

1 Aruna Prabhala, Cal. Bar No. 278865

2 Adam Keats, Cal. Bar No. 191157

3 John Buse, Cal. Bar. No. 163156

4 Center for Biological Diversity

5 351 California Street, Suite 600

6 San Francisco, CA 94104

7 Telephone: 415-436-9682

8 Facsimile: 415-436-9683

9 aprabhala@biologicaldiversity.org

10 akeats@biologicaldiversity.org

11 jbuse@biologicaldiversity.org

12 Jason Weiner, Cal. Bar. No. 259264

13 Wishtoyo Foundation and its Ventura Coastkeeper Program

14 3875-A Telegraph Road #423

15 Ventura, CA 93003

16 Telephone: 805-823-3301

17 Facsimile: 805-258-5107

18 jweiner.venturacoastkeeper@wishtoyo.org

19 Attorneys for Plaintiffs

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 CENTER FOR BIOLOGICAL

23 DIVERSITY, WISHTOYO

24 FOUNDATION, VENTURA

25 COASTKEEPER, FRIENDS OF THE

26 SANTA CLARA RIVER, and SANTA

27 CLARITA ORGANIZATION FOR

28 PLANNING THE ENVIRONMENT,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF

) Case No.

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COMPLAINT FOR DECLARATORY

AND INJUNCTIVE RELIEF

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1 ENGINEERS, COL. KIMBERLY)
 2 COLLOTON, in her official capacity as)
 3 Commander and District Engineer of the)
 4 Los Angeles District of the U.S. Army)
 5 Corps of Engineers, UNITED STATES)
 6 ENVIRONMENTAL PROTECTION)
 7 AGENCY, GINA McCARTHY, in her)
 8 official capacity as Administrator of the)
 9 U.S. Environmental Protection Agency,)
 10 and JARED BLUMENFELD, in his)
 11 official capacity as Region 9)
 Administrator of the U.S. Environmental)
 Protection Agency,)
 Defendants.)

12 **INTRODUCTION**

13 1. This action challenges the issuance of a permit under Section 404 of the
 14 Clean Water Act, 33 U.S.C. § 1344 (“Section 404”), by the United States Army Corps
 15 of Engineers (the “Corps”), with the cooperation of the Environmental Protection
 16 Agency (“EPA”), to the Newhall Land and Farming Company for planned urban
 17 development on the current site of Newhall Ranch in northern Los Angeles County.
 18 This action also challenges the Corps’ compliance with the National Historic
 19 Preservation Act (“NHPA”), 16 U.S.C. § 470 *et seq.*, in its issuance of a Section 404
 20 permit, its approval of a Final Environmental Impact Statement (“EIS”) under the
 21 National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4332 *et seq.*, and its 2011
 22 Record of Decision (“ROD”) for the Newhall Ranch Resource Management and
 23 Development Plan (“RMDP”) and Spineflower Conservation Plan (together, the
 24 “Project”). This action alleges the Corps’ approval of the Project and related permits
 25 was arbitrary and capricious, an abuse of discretion, and otherwise not in accordance
 26 with the law. 5 U.S.C. § 701-706.

27 2. The Project involves a federal Clean Water Act permit for one of the
 28 largest single residential developments ever proposed in California. The Project area

1 covers 2,587 acres, with 2,221.2 acres devoted to residential development. At build-
2 out, the Project will permit construction of 19,812 residential units and approximately
3 5.41 million square feet of commercial uses. Construction of this massive development
4 will result in extensive modification of the Santa Clara River, one of the last free-
5 flowing rivers in southern California, its floodplain, and tributary streams. The Project
6 will profoundly alter a key stretch of southern California habitat for the diverse fish,
7 wildlife, and plants species that rely on the site, including numerous federally protected
8 threatened and endangered species. Actions permitted under the Section 404 Permit
9 include filling portions of the floodplain of the Santa Clara River and extensive
10 modification of many of the river's tributaries. The permitted actions will result in
11 permanent impacts to 47.9 acres of "waters of the United States" within the Corps'
12 jurisdiction, and would temporarily disturb an additional 35.3 acres of waters of the
13 United States. The Project also will result in the permanent destruction of Chumash
14 and Tataviam Native American Village sites, sacred sites, burial grounds, and ancestral
15 remains, as well as natural resources significant to Chumash and Tataviam culture,
16 religion, and history (together, "cultural resources" and or "historic properties"), all of
17 which the Tribes depend upon to sustain their culture and history.

18 3. Despite these significant environmental and cultural consequences,
19 Defendants failed to fully disclose, analyze, and evaluate all environmental impacts and
20 reasonable alternatives when completing its statutorily required environmental review
21 of the Project and associated Section 404 permit. The Corps also failed to make a
22 reasonable and good faith effort to identify historic properties and cultural resources
23 within the Project area. Additionally, the Corps failed entirely to consult with the
24 federally recognized Santa Ynez Band of Chumash Mission Indians of the Santa Ynez
25 Reservation ("Santa Ynez Band of Chumash Indians"), which would have ensured that
26 the Corps adequately identified Chumash and Tataviam cultural resources and historic
27 properties, and evaluated alternatives to avoid, minimize, or mitigate adverse effects to
28 those resources and properties. Therefore, Plaintiffs seek declaratory relief that the

1 Corps violated NEPA and the NHPA, and that both the Corps and EPA violated the
2 Clean Water Act and the Administrative Procedure Act (“APA”). Plaintiffs also seek
3 injunctive relief to vacate the unlawfully issued permit and to prohibit the filling of
4 waters of the United States and to protect Chumash and Tataviam Native American
5 cultural resources unless and until Defendants demonstrate full compliance with the
6 law.

7 **JURISDICTION AND VENUE**

8 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 since this action
9 arises under the laws of the United States. 5 U.S.C. § 706 (APA), 42 U.S.C. § 4332
10 (NEPA), 33 U.S.C. § 1344 (Clean Water Act), 16 U.S.C. § 470 (NHPA). Additionally,
11 an actual controversy exists between the parties within the meaning of 28 U.S.C. §
12 2201.

13 5. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e)
14 because a substantial part of the events or omissions giving rise to the claims occurred
15 in this judicial district, and the property and resources at issue are located in this
16 judicial district.

17 **PARTIES**

18 6. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a
19 California nonprofit organization with approximately 50,000 members worldwide,
20 including approximately 2,450 members who live in Los Angeles, Ventura, and Kern
21 counties.

22 7. The Center’s mission is to protect endangered species and wild places
23 through science, policy, education, and environmental law. Center members visit,
24 recreate in, study, observe, and otherwise enjoy the area proposed for the Project and its
25 environs, and study, observe, and otherwise enjoy the natural resources at issue in this
26 complaint. Center members reside and own property in the vicinity of the Project site.
27 Center members derive professional, scientific, aesthetic, spiritual, recreational,
28 economic, and educational benefits from the Project site and its resources. The Center

1 and its members have participated and continue to participate in public processes related
2 to the Project in an effort to reduce the impacts of the Project and to ensure compliance
3 with applicable laws. The Center and its members will continue to maintain an interest
4 in Newhall Ranch, its adjoining areas, and resources in the future. The Center and its
5 members are directly, adversely, and irreparably affected, and will continue to be
6 prejudiced by the actions permitted under the Section 404 Permit and their direct,
7 indirect, and cumulative effects, as described herein, until and unless this Court provides
8 the relief prayed for in this complaint.

9 8. Plaintiff WISHTOYO FOUNDATION is a California nonprofit public
10 interest organization with over 700 members composed of Chumash Native Americans,
11 Ventura County residents, and Los Angeles County residents.

12 9. Wishtoyo Foundation's mission is to preserve, protect, and restore
13 Chumash culture, the culture of indigenous peoples, and the environment. The
14 Wishtoyo Foundation shares traditional Chumash beliefs, cultural practices, songs,
15 dances, stories, and values with the public to instill environmental awareness and
16 responsibility for sustaining the health of our land, air, and water for the benefit of
17 future generations. The Chumash People, including ancestors of members of the
18 Wishtoyo Foundation, and the People of the Tataviam Tribe resided in villages,
19 conducted ceremonies at sacred sites, conducted trade, migrated though, and buried
20 their dead in and around Newhall Ranch and other areas of Ventura and Los Angeles
21 counties affected by the Project for thousands of years. The Chumash People and
22 members of the Wishtoyo Foundation have a strong cultural interest in the protection of
23 the Santa Clara River's cultural and environmental resources. Wishtoyo Foundation
24 participated and continues to participate in public processes related to the Project, and
25 submitted timely comments on the Environmental Impact Statement for the Project.
26 Members of Wishtoyo use the Project site, surrounding areas, and the downstream reach
27 of the Santa Clara River for ceremonial purposes, to connect with and celebrate their
28 ancestors and cultural heritage, to gather natural cultural resources, as sacred sites and

1 grounds, for educational purposes, recreational use, wildlife viewing, scientific study,
2 and environmental monitoring, and intend to continue this use as permitted. Chumash
3 members of Wishtoyo perform religious and cultural ceremonies, learn about their
4 history and culture, and connect with their ancestors at and from burial, sacred,
5 historical, and cultural sites in, adjacent to, and overlooking the Project area; and have
6 harvested/collected and desire to continue harvesting/collecting in the Santa Clara
7 River, and in the riparian habitat within project area (1) white sage for ceremonial,
8 medicinal, and religious uses, (2) usable willow for Chumash basketry, material culture
9 practice, and ap (traditional Chumash dwelling unit) construction, (3) river rock for
10 ceremonial sweats, (4) other usable riparian plant species such as mulefat used to make
11 Chumash fish traps, additional types of sage used for ceremonial, medicinal, and
12 religious purposes, and other native riparian plants used for Chumash cultural, religious,
13 and ceremonial purposes; and (5) condor feathers for Chumash ceremonial and religious
14 use. Like their ancestors, Chumash members of Wishtoyo desire to maintain their
15 cultural and religious practices, and spiritual connection with their People, by
16 experiencing condor flyovers over cultural and sacred sites in the Project area, and by
17 experiencing and harvesting steelhead downstream of the Project. Wishtoyo Foundation
18 and its members are directly, adversely, and irreparably affected, and will continue to be
19 prejudiced by the actions permitted under the Section 404 Permit and their direct,
20 indirect, and cumulative effects, as described herein, until and unless this Court provides
21 the relief prayed for in this petition.

