

Christopher J. Krupp
WESTERN LAND EXCHANGE PROJECT
Post Office Box 95545
Seattle, Washington 98145
(206) 325-3503
Of Attorney for Plaintiffs

Henry Egghart

Local Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WESTERN LAND EXCHANGE)	
PROJECT, COMMITTEE FOR IDAHO'S)	No. CV-N-
HIGH DESERT, and CENTER FOR)	
BIOLOGICAL DIVERSITY,)	
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES BUREAU OF LAND)	
MANAGEMENT,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1
2 1. This is a civil action for declaratory and injunctive relief under the Administrative
3 Procedure Act (“APA”), 5 U.S.C. §§ 551-76. The claims arise from defendant’s violations of
4 the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370d, and the Council on
5 Environmental Quality’s guidelines (regulations) implementing NEPA, 40 C.F.R. §§ 1500-1508.
6 This action is brought under the right of review provision of the APA, 5 U.S.C. § 702.
7

8 2. Plaintiffs seek an order declaring that defendant has violated NEPA and enjoining
9 defendant and its employees and agents from any further action on the land disposal designated
10 as the “Lincoln County Land Act of 2000 Phase I Implementation” (hereinafter “Phase I”) in the
11 State of Nevada.
12

II. JURISDICTION AND VENUE

13
14 3. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal
15 question jurisdiction) because this action arises under the laws of the United States, including the
16 National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Administrative Procedure Act,
17 5 U.S.C. § 701 et seq.; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; and the Equal
18 Access to Justice Act, 28 U.S.C. § 2412 et seq. The relief is authorized pursuant to 28 U.S.C. §§
19 2201, 2202, and 5 U.S.C. § 706. The actions giving rise to this complaint took place in Ely,
20 Nevada, which is in this District; thus, venue is properly vested in this Court pursuant to 28
21 U.S.C. § 1391(e) and 5 U.S.C. § 703.
22
23

III. PARTIES

1 4. Plaintiff Western Land Exchange Project (“WLXP”) is a membership-based
2 nonprofit conservation organization incorporated in the State of Washington, with its office in
3 Seattle, Washington. WLXP is dedicated to conducting research, outreach, and advocacy toward
4 reform in federal land disposal policy. WLXP has a long-standing interest in land disposal
5 policy and in ensuring that public land disposals comply with federal environmental laws.
6
7 WLXP’s organizational interests in promoting lawful land disposal policy will be irreparably
8 harmed if defendants proceed with the land disposal that is the subject of this complaint.
9
10 WLXP’s staff and members use the lands subject to disposal for observation, aesthetic
11 enjoyment, and other recreational activities. WLXP’s staff and members derive recreational,
12 conservation, and aesthetic benefits from these lands. These uses and benefits would be
13 adversely affected if the subject disposal were to occur.

14 5. Plaintiff Committee for Idaho’s High Desert (“CIHD”) is a membership-based
15 nonprofit organization dedicated to the protection, restoration, and wise use and enjoyment of
16 public lands and desert ecosystems of the interior West, with a focus on Idaho, Nevada, and
17 Eastern Oregon. CIHD, as an organization and on behalf of its members, is concerned with and
18 active in seeking to protect the riparian areas, water quality, wildlife, fisheries, and other natural
19 resources and values of the interior West’s desert regions. CIHD’s members and staff use the
20 lands subject to disposal for observation, aesthetic enjoyment, and other recreational activities.
21
22 CIHD’s members and staff derive recreational, conservation, and aesthetic benefits from these
23 lands. These uses and benefits would be adversely affected if the subject disposal were to occur.
24
25
26

1 6. Plaintiff Center for Biological Diversity (CBD) (formerly Southwest Center for
2 Biological Diversity) is a membership-based nonprofit organization dedicated to the
3 preservation, protection, and restoration of biological diversity, native species, ecosystems, and
4 public lands. CBD has offices in San Diego, Berkeley, and Idyllwild, California, Phoenix and
5 Tucson, Arizona, Silver City, New Mexico, and Shaw Island, Washington. CBD's members and
6 staff use the lands subject to disposal for observation, research, aesthetic enjoyment, and other
7 recreational, scientific, and educational activities. CBD's staff and members derive scientific,
8 recreational, conservation, and aesthetic benefits from these lands and from species' existence in
9 the wild. These uses and benefits would be adversely affected if the subject disposal were to
10 occur.
11

