purpose, the agency’s environmental analysis must “provide full and fair discussion of significant  
22 environmental impacts and . . . inform decisionmakers and the public of the reasonable alternatives  
23 which would avoid or minimize adverse impacts or enhance the quality of the human  
24 environment.” 40 C.F.R. § 1502.1.

### 25 **The Endangered Species Act (ESA)**

26 77. The ESA is “the most comprehensive legislation for the preservation of endangered  
27 species ever enacted by any nation.” *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). It

1 reflects “a conscious decision by Congress to give endangered species priority over the ‘primary  
2 missions’ of federal agencies.” *Id.* at 185. The statute’s purpose is to “provide a means whereby  
3 the ecosystems upon which endangered species and threatened species depend may be conserved,  
4 [and] to provide a program for the conservation of such endangered and threatened species.” 16  
5 U.S.C. § 1531(b). Through the ESA, Congress declared its policy “that all Federal departments  
6 and agencies shall seek to conserve endangered and threatened species and shall utilize their  
7 authorities in furtherance of the purposes of [the act].” *Id.* § 1531(c)(1).

8         78. The ESA defines “conserve” as “the use of all methods and procedures which are  
9 necessary to bring any endangered species or threatened species to the point at which the measures  
10 provided pursuant to [the ESA] are no longer necessary.” 16 U.S.C. § 1532(3). Accordingly, the  
11 goal of the ESA is not only to temporarily save endangered and threatened species from  
12 extinction, but also to recover these species to the point where they are no longer in danger of  
13 extinction, and thus no longer in need of ESA protection.

14         79. Pursuant to the ESA, a species is listed as “endangered” if it is “in danger of  
15 extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). A species is  
16 listed as “threatened” if it is “likely to become an endangered species within the foreseeable future  
17 throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20).

18         80. An important benefit the ESA conveys to listed species to prompt their recovery is  
19 the “designation” of protected “critical habitat.” 16 U.S.C. § 1533(a)(3)(A)(i). Areas designated  
20 as critical habitat are “essential” to the “conservation of the species.” 16 U.S.C. § 1532(5)(A).

21         81. The ESA requires federal agencies to consult with FWS to “insure that any action  
22 authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued  
23 existence of any endangered species or threatened species or result in the destruction or adverse  
24 modification” of that species’ designated critical habitat. 16 U.S.C. § 1536(a)(2). Thus, regardless  
25 of whether critical habitat has been designated, the action agency must consult with FWS  
26 regarding whether the action may “jeopardize the continued existence” of any listed species. *Id.*  
27 However, if critical habitat has been designated, the ESA imposes an additional consultation

1 requirement concerning whether the action may result in the “destruction or adverse  
2 modification” of the species’ designated critical habitat. *Id.*

3 82. To comply with ESA Section 7(a)(2), an action agency—BLM in the present  
4 case—generally must prepare a “biological assessment” (BA). 16 U.S.C. § 1536(c)(1). The BA  
5 process begins with a request from the action agency to FWS for information concerning whether  
6 any listed species or critical habitat is present in the project area. *See id.* After FWS provides this  
7 information, the action agency then determines, in the first instance, whether any listed species  
8 or critical habitat may be affected by the proposed action. *See id.* The BA then evaluates whether  
9 the species or critical habitat is likely to be adversely affected or not likely to be adversely affected  
10 by the proposed project. 50 C.F.R. § 402.12(a).

11 83. If the proposed agency action may affect a listed species or critical habitat, the  
12 action agency must consult with FWS. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). If the  
13 agency action is likely to adversely affect a species or critical habitat, the action agency must  
14 engage in “formal consultation” with FWS. 50 C.F.R. § 402.14(a). On the other hand, if the action  
15 agency determines that its action is not likely to adversely affect a species or critical habitat it  
16 may engage in “informal consultation” with FWS. 50 C.F.R. §§ 402.13(a), 402.14(b)(1). If, as a  
17 result of informal consultation, FWS issues a written “concurrence” to the action agency that its  
18 proposed action is not likely to adversely affect a listed species or critical habitat, the consultation  
19 process ends. 50 C.F.R. §§ 402.13(a), 402.14(b)(1).