22 10. The mission of Plaintiff Wishtoyo Foundation's Ventura Coastkeeper
23 Program ("Ventura Coastkeeper") is to protect, preserve, and restore the ecological
24 integrity and water quality of Ventura County's inland waterbodies, coastal waters, and
25 watersheds. Ventura Coastkeeper strives to maintain clean and ecologically healthy
26 waters for all living beings in Ventura County's community through advocacy,
27 education, restoration projects, community mobilizing, and, where necessary, directly
28 initiating legal and enforcement actions on behalf of itself and its members. Members

1 of Ventura Coastkeeper use the Project site, surrounding areas, and the downstream
2 reach of the Santa Clara River for recreational use, wildlife viewing, scientific study,
3 environmental monitoring, and educational purposes, and intend to continue this use as
4 permitted. Ventura Coastkeeper participated and continues to participate in public
5 processes related to the Project, and submitted timely comments on the Environmental
6 Impact Statement for the Project. Ventura Coastkeeper and its members are directly,
7 adversely, and irreparably affected, and will continue to be prejudiced by the actions
8 permitted under the Section 404 Permit and their direct, indirect, and cumulative effects,
9 as described herein, until and unless this Court provides the relief prayed for in this
10 complaint.

11 11. Plaintiff FRIENDS OF THE SANTA CLARA RIVER (“FSCR”) is an
12 environmental group organized as a nonprofit corporation in accordance with the laws
13 of California in 1993, and with its principal place of business in Newbury Park,
14 California. FSCR brings this action on behalf of its members who have been, and will
15 continue to be, harmed by actions permitted under the Section 404 Permit, which will
16 result in loss of wetlands; diminished aesthetic enjoyment; loss of peace and tranquility;
17 increased traffic; increased flooding; loss of open space and habitat for the River’s
18 wildlife, including wading birds and federally protected species; degraded water quality;
19 damage to cultural resources; and diminished quality of life. FSCR has active members
20 throughout Los Angeles, Ventura, and Santa Barbara Counties who canoe, fish, swim,
21 hike, travel, recreate, and observe wildlife throughout the Santa Clara River watershed
22 and intend to continue these activities. The ability of FSCR’s members to engage in
23 such activities is harmed by approval of the Section 404 Permit because the dredge and
24 fill activity associated with the Project degrades many of the areas and water bodies
25 FSCR’s members enjoy. Further, the effects of the Project combined with the effects of
26 numerous other activities authorized by the Corps along the Santa Clara River are
27 devastating to the River’s watershed and to FSCR’s members’ ability to use and enjoy
28 the River. FSCR submitted timely comments on the Environmental Impact Statement

1 for the Project. FSCR and its members are directly, adversely, and irreparably affected,
2 and will continue to be prejudiced by the Project and its components, as described
3 herein, until and unless this Court provides the relief prayed for in this complaint.

4 12. Plaintiff SANTA CLARITA ORGANIZATION FOR PLANNING THE
5 ENVIRONMENT (“SCOPE”) is a California nonprofit membership organization that is
6 concerned with protection of the environment. Some members of SCOPE reside in
7 Santa Clarita, in the vicinity of the Project site. SCOPE brings this action on its own
8 behalf, for its members, and in the public interest. SCOPE was formed in 1987 to
9 promote, protect, and preserve the environment, ecology, and quality of life in the Santa
10 Clarita Valley. SCOPE’s mission is to (1) promote, protect and preserve the
11 environment of the Santa Clarita Valley; (2) work to provide a high quality of life for
12 residents of the Santa Clarita Valley; (3) monitor, review, and take action on proposals
13 that would impact or affect the environment, ecology, and/or quality of life in the Santa
14 Clarita Valley; (4) provide a forum for the people of the Santa Clarita Valley in which
15 issues involving the environment, ecology, or quality of life can be heard and discussed;
16 (5) foster the education of the members and the people of the Santa Clarita Valley on
17 matters involving environment, ecology, and quality of life; and (6) promote community
18 planning and design that exhibits superior attention to quality, aesthetics, sensitivity to
19 the environment, and consideration of community goals and needs. SCOPE submitted
20 timely comments on the Environmental Impact Statement for the Project. SCOPE and
21 its members are directly, adversely, and irreparably affected, and will continue to be
22 prejudiced by the Project and its components, as described herein, until and unless this
23 Court provides the relief prayed for in this complaint.

24 13. Defendant UNITED STATES ARMY CORPS OF ENGINEERS (“Corps”)
25 is the federal agency charged with evaluating applications for permits under Section
26 404 of the Clean Water Act for the discharge of dredged or filled materials into the
27 waters of the United States. In evaluating such permit applications, the Corps must
28 abide by its own regulations and ensure that the requirements of Clean Water Act

1 Section 404 and EPA's 404(b)(1) Guidelines, as well as the requirements of NEPA and
2 the NHPA, are fulfilled.

3 14. Defendant Corps also served as the lead federal agency under NEPA for
4 the Project. Alongside the California Department of Fish and Wildlife ("DFW,"
5 formerly the California Department of Fish and Game), the Corps oversaw the
6 preparation of the Joint Environmental Impact Statement/Environmental Impact Report
7 ("EIS") for the Project. The Corps also issued a provisional Section 404 permit and a
8 ROD on August 31, 2011. As the lead federal agency for the project, the Corps is
9 responsible for ensuring compliance with all applicable federal laws with respect to the
10 Project.

11 15. Defendant COL. KIMBERLY M. COLLOTON is the Commander and
12 District Engineer of the Los Angeles District of the Corps, which has jurisdiction over
13 the Project. As Commander and District Engineer, Col. Colloton is responsible for
14 reviewing and approving all permits for proposed project's resulting in the discharge of
15 dredged or filled materials into the waters of the United States within the Los Angeles
16 District. Col. Colloton is sued in her official capacity.

17 16. Defendant UNITED STATES ENVIRONMENTAL PROTECTION
18 AGENCY ("EPA") is the United States agency with ultimate and final supervisory
19 authority over the Corps' administration of, and compliance with, Section 404 of the
20 Clean Water Act. Specifically, the EPA has the authority to veto permits under Section
21 404(c) of the Clean Water Act. As part of this supervisory authority, the EPA has
22 engaged in analysis and evaluation of environmental review documents for the Project,
23 including the 2010 Final EIS, the RMDP, and the Section 404 Permit.

24 17. Defendant GINA McCARTHY is the Administrator of the EPA.
25 Administrator McCarthy is charged with overseeing the Corps' administration of and
26 compliance with Section 404 of the Clean Water Act, including EPA's regulations
27 implementing Section 404(b)(1). Administrator McCarthy is sued in her official
28 capacity.

1 wildlife values, water supply and conservation, water quality, and the general needs and
2 welfare of the people. *Id.* § 320.4(a).

3 22. As part of its public interest analysis, the Corps must also evaluate the
4 mitigation measures taken to “avoid[], minimiz[e], rectify[], reduc[e], or compensate[e]
5 for” the negative impacts of the permitted activity on wetlands and the waters of the
6 United States. *Id.* § 320.4(r).

7 23. In addition, the EPA, in conjunction with the Secretary of the Army, is
8 responsible for promulgating regulations that provide guidance for the issuance of
9 permits under Clean Water Act Section 404. 33 U.S.C. § 1344(b)(1). These are known
10 as the “404(b)(1) Guidelines” and are codified at 40 C.F.R. part 230.

11 24. These regulations, in part, require the Corps to complete a “least
12 environmentally damaging practicable alternative” or LEDPA analysis to determine if
13 there is a “practicable alternative” to the proposed discharge that would have a less
14 adverse impact on the aquatic ecosystem. 40 C.F.R. § 230.10(a). An alternative is
15 considered practicable if “it is available and capable of being done after taking into
16 consideration cost, existing technology and logistics in light of overall project
17 purposes.” *Id.* § 230.10(a)(2).

18 25. “In evaluating whether a given alternative site is practicable, the Corps may
19 legitimately consider such facts as cost to the applicant and logistics. In addition, the
20 Corps has a duty to consider the applicant’s purpose.” *Sylvester v. U.S. Army Corps of*
21 *Engineers*, 882 F.2d 407, 409 (9th Cir. 1989). However, an applicant’s purpose must be
22 “legitimate,” and alternatives considered by the Corps “do[] not have to accommodate
23 components of a project that are merely incidental to the applicant’s *basic* purpose.” *Id.*

24 26. The 404(b)(1) Guidelines also require that the Corps not issue a permit for
25 any discharge of fill material “unless appropriate and practicable steps have been taken
26 which will minimize potential adverse impacts of the discharge on the aquatic
27 ecosystem.” 40 C.F.R. § 230.10(d).