12
13 7. Defendant Bureau of Land Management ("BLM") is an agency of the United
14 States, within the U.S. Department of the Interior. The BLM prepared the Environmental
15 Assessment and manages the public lands that would be affected by Phase I.
16

17 IV. FACTS

18 8. Congress enacted the Lincoln County Land Act of 2000, P.L 106-298, ("LCLA"
19 or "the Act") on October 13, 2000. The Act directed the Secretary of the Interior to dispose of
20 public lands in Lincoln County, Nevada by a competitive bidding process, at a minimum for fair
21 market value.
22

23 9. The LCLA further directed the Secretary, notwithstanding the land sale and land
24 use planning requirements of the Federal Land Policy and Management Act (FLPMA), 43
25

1 U.S.C. §§ 1711-12, to act in accordance with FLPMA, 43 U.S.C. § 1701 et seq., and other
2 applicable laws when implementing the Act.

3 10. The Act directed the Secretary to dispose of approximately 4,817 acres of the land
4 not later than one year after the LCLA's enactment and to dispose of the remaining
5 approximately 8,683 acres not later than five years after enactment.
6

7 11. The Act directed the Secretary to consult with the City of Mesquite and Lincoln
8 County to develop a disposal strategy for the lands identified in the LCLA.
9

10 12. The Defendant, acting on behalf of the Secretary, consulted with the City of
11 Mesquite and Lincoln County to develop a disposal strategy for the LCLA lands. After
12 consultation, the Defendant decided to initially offer three parcels for sale at oral auction. Parcel
13 A would be approximately 4357 acres in size; Parcel B 2009 acres; and Parcel C 112 acres.
14

15 13. The Defendant announced the three parcels would be sold on October 12, 2001 at
16 an oral auction known as Phase I of the Lincoln County Land Act of 2000. Bidding was to begin
17 at the parcels' appraised values.

18 14. On August 3, 2001, the Defendants issued a draft Environmental Assessment
19 (EA) of Phase I for public review and comments pursuant to NEPA.
20

21 15. Plaintiff CIHD, among others, submitted timely comments on the draft EA to the
22 Defendant.

23 16. On September 10, 2001 the Defendant simultaneously issued a final EA and a
24 Decision Record and Finding of No Significant Impact (DR/FONSI) for Phase I.
25
26

1 17. By issuing the DR/FONSI, the Defendant determined that it need not prepare an
2 Environmental Impact Statement (EIS) for LCLA Phase I.

3 18. The EA identified species listed as threatened or endangered under the
4 Endangered Species Act, 16 U.S.C. §§ 1531-43, and known to inhabit the LCLA area. These
5 species include the desert tortoise, southwest willow flycatcher, Yuma clapper rail, Virgin River
6 chub and the woundfin minnow.

7
8 19. The Defendant prepared the EA for Phase I with the assumption that the majority
9 of the land within the three Phase I parcels would be developed as planned developments that
10 integrate residential, commercial, and recreational uses.

11
12 20. The Defendant assumed that development would be consistent with the City of
13 Mesquite's Long Range Comprehensive Master Plan (LRCMP) and similar Lincoln County
14 guiding documents.

15
16 21. The Defendant estimated that 57,718 persons would reside on the 6478-acre
17 Phase I sale area after twenty years.

18 22. Future actions in the Mesquite area that will impact the environment include the
19 LCLA Phase II sale of an additional 7007 acres, the sale of 10,540 acres of public land
20 authorized by the Mesquite Lands Act, a land exchange involving 10,400 acres of BLM-
21 managed lands, and the construction and operation of two power plants and a new regional
22 airport.

23
24 23. More than 200,000 people will live in the Mesquite area as a result of Phase I and
25 future actions.

1 24. Each of the proposed power plants would require approximately 7000 acre-feet of
2 water annually for cooling purposes.