20 84. To complete formal consultation, FWS must provide the action agency with a  
21 “biological opinion” (BiOp) explaining how the proposed action will affect the listed species or  
22 its critical habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. If FWS concludes that the proposed  
23 action “will jeopardize the continued existence” of a listed species or result in the destruction or  
24 adverse modification of critical habitat, the BiOp must outline “reasonable and prudent  
25 alternatives,” if any, that could be taken by the action agency without inflicting these harms. 16  
26 U.S.C. § 1536(b)(3)(A). An action agency may not proceed with an action that would likely  
27

1 jeopardize a listed species or destroy or adversely modify its critical habitat. 16 U.S.C. §  
2 1536(a)(2).

3 85. If the BiOp concludes that the action is not likely to jeopardize the continued  
4 existence of a listed species, and is not likely to result in the destruction or adverse modification  
5 of critical habitat, FWS must address whether the action will nevertheless “take” members of the  
6 species. 16 U.S.C. § 1536(b)(4). “Take” in this context “means to harass, harm, pursue, hunt,  
7 shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16  
8 U.S.C. § 1532(19). “Harm” under this definition “may include significant habitat modification or  
9 degradation where it actually kills or injures wildlife by significantly impairing essential  
10 behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3. Specifically,  
11 FWS must provide the action agency with an “incidental take statement,” specifying the amount  
12 or extent of incidental taking of such listed species that would be inflicted by the action and any  
13 “reasonable and prudent measures” that FWS considers necessary or appropriate to minimize  
14 such impact, and setting forth the “terms and conditions” with which the action agency must  
15 comply to implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). To minimize  
16 the impacts of incidental take, the action agency must monitor and report the impact of its action  
17 on the listed species to FWS as specified in the incidental take statement. 16 U.S.C. § 1536(b)(4);  
18 50 C.F.R. §§ 402.14(i)(1)(iv), 402.14(i)(3). If, during the course of the action, the amount or  
19 extent of incidental taking is exceeded, the action agency “must reinitiate consultation” with FWS  
20 “immediately.” 50 C.F.R. § 402.14(i)(4).

### 21 **The Administrative Procedure Act (APA)**

22 86. The APA provides for judicial review of federal agency actions for persons  
23 adversely affected or aggrieved by the agency action. 5 U.S.C. § 702. Agency action made  
24 reviewable by statute and final agency action for which there is no other adequate remedy are  
25 subject to judicial review. 5 U.S.C. § 704.

26 87. The APA requires a reviewing court to “compel agency action unlawfully withheld  
27 or unreasonably delayed” and “hold unlawful and set aside agency action, findings, and

1 conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in  
2 accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706.

3 88. An agency action is arbitrary and capricious if “the agency relied on factors which  
4 Congress did not intended it to consider, entirely failed to consider an important aspect of the  
5 problem, offered an explanation for its decision that runs counter to the evidence before the agency,  
6 or is so implausible that it could not be ascribed to a difference in view or the product of agency  
7 expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

### 8 **FIRST CLAIM FOR RELIEF**

#### 9 BLM Violated FLPMA and BLM Regulations at 43 C.F.R. Part 3809

#### 10 Failure to Require a Plan of Operations

11 89. Plaintiffs hereby incorporate by reference all preceding paragraphs.

12 90. BLM’s mining regulations provide that certain operations do not qualify as “notice”  
13 operations even if they cause a cumulative surface disturbance of five acres or less. *See* 43 C.F.R.  
14 §§ 3809.11, 3809.21. These include operations “causing surface disturbance” or taking place in  
15 certain “special status areas” where Section 3809.21 does not apply, including “(3) Designated  
16 Areas of Critical Environmental Concern [ACECs],” and “(6) Any lands or waters known to  
17 contain Federally proposed or listed threatened or endangered species or their proposed or  
18 designated critical habitat.” 43 C.F.R. § 3809.11(c)(3) and (6). Operations taking place in these  
19 “special status areas” require a Plan of Operations, which triggers the need for an Environmental  
20 Assessment or Environmental Impact Statement under NEPA. *Id.*; 43 C.F.R. § 3809.411; BLM  
21 Handbook H-3809-1, § 4.4.1.3.2 (NEPA Analysis); 42 U.S.C. § 4332(C).