1 27. Under its supervisory authority of the Corps' compliance with Section 404
2 of the Clean Water Act, the Administrator of EPA has the authority to veto the issuance
3 of any Section 404 permit "whenever [s]he determines . . . that the [proposed] discharge
4 of such materials into such area will have an unacceptable adverse effect on municipal
5 water supplies, shellfish beds and fishery areas (including spawning and breeding
6 areas), wildlife, or recreational areas." 33 U.S.C. § 1344(c).

7 ***THE NATIONAL ENVIRONMENTAL POLICY ACT***

8 28. Congress enacted NEPA to "promote efforts which will prevent or
9 eliminate damage to the environment." 42 U.S.C. § 4331. "NEPA was passed by
10 Congress to protect the environment by requiring that federal agencies carefully weigh
11 environmental considerations and consider potential alternatives to the proposed action
12 before the government launches any major federal action." *Lands Council v. Powell*,
13 395 F.3d 1019, 1026 (9th Cir. 2005).

14 29. The cornerstone of NEPA is the environmental impact statement that must
15 be prepared for all "major federal actions significantly affecting the quality of the
16 human environment." 42 U.S.C. § 4332. An environmental impact statement must be
17 prepared prior to initiating any major federal action to ensure that the agency has
18 available and will carefully consider detailed information regarding the environmental
19 effects of the proposed action before making a decision, and that relevant information
20 about the proposed action is made available to the public so that the public may play a
21 role in the decision-making process. 40 C.F.R. §§ 1501.2, 1502.5.

22 30. An environmental impact statement must consider the environmental
23 impact of the proposed federal action, any adverse environmental effects which cannot
24 be avoided should the proposal be implemented, alternatives to the proposed action, the
25 relationship between local short-term uses of man's environment and the maintenance
26 and enhancement of long-term productivity, and an irreversible and irretrievable
27 commitments of resources if the proposed action is implemented. 42 U.S.C. §
28 4332(2)(C).

1 31. Under NEPA and its implementing regulations, the effects that must be
2 discussed in the environmental impact statement include the direct, indirect, and
3 cumulative environmental impacts of the proposed action. 40 C.F.R. § 1508.25(c). The
4 NEPA regulations define “direct effects” as effects “which are caused by the action and
5 occur at the same time and place.” *Id.* § 1508.5(a). “Indirect effects” are those effects
6 “which are caused by the action and are later in time or farther removed in distance, but
7 are still reasonably foreseeable.” *Id.* § 1508.8(b).

8 32. NEPA’s regulations define “cumulative impact” as the “impact on the
9 environment which results from the incremental impact of the action when added to
10 other past, present, and reasonably foreseeable future actions regardless of what agency
11 (federal or non-federal) or person undertakes such other actions. Cumulative impacts
12 can result from individually minor but collectively significant actions taking place over
13 a period of time.” *Id.* § 1508.7. The information in a NEPA analysis must be of high
14 quality, as accurate scientific analysis, expert agency comments, and public scrutiny are
15 essential to implementing NEPA. *Id.* § 1500.1(b).

16 33. When an agency is evaluating reasonably foreseeable significant adverse
17 effects on the human environment in an environmental impact statement and there is
18 incomplete or unavailable information, the agency shall always make clear that such
19 information is lacking. *Id.* § 1502.22.

20 34. In addition, NEPA requires agencies to rigorously explore and objectively
21 evaluate all reasonable alternatives to the proposed action, thereby providing a clear
22 basis for choice among options by the decision-maker and the public. 42 U.S.C. §
23 4332(2)(C)(iii); 23 C.F.R. § 771.105; 40 C.F.R. §§ 1508.9, 1502.14. The alternatives
24 analysis “is the heart of the environmental impact statement.” 40 C.F.R. § 1502.14.
25 The Corps’ NEPA regulations specifically mandate that an environmental impact
26 statement for a Section 404 permit application “should discuss geographic alternatives,
27 e.g., changes in location and other site specific variables, and functional alternatives,
28 e.g., project substitutes and design modifications.” 33 C.F.R. § 325 App. B, 9(b)(5)(c).

1 35. An environmental impact statement must specify the purpose and need to
2 which the agency is responding in proposing the alternatives including the proposed
3 action. 40 C.F.R. § 1502.13. The agency’s objectives may not be defined in
4 unreasonably narrow terms that pre-ordain the proposed action or foreclose reasonable
5 alternatives, nor may the purpose and need be defined in terms of the applicant’s private
6 objectives.

7 36. Lastly, the agency’s ROD must state whether all practicable means to avoid
8 or minimize environmental harm from the alternative selected have been adopted, and if
9 not, why they were not. 40 C.F.R. § 1505.2(c). A monitoring and enforcement program
10 shall be adopted and summarized where applicable for any mitigation. *Id.*

11 ***THE NATIONAL HISTORIC PRESERVATION ACT***

12 37. Congress enacted the National Historic Preservation Act (“NHPA”), 16
13 U.S.C. § 470 *et seq.*, in 1966 with the express intent that “the historical and cultural
14 foundations of the Nation should be preserved as a living part of our community life and
15 development in order to give a sense of orientation to the American people.” 16 U.S.C.
16 § 470(b)(2).

17 38. Section 106 of the NHPA requires federal agencies involved in an
18 “undertaking,” which includes projects requiring a federal permit, to “take into account
19 the effect of the undertaking on any district, site, building, structure, or object that is
20 included in or eligible for inclusion in the National Register [of Historic Places].” 16
21 U.S.C. § 470f.

22 39. Like NEPA, the NHPA is designed to ensure that federal decision-makers
23 thoroughly evaluate and address the impacts of their proposed actions on historic
24 properties prior to taking final action.

25 40. The NHPA Section 106 process requires federal agencies involved in
26 undertakings to make a reasonable and good faith effort to identify and disclose historic
27 properties within affected areas, evaluate the potential adverse effects of the federal
28 undertaking to the historic properties, and seek ways to avoid, minimize, or mitigate any

1 adverse effects to the historic properties. 36 C.F.R. §§ 800.4-800.6. Throughout all
2 stages of the Section 106 process, the applicable federal agency must consult with
3 Indian tribes that attach religious and cultural significance to historic properties within
4 the affected area that may be affected by an undertaking, even if such an area is outside
5 of a Tribe's Reservation Boundaries. *Id.* §§ 800.2(c)(2)(ii)(iii), 800.3(f)(2), 800.4(a)(4),
6 800.5(c)(2)(iii), 800.6(a), 800.6(b)(2).

7 41. The NHPA and its implementing regulations further and specifically
8 provide that “[c]onsultation [with Indian tribes] should commence early in the planning
9 process, in order to identify and discuss relevant preservation issues . . .” (36 C.F.R. §
10 800.2(c)(2)(ii)(A)); federal agencies “shall make a reasonable and good faith effort to
11 identify any Indian tribes . . . that might attach religious and cultural significance to
12 historic properties in the area of potential effects and invite them to be consulting
13 parties” (36 C.F.R. § 800.3(f)(2)); that consultation with a tribe “must recognize the
14 government-to-government relationship between the federal government and Indian
15 tribes” (*id.* § 800.2(c)(2)(ii)(C)); and that federal agencies provide the tribe with “a
16 reasonable opportunity to identify its concerns about historic properties, advise on the
17 identification and evaluation of historic properties, including those of traditional
18 religious and cultural importance, articulate its views on the undertaking's effects on
19 such properties, and participate in the resolution of adverse effects.” *Id.* §
20 800.5(c)(2)(ii)(A).

21 ***ADMINISTRATIVE PROCEDURE ACT***

22 42. The APA, 5 U.S.C. §§ 701-706, provides for judicial review of final
23 agency action.

24 43. Under the authority of the APA, a reviewing court must hold unlawful and
25 set aside agency action, findings, and conclusions found to be arbitrary, capricious, an
26 abuse of discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2)(A). A
27 reviewing court must also set aside agency action, findings, and conclusions found to be
28 without observance of procedure required by law. 5 U.S.C. § 706(2)(D).

FACTUAL BACKGROUND

1
2 44. The proposed Project would permit development of a new urban center of
3 nearly 20,000 residences and more than 60,000 residents on the approximately 12,000-
4 acre Newhall Ranch site – one of the largest single residential developments ever
5 contemplated in California. The Project will require massive alterations to the Santa
6 Clara River, its floodplain, and tributaries to accommodate planned construction and
7 flood control protection, and to control erosion that will result from denuding much of
8 the development site of its natural vegetation. These alterations will have tremendous
9 adverse impacts on the diverse ecosystems and fragile environment currently found on
10 Newhall Ranch. While these impacts could have been reduced by reducing the scope or
11 altering the design of the Project, the current plan for development on Newhall Ranch
12 will irreparably alter current environmental conditions of the site and surrounding area.

The Current Environmental Setting

14 45. Newhall Ranch consists of about 12,000 acres of rugged, undeveloped
15 terrain and agricultural land along the Santa Clara River in northwestern Los Angeles
16 County. Specifically, Newhall Ranch lies along an approximately six-mile stretch of
17 the Santa Clara River between the Ventura County line and Interstate Highway 5. The
18 site's open space and agricultural uses support an extremely diverse range of plant and
19 animal types adapted to the variety of landscapes and habitats on the site.