3 25. All LCLA lands lie within the Virgin Valley Hydrographic Area. The perennial
4 yield of water in this basin is fully appropriated by the Virgin Valley Water District.

5 26. The nearby Virgin River is water-quality impaired and could not serve as the
6 water source for Phase I development.

7 27. The water supply for Phase I development would be provided by a system of
8 wells and pipelines, spread over a large region, possibly 20-50 miles from the Phase I lands.

9 28. The Defendant asserted that the Mesquite region would continue to meet the air
10 quality pollutant criteria established by the U.S. Environmental Protection Agency (EPA) after
11 Phase I development.

12 29. The Defendant reached this conclusion on the basis of a comparison of the
13 populations and geography of Mesquite and St. George, Utah.

14 30. The Defendant asserted Phase I would have no significant effects on threatened
15 and endangered species because “development agreements” would require Phase I developers to
16 abide by a Lincoln County Multispecies Habitat Conservation Plan.

17 31. The Defendant also identified the following mitigation efforts to protect federally-
18 listed species from significant adverse effects: a Hydrology Monitoring and Mitigation Plan for
19 the Lower Virgin River Basin in Nevada, Conservation Management Plans for the Mormon
20 Mesa and Beaver Dam Slope Areas of Critical Environmental Concern, and a Lower Virgin
21 River Recovery Implementation Team.

1 32. On October 10, 2001 Plaintiffs WLXP and CBD jointly filed a Notice of Appeal
2 and a Petition for Stay of the DR/FONSI with the Interior Board of Land Appeals (IBLA).

3 33. On October 10, 2001 Plaintiff CIHD independently filed a Notice of Appeal and a
4 Petition for Stay of the DR/FONSI with the IBLA.

5 34. On January 18, 2002, IBLA denied all Plaintiffs' Petitions for Stay of the
6 DR/FONSI. Accordingly, Plaintiffs have fully exhausted all available and necessary
7 administrative remedies before bringing this action.

8 35. On February 14, 2002, IBLA consolidated all administrative appeals of the
9 DR/FONSI and at the same time dismissed Plaintiffs WLXP and CBD from the consolidated
10 appeal.
11

12 36. Plaintiffs have no adequate remedy at law for the Defendant's violations as
13 alleged herein. Without immediate declaratory and injunctive relief ordering Defendant to
14 comply with the procedural requirements of NEPA, Plaintiffs will suffer irreparable harm.
15
16 Accordingly, Plaintiffs pray for judicial relief as set forth below.
17

18 **V. CAUSE OF ACTION**

19 **COUNT 1**

20 **VIOLATION OF NEPA**

21 **Failure to Prepare an Environmental Impact Statement**

22 37. Paragraphs 1 through 36 are incorporated herein by reference.

23 38. NEPA requires an Environmental Impact Statement for any major Federal action
24 significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R.
25 § 1502.3.
26

1 39. Defendant violated NEPA by preparing only an Environmental Assessment for
2 the project, and by issuing a "Finding of No Significant Impact" for the project.

3 40. These actions were taken not in accordance with law, without observance of
4 procedures required by law, and are arbitrary and capricious within the meaning of the APA. 5
5 U.S.C. § 706.
6

7 41. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with
8 this litigation pursuant to the Equal Access to Justice Act.
9

10 **COUNT 2**
11 **Failure to Adequately Disclose and Analyze**
12 **Environmental Impacts**

13 42. Paragraphs 1 through 36 are incorporated herein by reference.

14 43. The EA prepared by Defendant violates NEPA because it fails to adequately
15 disclose and analyze the environmental impacts of LCLA Phase I, including but not limited to
16 the following:

- 17 a. impacts to Virgin River fish species;
18 b. impacts to Virgin River riparian area bird species;
19 c. impacts to desert tortoise;
20 d. impacts to air quality;
21 e. impacts to groundwater;
22 f. impacts to Virgin River surface flows;
23
24
25
26

1 44. These actions were taken not in accordance with law, without observance of
2 procedures required by law, and are arbitrary and capricious within the meaning of the APA. 5
3 U.S.C. § 706.