22 91. The project will cause surface disturbance to the Ash Meadows and Amargosa  
23 Mesquite ACECs. The drilling locations are adjacent to, or within the Ash Meadows ACEC. *See*  
24 Figure 1, *supra*. The Project’s heavy equipment and vehicle access will be through, and disturb,  
25 the Ash Meadows ACEC and/or the Amargosa Mesquite ACEC. *See* Rover NOI at 2 (describing  
26 access via dirt roads from Highway 160 or State Route 373). The “Project Boundary” includes the  
27



1 northern portion of the Amargosa Mesquite ACEC. *See* Rover Metals (USA), Inc., *Geology and*  
2 *Lithium Mineralization of the Let's Go Lithium Project* (Oct. 4, 2022), Fig. 3.

3 92. The Project takes place on lands and waters known to harbor and sustain threatened  
4 and endangered species. Specifically, the Project is located in close proximity to the Refuge  
5 boundary and within 2,000 feet of Fairbanks Spring, which provides critical habitat for the  
6 endangered Ash Meadows Amargosa pupfish. Moreover, the Project involves drilling that will,  
7 per Rover's own admission, encounter the groundwater aquifer that supplies water to Fairbanks  
8 Spring and other springs within the Refuge. *See* Rover NOI at 4, 6.

9 93. Rover's proposal does not qualify as a "notice" operation under BLM's regulations  
10 because it will take place within ACECs, and because it will occur within and/or impact lands and  
11 waters that contain threatened and endangered species. 43 C.F.R. §§ 3809.11, 3809.21.

12 94. BLM accepted Rover's March 22, 2023 NOI without requiring the company to  
13 submit a Plan of Operations and without conducting the appropriate level of NEPA and FLPMA  
14 analysis. *See id.*; 43 C.F.R. § 3809.411; BLM Handbook H-3809-1, § 4.4.1.3.2 (NEPA Analysis);  
15 42 U.S.C. § 4332(C).

16 95. BLM's actions and omissions regarding the Project and Rover's March 22, 2023  
17 NOI are arbitrary, capricious, an abuse of discretion, not in accordance with law, without  
18 observance of procedure required by law, and in excess of statutory jurisdiction, authority, or  
19 limitations, within the meaning of the judicial review provisions of the APA. 5 U.S.C. §§ 701-706.

20 96. Alternatively, BLM's failure to require Rover to submit a Plan of Operations and  
21 its failure to conduct the appropriate level of NEPA and FLPMA analysis constitute agency action  
22 unlawfully withheld or unreasonably delayed within the judicial review provisions of the APA. 5  
23 U.S.C. §§ 701-706.

24 **SECOND CLAIM FOR RELIEF**

25 **BLM Violated FLPMA and BLM Regulations at 43 C.F.R. Part 3809**

26 **Failure to Prevent UUD**

27 97. Plaintiffs hereby incorporate by reference all preceding paragraphs.

1           98. Under FLPMA, BLM in managing public lands “shall . . . take any action necessary  
2 to prevent unnecessary or undue degradation [UUD] of the lands.” 43 U.S.C. § 1732(b).

3           99. Operations on public lands that do not adhere to BLM performance standards at 43  
4 C.F.R. § 3809.420 fail to prevent UUD. 43 CFR § 3809.415. The performance standards require  
5 BLM and mining operators to “take such action as may be needed to prevent adverse impacts to  
6 threatened or endangered species, and their habitat which may be affected by operations,” 43  
7 C.F.R. § 3809.420(b)(7), and “conduct all operations in a manner that complies with all pertinent  
8 Federal and state laws,” including NEPA and the ESA, 43 C.F.R. § 3809.420(a)(6).

9           100. BLM did not require Rover to take such action as may be needed to prevent adverse  
10 impacts to threatened or endangered species and their habitat which may be affected by its  
11 operations. 43 C.F.R. § 3809.420(b)(7).

12           101. BLM is required to ensure that notice level operations do not cause UUD, as the  
13 operator must include a detailed description of “[t]he measures that you will take to prevent  
14 unnecessary or undue degradation during operations.” 43 C.F.R. § 3809.301(b)(2)(i). BLM failed  
15 to require Rover to provide the necessary information to ensure the prevention of UUD, and thus  
16 failed to prevent UUD.

17           102. BLM’s failure to consult with the U.S. Fish and Wildlife Service as required under  
18 ESA Section 7(a)(2) violates the ESA. *See* 16 U.S.C. § 1536(a)(2). BLM’s failure to prepare an  
19 Environmental Assessment or Environmental Impact Statement violates NEPA. *See* 42 U.S.C. §  
20 4332. The proposed exploration activities therefore do not comply with all pertinent Federal and  
21 state laws. 43 C.F.R. § 3809.420(a)(6).