20 46. The Santa Clara River is one of the largest rivers in southern California,
21 running some 116 miles from its headwaters on the north slope of the San Gabriel
22 Mountains near Acton to its confluence with the Pacific Ocean between the cities of
23 Oxnard and Ventura. Like other rivers in southern California, the Santa Clara River
24 tends to have highly variable, flashy flows. However, in contrast to other major
25 southern California rivers like the Los Angeles or Santa Ana, the Santa Clara is not
26 confined by extensive levees, impounded by dams (although a major diversion dam
27 located near Santa Paula impedes fish passage), or lined with concrete. Throughout
28 much of its course, the Santa Clara River consists of multiple, braided channels that

1 wander across a broad floodplain. Upstream of the Project site, the river is bordered by
2 extensive urban development in Valencia, Santa Clarita, and Canyon Country. The area
3 downstream of the Project site in Ventura Country is primarily agricultural land.

4 47. Most of the Santa Clara River's flow occurs during the wet season, and
5 major storms account for most of the wet season flow. A peak discharge of 68,800
6 cubic feet per second was recorded in 1969 for the Santa Clara—from a watershed of
7 only about 1,600 square miles. During dry periods, flows can be very low, and in some
8 stretches, subterranean.

9 48. The Project site contains a wide variety of landscapes and vegetation types,
10 including the river channel and floodplain of the Santa Clara River, mature riparian
11 forests, oak woodlands, sagebrush, grasslands, freshwater wetlands, alkaline marshes,
12 steep hillsides and mountainous terrain covered by chaparral, and agricultural lands. In
13 addition, Newhall Ranch is crossed by over 40 miles of streams tributary to the Santa
14 Clara River, including Potrero Canyon, Long Canyon, Middle Canyon, Lion Canyon,
15 Chiquito Canyon, and San Martinez Grande Canyon.

16 49. Newhall Ranch provides habitat for an exceptionally diverse range of
17 wildlife, fish, and plants, including several critically endangered species. California
18 condors flyover, visit, and forage on the Project site, and three other birds protected
19 under federal and/or state law, including the southwestern willow flycatcher, least Bell's
20 vireo, and yellow-billed cuckoo, nest in riparian vegetation on Newhall Ranch.

21 50. Other rare fish and wildlife found on the Project site or in downstream
22 reaches of the Santa Clara River include the California red-legged frog, arroyo toad,
23 golden eagle, white-tailed kite, California gnatcatcher, unarmored threespine
24 stickleback, and southern California steelhead ("steelhead").

25 51. The Project site contains one of only two known populations of the San
26 Fernando spineflower ("spineflower"), a small annual plant that was believed extinct
27 until it was rediscovered in 1999. The spineflower is a candidate species for listing
28 under the federal Endangered Species Act, meaning that the U.S. Fish and Wildlife

1 Service has determined that the species warrants legal protection. According to the Fish
2 and Wildlife Service, “[t]he existence of only two areas of occurrence, and a relatively
3 small range, makes the variety highly susceptible to extinction or extirpation from
4 significant portion of its range due to random events such as fire, drought, erosion, or
5 other occurrences.” The spineflower is also protected by the state of California as an
6 endangered species. In 2001, the Newhall Land and Farming Company cleared and
7 terraced areas containing spineflower without required permits, resulting in the loss of
8 numerous individual plants and permanent impacts to spineflower habitat on the Project
9 site.

10 52. Newhall Ranch, including the Project area, contains the ancestral homes,
11 trading and migration routes, and trading centers of the Chumash and Tataviam Native
12 Americans. Accordingly, the Project area is rich with these Tribes’ historic properties
13 and cultural resources, including their burial sites, village sites, sacred sites, trading
14 routes and grounds, and ceremonial grounds, which have deep religious, spiritual,
15 historical, and cultural significance to the Tribes. The Tataviam and Chumash thus
16 retain strong cultural and religious attachment to the lands, historic properties, and
17 cultural resources within the Project area, which provides invaluable insights into the
18 temporal and functional mode of the historic Chumash and Tataviam tribal relations,
19 lifeways, socioeconomic structure, cultural practices, history, and community in the
20 Santa Clara River Valley.

21 53. The Tataviam village center of Tacuyam, home to a mixed population of
22 Chumash and Tataviam, lies in the center of the Project area, and the village center of
23 Camulus lies just downstream of the Project area around the Santa Clara River. The
24 Project area’s development envelope (including the area that will be directly affected by
25 excavation, earthmoving, and other disturbance authorized by the Project plus the
26 Newhall Ranch Specific Plan area in which the Project will enable development) thus
27 contains numerous Tataviam and Chumash burial sites, sacred grounds, village sites,
28 and unearthed cultural artifacts (such as beads, art, tools, musical instruments, and

1 jewelry). The Project's development envelope also contains Tataviam and Chumash
2 natural cultural resources, such as the California condor habitat, flyzones, and feathers;
3 in-stream, floodplain, and riparian gathering sites for willow, white sage, river rock, and
4 other riparian plants that are essential to maintaining Chumash cultural, religious, and
5 ceremonial practices; and cultural landscapes which include undeveloped hillsides,
6 tributaries, canyons, and floodplains that bring sacredness to sacred sites.

7 54. For the region's Native Americans, the condor holds a very special place in
8 the universe, possessing great cultural and religious significance. It is one of the most
9 important and irreplaceable historic and cultural resources in the Project area for the
10 Tataviam and Chumash People. The condor's visible and unseen presence in the
11 Project area, whether flying overhead, foraging for food, roosting in a tree, or cleaning
12 itself near the river, are integral components of the sacredness of Chumash sacred
13 grounds, cultural sites, burial sites, prayers, and ceremonies. The Chumash also have
14 historically collected, and wish to continue collecting, condor feathers in the Project
15 area for ceremonial offerings and to use in ceremonial regalia when the feathers fall to
16 the ground after the condors forage, clean themselves, and roost.

17 55. In 1981, Los Angeles County designated portions of the Santa Clara River
18 corridor, including the area within Newhall Ranch, as a Significant Ecological Area
19 ("SEA 23") because these areas provided habitat for a state- and federally-protected fish
20 species, the unarmored threespine stickleback. According to Los Angeles County's
21 1976 SEA study, the stickleback requires a natural stream course, including "clean, free-
22 flowing perennial streams and ponds surrounded by native vegetation." Los Angeles
23 County Dept. of Regional Planning, Los Angeles County Significant Ecological Area
24 Study, Appendix E, at E-22 (1976). The Section 404 Permit nonetheless allows
25 development within SEA 23 even though it will destroy a substantial portion of the
26 stickleback's essential habitat.

27 56. The Santa Clara River is considered an impaired waterbody due to high
28 levels of chlorides and other pollutants. Specifically, the Upper Santa Clara River is

1 impaired for chloride under Section 303(d) of the Clean Water Act. 33 U.S.C.
2 § 1313(d). The high level of chlorides is the result of wastewater discharges and other
3 municipal sources, and is caused in part by the importation of water with high chloride
4 content from outside the watershed. High chloride levels in the Santa Clara River harm
5 fish and wildlife, downstream agricultural uses, and downstream water supplies. The
6 Los Angeles Regional Water Quality Control Board has adopted a Total Maximum
7 Daily Load (“TMDL”) for chlorides in the Santa Clara River, which establishes numeric
8 targets for chloride concentrations and measures to meet these targets. The Regional
9 Water Quality Control Board also recently adopted a TMDL for bacteria for parts of the
10 Santa Clara River.

11 57. Based on development threats, including the Project, the nonprofit
12 organization American Rivers named the Santa Clara River as one of the nation’s most
13 endangered rivers in 2005.

14 ***The Proposed Development***

15 58. Newhall Ranch is the site of a proposed new urban center that would
16 contain more than 60,000 residents at full buildout. Los Angeles County approved the
17 Newhall Ranch Specific Plan, which provides the overall template for development, in
18 2003. The Newhall Ranch Specific Plan provides for over 20,000 residential units,
19 extensive commercial development, a water reclamation plant, and attendant roads and
20 infrastructure. The Project described in the 2010 Final EIS and 2011 Section 404 permit
21 allows for 2,587 acres of total development area with 19,812 residential units and
22 approximately 5.41 million square feet of commercial uses.

23 59. The proposed development covered by the Section 404 Permit will result in
24 permanent impacts to 47.9 acres of waters of the United States, including 5.1 acres of
25 wetlands, and temporary impacts to 35.3 acres of waters of the United States.
26 Additionally, the Project will result in the net loss of about 110 acres of the Santa Clara
27 River’s 100-year floodplain, including 5.8 acres of jurisdictional waters of the United
28 States. Activities required for construction of the development include construction of

1 bridges and culverts, conversion of tributary streams to buried or channelized storm
2 drains, removal of native riparian vegetation, stream diversion, and road construction.
3 Former free-flowing streams would be filled and replaced by concrete-lined channels,
4 levees, or other bank stabilization structures.

5 60. To accommodate the channel modifications, floodplain fill, levees, bridges,
6 the Project will require extensive clearing of vegetation, including permanent clearing
7 of about 25 acres of riparian forest, over 50 acres of other riparian and bottomland
8 vegetation, 25 acres of chaparral, and 28 acres of scrub, in addition to “temporary”
9 impacts to over 100 acres of riparian vegetation. These environmental impacts will
10 adversely affect the diverse wildlife and plants found on Newhall Ranch, including the
11 least Bell’s vireo, unarmored threespine stickleback, arroyo toad, southwestern willow
12 flycatcher, California red-legged frog, and California gnatcatcher and their habitat.
13 Upland development facilitated by the Section 404 Permit will reduce the area occupied
14 by the spineflower and confine the spineflower to a series of isolated reserves with little
15 connectivity between populations.