4 45. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with
5 this litigation pursuant to the Equal Access to Justice Act.
6

7 **COUNT 3**
8 **Violation of NEPA**
9 **Failure to Analyze Reasonable Alternatives**

10 46. Paragraphs 1 through 36 are incorporated herein by reference.

11 47. NEPA requires a NEPA document to include a discussion of alternatives to the
12 proposed action. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9(b). The
13 discussion of alternatives is needed in order to "provid[e] a clear basis for choice among options
14 by the decisionmaker and the public." 40 C.F.R. § 1502.14.
15

16 48. In the EA, Defendant failed to analyze a reasonable range of alternatives,
17 including the reasonable alternative of a smaller Phase I offering consisting of 4,817 acres.

18 49. In failing to analyze a reasonable range of alternatives, Defendant violated NEPA.

19 50. These actions were taken not in accordance with law, without observance of
20 procedures required by law, and are arbitrary and capricious within the meaning of the APA. 5
21 U.S.C. § 706.
22

23 51. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with
24 this litigation pursuant to the Equal Access to Justice Act.
25

26 **COUNT 4**

27 COMPLAINT - 10

Western Land Exchange Project
Post Office Box 95545
Seattle, Washington 98145
(206) 325-3503

Violation of NEPA
Failure to Adequately Address Mitigation Measures

52. Paragraphs 1 through 36 are incorporated herein by reference.

53. NEPA requires that a NEPA document include a discussion of "any adverse environmental effects which cannot be avoided should the proposal be implemented." 42 U.S.C. § 4332(2)(C)(ii) (1989). This requirement includes discussion of the extent to which steps can be taken to mitigate adverse environmental consequences.

54. The Council on Environmental Quality's regulations require the government to discuss in a NEPA document "[m]eans to mitigate adverse environmental impacts" of the proposed action and the "conservation potential" of proposed mitigation measures. 40 C.F.R. §§ 1502.14(f), 1502.16, 1508.25(b).

55. While a NEPA document need not include a detailed explanation of specific measures which will be employed to mitigate the adverse impacts of a proposed action, it must include a reasonably complete discussion of possible mitigation measures discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.

56. Defendant has failed to comply with NEPA's requirements regarding discussion of mitigation measures, including but not limited to the following:

- a. Lincoln County Multispecies Habitat Conservation Plan;
- b. Hydrology Monitoring and Mitigation Plan for the Lower Virgin River Basin in Nevada;
- c. Mormon Mesa Area of Critical Environmental Concern Conservation Management Plan;

- 1 d. Beaver Dam Slope Area of Critical Environmental Concern Conservation
2 Management Plan;
3 e. Lower Virgin River Recovery Implementation Team; and
4 f. proposed development agreements between Lincoln County and Phase I
5 developers.
6

7 57. The failure to include reasonably complete discussion of possible mitigation
8 measures was not in accordance with law, without observance of procedures required by law,
9 and is arbitrary and capricious within the meaning of the APA. 5 U.S.C. § 706.
10

11 58. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with
12 this litigation pursuant to the Equal Access to Justice Act.

13 VI. RELIEF REQUESTED

14 Wherefore, Plaintiffs respectfully request that this Court grant the following relief:
15

- 16 A. Order, declare, and adjudge that Defendant violated NEPA and the APA in preparing the
17 EA for the LCLA Phase I;
18 B. Reverse and remand the DR/FONSI for the LCLA Phase I;
19 C. Issue such temporary restraining order(s) and/or preliminary and permanent injunction(s),
20 as requested by Plaintiffs, barring Defendant from implementing the Proposed Action until such
21 time as Defendant has complied with the procedural requirements of NEPA;
22 D. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated
23 with this litigation pursuant to the Equal Access to Justice Act and all other applicable
24 authorities; and
25
26

1 E. Grant such further relief as the Court deems proper and just.

2 RESPECTFULLY SUBMITTED this ____ day of _____, 2002.

3
4
5
6 By: _____
CHRISTOPHER J. KRUPP, WSB # 31827
7 Attorney for Plaintiffs

8 By: _____
9 HENRY EGGHART, NSB # 3401
10 Local Counsel for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26