22           103. BLM has not taken action to avoid or mitigate the impacts of Rover’s operations,  
23 including adverse impacts to groundwater and contamination from drilling fluids and unlined  
24 sumps.

25           104. For all of these reasons, BLM has failed to prevent UUD in connection with Rover’s  
26 exploration activities, and has violated FLPMA. 43 U.S.C. § 1732(b).

27

1 105. BLM’s actions and omissions regarding the Project and Rover’s NOI are arbitrary,  
2 capricious, an abuse of discretion, not in accordance with law, without observance of procedure  
3 required by law, and in excess of statutory jurisdiction, authority, or limitations, within the  
4 meaning of the judicial review provisions of the APA. 5 U.S.C. §§ 701-706.

5 106. Alternatively, BLM’s failure to take actions necessary to prevent UUD constitutes  
6 agency action unlawfully withheld or unreasonably delayed within the judicial review provisions  
7 of the APA. 5 U.S.C. §§ 701-706.

8 **THIRD CLAIM FOR RELIEF**

9 BLM Violated NEPA

10 107. Plaintiffs hereby incorporate by reference all preceding paragraphs.

11 108. NEPA and its implementing regulations require federal agencies to prepare an  
12 environmental impact statement (EIS) for all “major Federal actions significantly affecting the  
13 quality of the human environment.” 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1502.3. An agency may  
14 first prepare an environmental assessment (EA) to determine whether an EIS is necessary. 40  
15 C.F.R. § 1501.5.

16 109. Whether the agency prepares an EA or an EIS, the agency must take a “hard look”  
17 at all direct, indirect, and cumulative environmental impacts of the proposed action and reasonable  
18 alternatives thereto. *Kern v. United States BLM*, 284 F.3d 1062, 1071 (9th Cir. 2002); 40 C.F.R. §  
19 1502.1.

20 110. According to BLM’s own regulations and Handbook, BLM is required to prepare  
21 an EA or EIS for any mineral operations on public lands which do not qualify as “casual use” or  
22 “notice” operations. 43 C.F.R. § 3809.411; BLM Handbook H-3809-1, § 4.4.1.3.2 (NEPA  
23 Analysis); 42 U.S.C. § 4332(C).

24 111. The Project does not qualify as “casual use.” *See* 43 C.F.R. § 3809.5.

25 112. The Project does not quality as a “notice” operation because will take place in and  
26 disturb the Ash Meadows and/or Amargosa Mesquite ACECs; and because it will take place on  
27

1 lands and waters known to harbor and sustain threatened and endangered species, and may likely  
2 affect those species and their habitat. *See* 43 C.F.R. § 3809.11.

3 113. BLM failed to prepare an EA or EIS to analyze the Project’s direct, indirect, and  
4 cumulative impacts, as well as the other requirements of NEPA.

5 114. BLM’s actions and omissions regarding the Project and Rover’s March 22, 2023  
6 NOI therefore violate NEPA and are arbitrary, capricious, an abuse of discretion, not in accordance  
7 with law, without observance of procedure required by law, and in excess of statutory jurisdiction,  
8 authority, or limitations, within the meaning of the judicial review provisions of the APA. 5 U.S.C.  
9 §§ 701-706.

10 115. Alternatively, BLM’s failure to prepare an EA or EIS constitutes agency action  
11 unlawfully withheld or unreasonably delayed within the judicial review provisions of the APA. 5  
12 U.S.C. §§ 701-706.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that this Court:

15 A. Declare that BLM has violated FLPMA and BLM’s regulations in allowing,  
16 approving and authorizing the Project;

17 B. Declare that the BLM has violated NEPA in allowing, approving and authorizing  
18 the Project;

19 C. Enjoin any implementation of the Project;

20 D. Vacate BLM’s actions authorizing, allowing or approving the Project;

21 E. Award to Plaintiffs their costs, expenses, expert witness fees, and reasonable  
22 attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

23 F. Grant Plaintiffs such further relief as may be just, proper, and equitable.  
24  
25  
26  
27

1 Dated July 7, 2023

Respectfully submitted,

2 */s/ Scott Lake*

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