16 61. The alteration of the Santa Clara River, its tributary streams, and its
17 floodplains will require movement and placement of large volumes of fill. The EIS
18 estimates that about 5.5 million cubic yards of soil will needed to be excavated from
19 Newhall Ranch and used as fill material. However, this projection significantly
20 underestimates the direct and indirect fill and soil moving requirements of the Project.

21 62. The Project’s modifications to the Santa Clara River and its tributaries, in
22 combination with the replacement of thousands of acres of natural vegetation and soils
23 with impervious surfaces, will substantially increase stormwater runoff and other water
24 pollution in comparison to the pre-Project condition. To capture the increased polluted
25 runoff and sediment from the site, the Project proposes construction of an extensive
26 series of “water quality treatment” and debris basins.

27 63. The impervious surfaces created by the Project and enabled by the Section
28 404 Permit will further deprive the flow-impaired Santa Clara River of a source of much

1 needed sustainable summer base flows from precipitation that would otherwise
2 percolate into the ground underlying the Project area and steadily make its way to the
3 River as surface flows. The precipitation that no longer percolates into the soils
4 underlying Newhall Ranch, but instead falls on impervious surfaces, will not only wash
5 urban toxins into the Santa Clara River and deprive the river of sustainable base flows,
6 but its flashy addition to the river in larger volumes over a short time span will have
7 downstream hydromodification impacts to the Santa Clara River that destroy riparian
8 habitat, increase flow velocity in a manner harmful to the unarmored threespine
9 stickleback and other aquatic species, and increase downstream flood damage to urban
10 and agricultural areas.

11 64. While the Project's stormwater runoff will increase the concentration and
12 loading of pollutants into the Santa Clara River, into the Santa Clara River estuary, and
13 into coastal marine waters, discharges of treated effluent from the Newhall Ranch water
14 reclamation plant also will increase the concentrations and loading of pollutants into
15 these waters. The human health impacts from the Project's direct, indirect, and
16 cumulative contribution to bacteria loading and the acute and chronic lethal and sub-
17 lethal toxicity impacts on the aquatic life residing in and migrating through the Santa
18 Clara River, its estuary, and coastal marine waters from individual contaminants and the
19 mix of contaminants discharged from the Project site during wet and dry weather
20 events, and from the water reclamation plant, will impart irreversible impacts to the
21 steelhead, the unarmored threespine stickleback, the Santa Clara River's
22 macroinvertebrate communities, and the entire Santa Clara River ecosystem.

23 65. Wastewater from the first 6,000 residential units of the Project is currently
24 anticipated to be treated though the Los Angeles County's Valencia Wastewater
25 Treatment Facility. However, the Valencia Wastewater Treatment Facility is currently
26 not in compliance with Clean Water Act wastewater discharge limits for chloride.
27 Wastewater flows from the Valencia Wastewater Treatment Facility continue to degrade
28

1 the Santa Clara River and will continue to do so if the Valencia Wastewater Treatment
2 Facility is forced to take on additional wastewater from the proposed Project.

3 66. Despite historical records evidencing the presence of Chumash within the
4 Project envelope indicating that the Chumash might attach religious, historical, and
5 cultural significance to historic properties in the Project area, and despite public
6 comment from a Chumash ceremonial elder that the Chumash attach religious,
7 historical, and cultural significance to the Project area and its historic properties, the
8 Corps failed to make a reasonable and good faith effort to identify the federally
9 recognized Santa Ynez Band of Chumash Indians and invite them to be consulting
10 parties, the Corps failed to consult with the federally recognized Santa Ynez Band of
11 Chumash Indians, and the EIS only attempts to adequately identify, analyze, and set
12 forth mitigation measures for impacts to Tataviam cultural resources.

13 67. The Corps repeatedly failed to provide the Santa Ynez Band of Chumash
14 Indians with information critical to the NHPA Section 106 consultation process from
15 the beginning of the archeological surveys in 1993 to Project approval, and failed to
16 inform or otherwise contact the Santa Ynez Band of Chumash Indians about the Project
17 as required by Section 106 of the NHPA, precluding the Tribe from engaging in
18 meaningful consultation regarding identification of historic properties, the Project's
19 potential adverse effects to such properties, and development and evaluation of
20 alternatives or modifications that could have avoided, minimized, or mitigated those
21 adverse effects.

22 68. The Corps also failed to consult with the Santa Ynez Band of Chumash
23 Indians in compliance with Executive Order 13175, Consultation and Coordination with
24 Indian Tribal Governments (65 Fed. Reg. 67249) (November 6, 2000), President Barack
25 Obama's November 9, 2009 Memorandum to the heads of all Federal agencies entitled
26 *Tribal Consultation* (74 Fed. Reg. 57881) reaffirming Executive Order 13175, and the
27 Corp's Draft Tribal Consultation Policy (December 1, 2011), which, like NHPA Section
28 106 regulations, requires consultation to commence early and continue throughout the

1 administrative process, requires sharing of information, and requires consultation with
2 the actual federal decision-maker, the Corps.

3 69. Among the Project's most devastating and irreversible impacts to Native
4 American historic, cultural, and religious resources and historic properties are its
5 impacts to Tataviam and Chumash burials and buried cultural remains such as villages
6 and artifacts. The earth moving excavation conducted pursuant to the Project will
7 destroy Tataviam and Chumash burial sites and remains, and along with them, the
8 ancestors, the spirits, the culture, and the history of their People. These impacts will not
9 only harm Chumash cultural practices, religious practices, and life ways, but will
10 permanently impair the ability of the Chumash, Tataviam, and historians to understand
11 and learn about the temporal and functional mode of the historic Chumash and Tataviam
12 tribal relations, lifeways, socioeconomic structure, cultural practices, history, and
13 community in the Santa Clara River Valley.

14 70. In addition, the Project jeopardizes the Tataviam and Chumash cultural
15 landscape within the Project envelope, which is a critical religious and cultural
16 component to these Tribes' burial sites, sacred grounds, and ceremonial practices. The
17 cultural landscape includes scenic vistas, undeveloped mountains, native wildlife,
18 undeveloped valleys, and meandering waterways in the Project envelope that serve as
19 the spiritual and religious backdrop for or component of the burial sites, sacred
20 grounds, and ceremonial sites. The Project will line the hills, riverbanks, mountains,
21 and valleys of the Project envelope with modern buildings, power lines, and pavement,
22 and decrease the local presence of wildlife such as the overhead flight of the condor,
23 which is a critical component of the local Tribes' cultural landscape. In effect, the
24 Project will thus destroy the historic cultural landscape that the current and future
25 generations of Chumash and Tataviam depend upon to sustain their culture and religious
26 practices.

27 71. Further, the Project's impacts to instream, floodplain, and riparian natural
28 cultural resources such as willow, white sage, river rock, other native riparian

1 vegetation, and steelhead threatens Chumash life ways and the sustainability of
2 Chumash cultural and religious practices dependent on these resources.

3 72. Additionally, the reduction in presence of the condor from the Chumash
4 and Tataviam cultural landscape in the Project area and flying over the Project area due
5 to the Project's impacts will diminish the Chumash Peoples' connection with their
6 ancestors and their culture, and will detract from their ceremonial and religious practices
7 in and around the Project area. The Project's negative impacts on condor populations
8 within the Project area also will deprive Chumash people of a place to find the condor
9 feathers that are necessary to conduct specific religious and cultural ceremonies.

10 73. Despite the eligibility of historic properties and cultural resources
11 contained in the Project envelope for inclusion on the National Register of Historic
12 Places, as noted in a Final EIS comment letter by Chumash Native American
13 ceremonial elder Mati Waiya, the archeological surveys and other efforts of the Corps to
14 identify properties of religious, historical, and cultural importance to the Chumash and
15 Tataviam were not conducted in consultation with either Tribe or the federally
16 recognized Santa Ynez Band of Chumash Indians, did not utilize best available and
17 feasible methods, were not conducted in good faith, and otherwise fell short of a
18 reasonable and good faith effort to identify historic properties within the area of
19 potential effects within the Project site.

20 74. Furthermore, despite a letter from Chumash Native American ceremonial
21 elder Mati Waiya alerting the Corps to the Project's impacts to Native American historic
22 properties, cultural resources, natural cultural resources, and religious practices from the
23 Project's impacts to the condor, the Final EIS does not adequately identify or analyze
24 impacts to these properties and resources.

25 75. Because many of the Chumash and Tataviam burial sites and buried
26 cultural and historic resources are not identified in the limited archeological surveys
27 cited to in the EIS, because the EIS does not commit to the avoidance or the
28 preservation of the Chumash and Tataviam cultural and historic resources the EIS does

1 identify, and because the EIS mitigation measures do not include Chumash Native
2 American monitors to represent the interests of the Chumash Peoples, the EIS did not
3 evaluate a reasonable range of alternatives, and specific alternatives, that would
4 adequately mitigate adverse impacts to these Native American historic and cultural
5 resources during Project construction. The final EIS does not analyze a Project
6 alternative that would entirely avoid all Chumash and Tataviam historic properties,
7 cultural resources, historic resources, and natural cultural resources identified in the
8 EIS.

