

1 initial inventories for each state, which must “include NRHP eligibility  
2 recommendations and assessments of direct, indirect, and cumulative effects  
3 within the APE.” Draft Inventory Reports must be submitted to BLM, which must  
4 forward the draft reports to consulting parties, including concerned Tribes, for  
5 review and comment on matters including: “[t]he adequacy of the identification  
6 effort”; “[t]he NRHP eligibility of the cultural resources identified”; “the  
7 assessment of effects . . . on the historic properties identified”; and “[w]hether  
8 there are any properties of traditional cultural or religious importance to tribes and  
9 ethnic groups that were not identified in the inventory and that may be affected by  
10 the [Project].” BLM must consider comments on draft reports that are submitted  
11 within sixty days.

12         75. The Programmatic Agreement provides that “[w]hen making  
13 determinations of NRHP eligibility, the BLM will consider historic sites, districts,  
14 buildings, structures and objects that are significant and meet the integrity  
15 criteria.” Where a property has “traditional cultural values,” BLM will consider  
16 the “values expressed by the consulted tribes or other ethnic groups.” Copies of  
17 BLM’s NRHP eligibility determinations will be provided to consulting parties for  
18 review and comment.

19         76. The Programmatic Agreement reports that “BLM has consulted with  
20 Indian tribes whose aboriginal territories included portions of the [Project] area or  
21 who have previously expressed interest in undertakings within the APE.” The  
22 Agreement obligated BLM to “continue to consult with Indian tribes regarding  
23 properties of traditional religious and cultural importance to them that might be  
24 affected by the [Project]” and to “provide opportunities for review and comment  
25 on draft and final versions of the Inventory Report.” The Agreement stipulated  
26 that “[t]he consultation process *will remain open* for any tribe that expresses a  
27 desire to participate.”

1           77. The Programmatic Agreement also sets forth terms for the resolution  
2 of adverse effects of the Project on historic properties. For example, the  
3 Agreement provides that “BLM shall, if possible, *avoid* adverse effects to *all types*  
4 *of historic properties.*” (emphasis added). Avoidance measures “may include (but  
5 are not limited to) realignment of the transmission line.” “Where avoidance is not  
6 possible,” BLM must “minimize or mitigate adverse effects to historic properties,  
7 if possible.” The Programmatic Agreement thus establishes avoidance as the  
8 preferred method of resolving adverse effects to historic properties. Additionally,  
9 the Agreement provides that “[i]f any Indian tribes or other Native American  
10 groups have expressed concerns about effects on properties to which they ascribe  
11 traditional religious and cultural importance, BLM shall consult with them and the  
12 appropriate SHPO” regarding measures to resolve the adverse effects. The  
13 Agreement also directs SunZia Transmission, LLC to prepare a Historic Properties  
14 Treatment Plan (“HPTP”) to address the direct, indirect, and cumulative adverse  
15 effects of the Project on historic properties, including traditional cultural  
16 properties. The HPTP will be developed through consultation with BLM, the New  
17 Mexico and Arizona SHPOs, and other consulting parties. Once complete, the  
18 HPTP is incorporated into the Project’s Plan of Development.

19           78. Consistent with the NHPA’s implementing regulations, the  
20 Programmatic Agreement provides that “[r]equests for authorizations of  
21 construction will be approved *only if such authorizations will not restrict*  
22 *subsequent measures to avoid, minimize or mitigate the adverse effects to historic*  
23 *properties through rerouting of the corridor or placement of ancillary facilities.*”

24           79. The Programmatic Agreement also provides that if “*any Consulting*  
25 *Party to this [Agreement] object[s] at any time* to any actions proposed or the  
26 manner in which the terms of th[e] [Agreement] are implemented, the BLM *shall*  
27 *consult* with such party to resolve the objection.” If BLM determines that the

1 objection cannot be resolved, the agency must “[f]orward all documentation  
2 relevant to the dispute, including [the agency’s] proposed resolution to the  
3 ACHP.” The ACHP must then advise BLM on the resolution of the objection  
4 within thirty days. BLM must then “prepare a written response that takes into  
5 account any timely advice or comments regarding the dispute from the ACHP  
6 [and] Consulting Parties” prior to proceeding to its final decision.

7 **F. The 2015 ROD**

8 80. In January 2015, BLM issued a Record of Decision (“ROD”)  
9 approving the proposed right-of-way for the transmission line. In 2016, relying on  
10 the Final EIS and ROD for its compliance with NEPA, BLM issued a right-of-way  
11 grant to SunZia Transmission, LLC, authorizing use of a 400-foot-wide corridor  
12 across 183 miles of private, state-administered, and BLM-administered land.  
13 However, the Project (as approved) was never built.

14 81. With respect to cultural resources, the 2015 ROD reported that  
15 government-to-government consultations under NEPA and the NHPA, as well as  
16 Section 106 consultations under the NHPA, were conducted in support of the  
17 Project. The 2015 ROD reported that several Tribes were designated as consulting  
18 parties for the Section 106 process, including the Tohono O’odham Nation, Gila  
19 River Indian Community, Salt River Pima-Maricopa Indian Community, Ak-Chin  
20 Indian Community, Pueblo of Isleta, Pueblo of Ysleta del Sur, Pueblo of Zuni,  
21 Mescalero Apache, Fort Sill Apache, San Carlos Apache, and White Mountain  
22 Apache. According to the 2015 ROD, “consultation was completed with the  
23 execution of the [Programmatic Agreement] on December 17, 2014.”