9 76. The Project's impacts to historic properties, cultural resources, historic
10 resources, and natural cultural resources will thus irreparably harm Wishtoyo's
11 Chumash members' cultural heritage, connections with their ancestors, knowledge
12 about Chumash history and life ways, and cultural, spiritual, and ceremonial practices.
13 For example, the Project will impair the ability of Wishtoyo's Chumash members to:
14 perform religious and cultural ceremonies, learn about their history and culture, and
15 connect with their ancestors at burial, sacred, historical, and cultural sites in, adjacent to,
16 and overlooking the Project area; maintain their cultural practices; and to connect
17 spiritually with their ancestors by experiencing condor flyovers over cultural and sacred
18 sites in the Project area, and by experiencing and harvesting steelhead downstream of
19 the Project; and harvest/collect in the Santa Clara River, and in the riparian habitat
20 within project area (1) white sage for ceremonial, medicinal, and religious uses, (2)
21 willow for Chumash basketry, material culture practice, and ap (traditional Chumash
22 dwelling unit) construction, (3) river rock for ceremonial sweats, (4) other riparian plant
23 species such as mulefat used to make Chumash fish traps, additional types of sage used
24 for ceremonial, medicinal, and religious purposes, and other native riparian plants used
25 for Chumash cultural, religious, and ceremonial purposes; and (5) condor feathers for
26 Chumash ceremonial and religious use.

1 ***The Procedural History***

2 77. The Newhall Ranch Specific Plan, which Los Angeles County approved in
3 2003, contemplates five development phases and describes the general development
4 guidelines and policies governing this future development. Subsequent subdivision
5 approvals are required for each of these phases. Los Angeles County approved the first
6 two phases of Newhall Ranch—Landmark Village and Mission Village—in 2011 and
7 2012, respectively.

8 78. In December 2003, Newhall applied to the Corps for a Section 404 Permit
9 to permanently impact 93.3 acres and temporarily impact 33.3 acres of waters of the
10 United States for construction of extensive development on Newhall Ranch in
11 conjunction with the Project.

12 79. In 1994, prior to making a reasonable and good faith effort to identify any
13 Indian tribes that might attach religious and cultural significance to historic properties
14 and cultural resources in the Project Area, the Phase I and Phase II archeological
15 surveys relied upon by the EIS were completed. Neither the federally recognized Santa
16 Ynez Band of Chumash Indians nor the Tataviam were consulted during the Phase I and
17 Phase II archeological surveys.

18 80. In July 2004, well after the Phase I and Phase II archeological surveys were
19 completed, the Corps began its outreach to Native American Tribes. The Corps did not
20 consult, or otherwise make a reasonable and good faith effort to identify, the federally
21 recognized Santa Ynez Band of Chumash Indians at any time during the Corps' Section
22 404 permitting process prior to issuance of a ROD and provisional Section 404 permit
23 to the Newhall Land and Farming Company.

24 81. In April 2009, the Corps released the Draft EIS for the Project and for the
25 Corps' Section 404 Permit. This joint environmental review with California DFW was
26 intended to evaluate the environmental consequences of the Project pursuant to the
27 California Environmental Quality Act (Cal. Pub. Resources Code § 21000 *et seq.*) and
28 the Corps' Section 404 permit pursuant to NEPA. The Draft EIS relied heavily and

1 primarily upon the Phase I and Phase II archeological surveys for identification of
2 Chumash and Tataviam historic properties, cultural resources, and natural cultural
3 resources, and relied upon a consultation process that did not include all mandatory
4 consulting parties, such as the Santa Ynez Band of Chumash Indians, and that was not
5 informed by Chumash Native Americans.

6 82. The EIS evaluated several alternatives, including a no action/no project
7 alternative (Alternative 1), the applicant's proposed project (Alternative 2), and an
8 "environmentally superior" alternative (Alternative 7). Alternative 7 would remove
9 bank stabilization structures and other development from the Santa Clara River's 100-
10 year floodplain, preserve two tributary streams that would be destroyed and converted to
11 buried storm drains under the Alternative 2, eliminate two major bridge crossings of the
12 Santa Clara River, and maximize avoidance of areas populated by spineflowers.
13 Alternative 7 would allow the development of 1,352.4 acres, including 3.76 million
14 square feet of commercial floor space and 16,471 development units.

15 83. The EIS also detailed the Draft LEDPA as modified Alternative 3, which
16 includes 2,587 acres of total development area with 19,812 residential units and
17 approved approximately 5.41 million square feet of commercial uses. Although the
18 Draft LEDPA would reduce the footprint of the development in comparison to the some
19 of the alternatives proposed, it would still result in the permanent fill of 66.3 acres of
20 waters of the United States and temporarily disturb 32.2 acres of waters of the United
21 States. These impacts are substantially greater than the impacts of Alternative 7, which
22 would result in the permanent fill of 13.1 acres of waters of the United States and
23 temporarily disturb 20.3 acres of waters of the United States.

24 84. Plaintiffs submitted extensive comments on the Draft EIS. In June 2010,
25 California DFW and the Corps issued a Final EIS that purported to respond to these
26 comments and those submitted by other organizations, individuals, and numerous state,
27 federal, and local agencies. Plaintiffs submitted additional comments on the Final EIS.
28

1 EPA provided comments to the Corps on both the Draft and Final EIS detailing
2 numerous concerns with the proposed Project and the Corps' Draft LEDPA.

3 85. The Draft LEDPA in the Final EIS served as the primary basis for the
4 Newhall Ranch RMDP. The RMDP is described as "a conservation, mitigation, and
5 permitting plan for the long-term management of sensitive biological resources" within
6 the Newhall Ranch Specific Plan that "is intended to direct both resource management
7 and development in the Specific Plan area." In addition to the Newhall Ranch Specific
8 Plan area, the RMDP area covers an adjacent 1,517-acre Salt Creek area in Ventura
9 County.

10 86. On July 25, 2011, the Corps provided EPA with a Notice of Intent to
11 Proceed and a draft Section 404 Permit for the RMDP. After reviewing the draft
12 provisional permit, and despite EPA's prior comments evidencing the agency's
13 numerous concerns about the Project, EPA Regional Administrator Jared Blumenfeld
14 informed the Corps on August 9, 2011 that EPA would not seek higher level review of
15 the draft Section 404 permit. In his letter, Mr. Blumenfeld stated that EPA "will not
16 seek a higher level review of the draft permit at the EPA's Office of Water pursuant to
17 paragraph 3(d)(1) of our agencies' Memorandum of Agreement (MOA) under Clean
18 Water Act (CWA) Section 404(q)."

19 87. On August 31, 2011, the Corps issued a provisional Section 404 permit to
20 Newhall Land and Farming Company and a ROD permitting the fill of waters of United
21 States during construction of the Project. The Final LEDPA adopted by the Corps
22 permits permanent construction-related impacts to 47.9 acres of waters of the United
23 States and temporary construction-related impacts to 35.3 acres of waters of the United
24 States. The waters impacted include the Santa Clara River, several tributaries to the
25 Santa Clara River, and adjacent wetlands.

FIRST CLAIM FOR RELIEF

(Against the Corps and EPA, for violation of APA Section 706: Failure to Comply with the Clean Water Act and its Accompanying Regulations Prior to Issuing a Section 404 Permit)

88. Plaintiffs incorporate by reference each and every allegation set forth in this Complaint as if set forth in full herein.

89. This claim is brought against the Corps and EPA and is raised by all Plaintiffs.

90. The 404(b)(1) Guidelines associated with the Clean Water Act mandate that “no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” 40 C.F.R. § 230.10(a). Accordingly, the Corps must adopt the alternative to a proposed discharge that best avoids, minimizes, and mitigates of impacts to the aquatic ecosystem while still achieving the Project’s purpose as the least environmentally damaging practicable alternative (LEDPA).

91. The LEDPA chosen by the Corps will result in unnecessary and avoidable environmental impacts to the Santa Clara River and the surrounding areas.

92. The LEDPA adopted by the Corps will permanently fill 47.9 acres of waters of the United States, including 5.1 acres of jurisdictional wetlands. The LEDPA will also temporarily disturb 35.3 acres of waters of the United States, including 11.8 acres of jurisdictional wetlands. In particular, the LEDPA would directly impact 5.8 acres of jurisdictional waters of the Santa Clara River and temporarily impact 15.7 acres of the Santa Clara River.

93. The LEDPA adopted by the Corps will result in the net loss of 110 acres of Santa Clara River 100-year floodplain, or about 8 percent of the river’s 100-year floodplain in the Project area.

1 94. The LEDPA adopted by the Corps will result in significant adverse impacts
2 to air quality and human respiratory health.

3 95. The LEDPA adopted by the Corps is not the LEDPA as defined by the
4 404(b)(1) Guidelines. Other practicable, less-damaging alternatives are available that
5 conform to the 404(b)(1) Guidelines.

6 96. The Corps failed to minimize and eliminate all avoidable environmental
7 impacts associated with the LEDPA, including the filling of waters of the United States
8 and direct, indirect, and cumulative impacts to habitat for endangered, threatened, and
9 rare species.

10 97. The Corps' economic analysis in support of the LEDPA is flawed and
11 inadequate because, among other things, it ignores likely economic returns for the
12 alternatives and arbitrarily skews the analysis in favor of the LEDPA.

13 98. Alternative 7 would facilitate urban development on the Project site but
14 would result in reduced placement of fill within waters of the United States and avoid
15 impacts to the 100-year floodplain. The Corps failed to adequately justify its rejection
16 of the environmentally superior Alternative 7 as not economically practicable or
17 compatible with the Project's purpose.

18 99. Additionally, the Corps violated its mandatory duty under the 404(b)(1)
19 Guidelines when it:

- 20 a. failed to ensure that the Project would not cause or contribute to significant
21 degradation of the waters of the United States, including the Santa Clara
22 River and its tributaries, through additional wastewater flows;
- 23 b. failed to fully analyze and address all of the Project's cumulative effects on
24 the water quality and productivity of the aquatic ecosystem;
- 25 c. failed to fully analyze and address the secondary effects of the filling of the
26 waters of the United States associated with the Project;
- 27 d. failed to ensure that the Project will not jeopardize the continued existence
28 of any federally listed species as required by 40 C.F.R. 230.10(b)(3); and

- 1 e. failed to provide a comprehensive compensatory mitigation plan that
2 includes the required elements described in 40 C.F.R. § 230.9(c), such as
3 baseline information, a mitigation work plan, a maintenance plan,
4 ecological performance standards, monitoring requirements, and a long-
5 term management plan for Project's the numerous unavoidable
6 environmental impacts.

7 100. The Corps also violated its mandatory duty under the Corps' own Clean
8 Water Act regulations (33 C.F.R. pt. 320) when it failed to adequately analyze and
9 evaluate each of the public interest factors listed in 33 C.F.R. § 320.4, including but not
10 limited to:

- 11 a. the Project's adverse environmental impacts to the ecologically important
12 Santa Clara River floodplain;
13 b. the Project's impacts to the Santa Clara River and its watershed;
14 c. impacts from anticipated changes in water flows associated with the Project
15 to nearby downstream properties;
16 d. the Project's impacts on flood control and downstream erosion resulting
17 from changes to river and stream banks and the floodplain; and
18 e. the Project's effects on general environmental concerns and human
19 welfare, including its impacts on air quality and human health.

20 101. In its public interest analysis, the Corps improperly considered broad
21 economic factors and purported Project benefits beyond the scope of the Corps'
22 statutory and regulatory mandates, and beyond the scope of the analysis of impacts and
23 alternatives.

24 102. The Corps authorized floodplain development and failed to avoid the long-
25 and short-term significant adverse impacts associated with occupancy and modification
26 of floodplains despite the existence of practicable alternatives outside the floodplain.

27 103. The Corps has violated the Clean Water Act by failing to adequately
28 analyze the LEDPA for the Project, failing to adequately comply with the 404(b)(1)

1 Guidelines, and failing to complete the required public interest analysis under 33
2 C.F.R. pt. 320. Therefore, the Corps acted arbitrarily and capriciously, abused its
3 discretion, and was not in accordance with law as required by Clean Water Act, the
4 Corps' and EPA's implementing regulations, and the APA, and is subject to judicial
5 review under the APA. 5 U.S.C. §§ 701-706, 706(2).

6 104. EPA failed to ensure that the Corps took appropriate steps to avoid and
7 minimize the Project's adverse impacts. EPA declined to prohibit the Project's
8 discharge of fill material even though such a discharge will "have an unacceptable
9 adverse effect on municipal water supplies, shellfish beds and fishery areas . . . ,
10 wildlife, or recreational areas." 33 U.S.C. § 1344(c). As a result, EPA's decision not
11 to veto the Section 404 Permit under EPA's Clean Water Act Section 404(c) authority
12 is arbitrary and capricious, an abuse of discretion, and not in accordance with law as
13 required by Clean Water Act, its implementing regulations, and the APA, and is subject
14 to judicial review under the APA. 5 U.S.C. §§ 701-706, 706(2). EPA's decision not to
15 veto the permit, evidenced by a specific letter in which the EPA's Regional
16 Administrator declared that the agency "will not seek a higher level review of the draft
17 permit at the EPA's Office of Water pursuant to paragraph 3(d)(1) of our agencies'
18 Memorandum of Agreement (MOA) under Clean Water Act (CWA) Section 404(q),"
19 conclusively removed the sole remaining barrier to Corps approval of the permit and
20 issuance of the ROD three weeks later.

21 **SECOND CLAIM FOR RELIEF**

22 **(Against the Corps, for violation of APA Section 706: Failure to Adequately** 23 **Evaluate Environmental Impacts and All Reasonable Alternatives in the 2010** 24 **Environmental Impact Statement in Violation of the National Environmental** 25 **Policy Act)**

26 105. Plaintiffs incorporate by reference each and every allegation set forth in
27 this Complaint as if set forth in full herein.

28 106. This claim is brought against the Corps and is raised by all Plaintiffs.

1 107. In preparing an EIS, agencies must take a “hard look” at the potential
2 environmental consequences of a proposed action, and must consider relevant factors
3 and important aspects of the proposed action. *See N. Plains Resource Council v.*
4 *Surface Transp. Bd.*, 668 F.3d 1067, 1074-75 (9th Cir. 2011). An EIS must analyze the
5 direct, indirect, and cumulative environmental impacts of the proposed action. 40
6 C.F.R. § 1508.25(c).

7 108. Agencies must also disclose in the EIS whether the alternatives under
8 consideration will or will not achieve compliance with other environmental laws and
9 policies. 40 C.F.R. § 1502.2(d). Because the alternatives analysis “is the heart of the
10 environmental impact statement” an agency must “[r]igorously explore and objectively
11 evaluate all reasonable alternatives.” *Id.* § 1502.14.

12 109. The 2010 Final EIS is inadequate under NEPA, 42 U.S.C. §§ 4331 *et seq.*,
13 and its implementing regulations, 40 C.F.R. §§ 1500-1508, because it does not
14 adequately address and analyze all relevant factors, including but not limited to, the
15 following:

- 16 a. loss of ecological function within the Santa Clara River, its floodplain, and
17 its tributaries due to the placement fill;
- 18 b. environmental impacts of storm water runoff, including water quality
19 impacts and hydromodification of the Santa Clara River and its tributaries;
- 20 c. environmental impacts of management of wastewater, including long-term
21 water quality impacts and hydromodification of the Santa Clara River and
22 its tributaries;
- 23 d. environmental impacts on water quality due to sedimentation from upland
24 sources and management or mitigation of those impacts;
- 25 e. significant indirect and cumulative chronic and acute sub-lethal toxicity
26 impacts of the Project’s wet and dry weather urban runoff, either in
27 combination with the Newhall Ranch water reclamation plant or alone, on
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1 aquatic life, juvenile steelhead, and adult steelhead in the Santa Clara
2 River, the Santa Clara River Estuary, and in the Pacific Ocean;

3 f. cumulative impacts to surface water quality from permanent and temporary
4 impacts to the waters of the United States impacted by the Project;

5 g. significant indirect and cumulative water quality impacts on juvenile
6 steelhead residing in the Santa Clara River estuary, migrating adult
7 steelhead in the Santa Clara River, or migrating juvenile steelhead in the
8 Santa Clara River, and in particular, the significant indirect and cumulative
9 sub-lethal toxicity impacts on juvenile steelhead from the Project's
10 stormwater discharges containing dissolved copper, and the sufficiency of
11 proposed mitigation measures;

12 h. environmental impacts and the efficacy of measures taken to prevent
13 erosion at bridge abutment and outfall locations;

14 i. environmental impacts to the endangered spineflower and the sufficiency
15 of proposed mitigation measures;

16 j. air quality impacts arising during construction and daily vehicles miles
17 traveled by residents after completion of construction of the Project;

18 k. impacts from roadway congestion, projected automobile emissions, and
19 other transportation related impacts;

20 l. the amount of fill material and soil required for the proposed development,
21 thereby making uncertain the direct, indirect, and cumulative air quality
22 and traffic impacts associated with moving this material;

23 m. potential significant direct, indirect, and cumulative impacts to Chumash
24 and Tataviam historic, cultural, and religious resources, practices, and
25 knowledge, and the sufficiency of proposed mitigation measures for the
26 impacts to these resources; and

27 n. potential significant direct, indirect, and cumulative impacts to Chumash
28 natural cultural resources, including white sage, willow, river rocks, other

1 native riparian vegetation, steelhead, and the California condor, and the
2 potential significant direct, indirect, and cumulative impacts to Chumash
3 cultural and religious practices, and the Chumash Peoples' connection to
4 their ancestors, from the potential significant direct, indirect, and
5 cumulative impacts to these Chumash natural cultural resources.

6 110. By not disclosing, failing to analyze, or failing to adequately consider these
7 important and relevant factors within the EIS, the Corps violated NEPA. 42 U.S.C. §
8 4332(2)(C); *N. Plains Resource Council*, 668 F.3d at 1074-75.

9 111. Furthermore, the Corps' consideration of alternatives in the Final EIS is
10 inadequate under NEPA and its implementing regulations. The Corps failed to analyze
11 all reasonable alternatives that were distinguishable in substance and consequences
12 from those alternatives the EIS actually considered, including an alternative that would
13 involve no fill in Potrero Canyon, an adequate spineflower conservation plan, a cultural
14 resources monitoring plan with Chumash monitors to represent the interests of the
15 Chumash Peoples and to protect Chumash cultural and historic resources, and an
16 alternative that would entirely avoid all Native American cultural sites and resources,
17 natural cultural resources, historic resources, and historic properties identified in the
18 EIS. In addition, the Final EIS alternatives analysis was fundamentally flawed because
19 Corps' Final EIS erroneously relied on incomplete, insufficient, and flawed Chumash
20 cultural and historic resources impact analysis, mitigation analysis, and mitigation
21 measures that were noncommittal, to inform, analyze, and set forth alternatives.

22 112. Additionally, the Corps' analysis of Alternatives 1 through 8 was
23 incomplete and inadequate. For example, the Corps failed to analyze the alternatives in
24 light of hydromodification impacts to each of major tributaries to Santa Clara River.
25 Similarly, the Corps did not fully address why some alternatives, such as the
26 environmentally superior Alternative 7, are economically or technologically
27 impractical or infeasible. When evaluating alternatives, the Corps failed to rigorously
28 and objectively explore all alternatives. Instead, the Corps adopted an alternative that

1 is more desirable to the applicant but that was never fully disclosed or analyzed within
2 the Final EIS.

3 113. The Corps adopted a statement of purpose and need that defined the
4 Project's objectives in terms that are unreasonably and unlawfully narrow.

5 114. In adopting the statement of purpose and need for the Project, the Corps
6 failed to exercise its independent judgment.

7 115. The Corps improperly adopted the applicant's objectives, including
8 conformity with the 2003 Specific Plan, as defining characteristics of the Project and as
9 criteria for evaluating alternatives.

10 116. The Corps' approval of the 2010 Final EIS despite its inadequacy violated
11 NEPA and its implementing regulations. 42 U.S.C. §§ 4331 *et seq.*; 40 C.F.R. §§
12 1500-1508. The Corps' issuance of the Section 404 permit for the Project on the basis
13 on an inadequate EIS violates NEPA. Therefore, the Corps' approval and issuance of
14 the ROD and Section 404 permit are arbitrary and capricious, an abuse of discretion,
15 and not in accordance with the law as required by NEPA, its implementing regulations,
16 and the APA, and are subject to judicial review under the APA. 5 U.S.C. §§701-706;
17 706(2).

18 **THIRD CLAIM FOR RELIEF**

19 **(Against the Corps, for violation of APA Section 706: Failure to Comply with the** 20 **National Historic Preservation Act)**

21 117. Plaintiffs incorporate by reference each and every allegation set forth in
22 this Complaint as if set forth in full herein.

23 118. The Santa Ynez Band of Chumash Indians is a federally recognized Indian
24 Tribe that has used the lands and waters at and around the Project site for generations
25 since time immemorial. The Santa Ynez Band of Chumash Indians attach religious and
26 cultural significance to historic properties that may be affected by the Project.

27 119. NHPA Section 106 and its implementing regulations provide that federal
28 agencies "shall make a reasonable and good faith effort to identify any Indian tribes . . .

1 that might attach religious and cultural significance to historic properties in the area of
2 potential effects and invite them to be consulting parties.” 36 C.F.R. § 800.3(f)(2).
3 The Corps violated NHPA Section 106 and its implementing regulations by failing to
4 make a reasonable and good faith effort to identify the federally recognized Santa Ynez
5 Band of Chumash Indians as an Indian tribe that might attach religious and cultural
6 significance to historic properties in the area of potential effects, and by failing to invite
7 the Santa Ynez Band of Chumash Indians to be a consulting party. *Id.*

8 120. According to the NHPA Section 106 and its implementing regulations, a
9 federal agency “shall ensure that consultation in the section 106 process provides the
10 Indian tribe . . . a reasonable opportunity to identify its concerns about historic
11 properties, advise on the identification and evaluation of historic properties, . . .
12 articulate its view on the undertaking’s effects on such properties, and participate in the
13 resolution of adverse effects.” 36 C.F.R. §§ 800.2(c)(2)(ii)(A)(C). The Corps did not
14 consult the federally recognized Santa Ynez Band of Chumash Indians with regard to
15 identifying properties in the Project area that may be affected by the Project, evaluating
16 and identifying the potential impacts to such historic properties, and resolving adverse
17 effects to such historic properties. Furthermore, the Corps did not consult with
18 members of other non-federally recognized Chumash bands or the Tataviam Tribe until
19 after the Phase I and II cultural resources surveys were completed to identify tribal
20 historic properties and cultural resources. These failures to adequately consult with the
21 Santa Ynez Band of Chumash Indians, and to delay consultation with members of other
22 Chumash bands and the Tataviam Tribe until after surveys for historic properties and
23 cultural resources were complete, violate the consultation requirements of NHPA
24 Section 106 and its implementing regulations. 36 C.F.R. §§ 800.2(c)(2)(ii)(A)(C).
25 These failures also prejudicially impacted all Chumash and Tataviam Peoples and
26 Bands, and Wishtoyo’s members, because they resulted in Corps failure to obtain
27 adequate information about the impacts of the Project on Chumash and Tataviam
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1 historic properties, cultural resources, and natural cultural resources, and in the Corps
2 failure to obtain adequate information to sufficiently mitigate these impacts.

3 121. Furthermore, pursuant to the NHPA Section 106 and its implementing
4 regulations, a federal agency, must consult with an Indian tribe that that attaches
5 religious and cultural significance to historic properties that may be affected by an
6 undertaking, and this consultation must recognize the government-to-government
7 relationship between the federal Government and Indian Tribes be conducted in a
8 manner sensitive to the concerns and needs of the Indian tribe. 36 C.F.R. §§
9 800.2(c)(2)(ii); (ii)(C). The Corps violated the NHPA and its implementing regulations
10 prior to the issuance of the Section 404 permit to Newhall Land and Farming Company
11 and executing the ROD because it failed to initiate a government-to-government
12 relationship to conduct a consultation with the Santa Ynez Band of Chumash Indians,
13 and failed to engage in a consultation for impacts to historic properties in a manner
14 sensitive to the concerns and needs of the Santa Ynez Band of Chumash Indians. *Id.*

15 122. The NHPA and its implementing regulations also request the Corps to
16 make a reasonable and good faith effort to identify historic properties within the area of
17 potential effects of a federal undertaking. The Corps failed to make this requisite effort
18 to identify Chumash historic properties within the Project site as evidenced by its
19 inadequate investigation and analysis of Chumash historic properties and cultural
20 resources, failure to adhere to the Secretary of the Interior's investigation guidelines¹, by
21 its failure to consult with the Santa Ynez Band of Chumash Indians, and by its failure to
22 adequately consult with, and consider information from, other Chumash and Tataviam
23 Native Americans. 36 C.F.R. § 800.4. For example, the Corps failed to identify
24 Chumash and Tataviam historic properties known to exist, failed to identify the extent
25 and character of significant historic properties, identified historic properties through
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27 _____
28 ¹ See *National Register Bulletin 36: Guidelines For Evaluating and Registering Archeological Properties* and *National Register Bulletin 24: Guidelines For Local Surveys: A Basis For Preservation Planning*.

1 mere chance, employed unreasonably inadequate methods to identify subsurface historic
2 properties, burials, and artifacts, failed to follow the Secretary of the Interior's
3 guidelines' techniques and procedures to identify and locate historic properties and
4 artifacts, and failed to follow the Secretary of the Interior's guidelines'² techniques and
5 procedures to identify subsurface historic properties where portions of historic
6 properties were uncovered by chance and where findings revealed a historic property to
7 be more significant than estimated. The Corps failure to make a reasonable and good
8 faith effort to identify historic properties within the area of potential effects of a federal
9 undertaking prejudicially impacted all Chumash and Tataviam Peoples and Bands, and
10 Wishtoyo's members, because it resulted in Corps failure to obtain adequate
11 information about the impacts of the Project on Chumash and Tataviam historic
12 properties and cultural resources, which precluded the Corps from prescribing
13 sufficient measures to mitigate these impacts.

14 123. The Corp's unlawful failure to comply with the requirements of the NHPA
15 prior to issuing the provisional Section 404 permit and executing the ROD violates the
16 NHPA and its implementing regulations. Therefore, the Corps' approval and issuance
17 of the ROD and Section 404 permit are arbitrary and capricious, an abuse of discretion,
18 and not in accordance with the law as required by the NHPA, its implementing
19 regulations, and the APA, and are subject to judicial review under the APA. 5 U.S.C.
20 §§ 701-706; 706(2).

21 PRAYER FOR RELIEF

22 Wherefore, Plaintiffs respectfully request that the Court enter judgment providing the
23 following relief:

- 24 1. declaring that the Corps' Section 404 Permit, issued on August 31, 2011
25 to Newhall Land and Farming Company, was unlawfully issued in
26 violation of the Clean Water Act, NEPA, the NHPA, APA, and the
27 implementing regulations of these laws;

28 _____
² *Id.*

2. vacating the Corps' decisions approving the ROD, approving the Section 404 Permit, and specifying the disposal site identified in the Section 404 Permit, and remanding these decisions to the Corps for further action consistent with the Court's rulings;
3. vacating EPA's decision not to elevate or veto the Section 404 permit, and remanding this decision to the EPA for further action consistent with the Court's rulings;
4. issuing a preliminary injunction, and a permanent injunction, prohibiting any construction activities resulting in the discharge of dredged or fill material into any waters of the United States associated with the Project unless and until the Corps issues a valid Section 404 permit and complies with all applicable laws and regulations and all declarations and orders described above;
5. award Plaintiffs' reasonable attorneys' fees and costs; and
6. grant Plaintiffs such additional and further relief as the Court may deem just and appropriate.

Respectfully submitted this 6th day of March, 2014,

/s/ John Buse

John Buse

Adam Keats

Aruna Prabhala

CENTER FOR BIOLOGICAL DIVERSITY

Attorneys for Plaintiffs Center for Biological
Diversity, Friends of the Santa Clara River, and
Santa Clarita Organization for Planning the
Environment

/s/ Jason Weiner

Jason Weiner

1 WISHTOYO FOUNDATION/VENTURA
2 COASTKEEPER

3 Attorney for Plaintiff Wishtoyo
4 Foundation/Ventura Coastkeeper
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