24 82. According to BLM, in February 2018, Consulting Parties were  
25 provided draft Class III Intensive Field Inventories and given sixty days to provide  
26 written comments concerning properties of traditional cultural or religious  
27 importance that were not identified in the report. Conspicuously, despite numerous

1 letters from Plaintiffs and others repeatedly explaining the cultural significance of  
2 the middle and lower San Pedro Valley to several Native America Tribes and  
3 specifically identifying the area as a traditional cultural property full of important  
4 historic and cultural resources, the inventory did not identify the San Pedro Valley  
5 as such.

6 **III. THE 2023 RIGHT-OF-WAY AUTHORIZATION PROCESS**

7 83. In December 2020 and September 2021, SunZia Transmission, LLC  
8 submitted updated applications to BLM seeking to amend the existing right-of-  
9 way authorization to accommodate advanced design and engineering review.  
10 Specifically, the updated applications sought changes to four components of the  
11 approved right-of-way grant. Relevant here, the proposed changes include 25  
12 miles of new access roads and 230 acres of additional ancillary facilities in the San  
13 Pedro Valley.

14 **A. The 2022 Draft EIS**

15 84. In June 2021, BLM issued a scoping notice for the proposed  
16 amendments to the right-of-way. Archeology Southwest submitted comments on  
17 the scoping notice, urging BLM to critically examine the need for the Project,  
18 particularly in light of the significant ground disturbance contemplated by the  
19 addition of hundreds of miles of new and improved access roads. The Center for  
20 Biological Diversity also submitted comments urging BLM to consider “siting  
21 alternatives that would re-route the line away from sensitive areas including  
22 avoiding crossings and transmission along the San Pedro River.”

23 85. In April 2022, BLM issued a Draft EIS to assess the impacts of the  
24 proposed changes to the Project. BLM expressly limited its analysis in the 2022  
25 Draft EIS to the “four Project components contained within SunZia’s application  
26 to amend the existing [right-of-way] authorization.” BLM thus insisted that the  
27 2022 Draft EIS “does not revisit or reanalyze the previously analyzed and

1 approved route . . . unless conditions have changed that warrant new analysis,”  
2 and that for those unchanged portions of the Project, the 2013 final EIS, 2015  
3 ROD, and 2016 right-of-way grant constituted the agency’s final decision.

4 86. The 2022 Draft EIS reported that since the 2013 Final EIS, data  
5 regarding historic and cultural sites and resources “have been and will be collected  
6 through tribal consultation.” Paradoxically, the 2022 Draft EIS acknowledged that  
7 “an inventory for [traditional cultural properties] has not been completed at this  
8 time,” yet also reported that “[n]o [traditional cultural properties] or sacred sites  
9 were identified within the analysis area during the previous consultation for the  
10 2013 [final] EIS.” Despite nearly ten years of purportedly “ongoing” consultations  
11 regarding cultural resources, BLM reported that “[n]o new data are available for  
12 this Draft EIS.”

13 87. Regarding cultural resources, the 2022 Draft EIS acknowledged that  
14 the proposed access roads and temporary work areas may impact “places or  
15 resources of concern [that] were identified along the project route.” Indeed,  
16 “[g]round disturbance from the proposed access roads outside the granted right-of-  
17 way could impact 68 resources in New Mexico and Arizona,” of which “twenty-  
18 seven are NRHP-eligible and nineteen are unevaluated.” With respect to the  
19 proposed temporary work areas, associated “[g]round disturbance . . . could  
20 impact 24 cultural resources; eight of the resources are NRHP-eligible and 10 are  
21 unevaluated.” The 2022 draft EIS did not discuss regional or local impacts to  
22 cultural resources resulting from the proposed changes to the Project.

23 88. Plaintiffs and others submitted extensive comments on various  
24 aspects of the 2022 Draft EIS. Relevant here, commenters criticized BLM’s  
25 decision to “analyze the new . . . application as a minor amendment to an approved  
26 [right-of-way] grant instead of for what the Project is: a major bundle of  
27 additional, significant, and impossible to adequately mitigate impacts to unique

1 and fragile environments.” Commenters also explained that “survey coverage” for  
2 cultural resources “is low for this set of routes or for any other routes,” and  
3 consequently, “it is incumbent upon [ ] BLM” to thoroughly examine the project  
4 area and identify historic and cultural resources prior to Project approval.  
5 Commenters also urged BLM to engage with tribal communities with “culturally,  
6 ancestrally, and currently significant” connections with the affected area.  
7 Commenters reminded BLM that “[i]t is particularly important to recognize that  
8 the alterations to the landscape in this region could have wider impact than to just  
9 the land directly within the boundaries.” Indeed, [t]he impact increased human  
10 activities, and those from ancillary activities like construction and maintenance,  
11 could have broader, unforeseen cumulative consequences on this sensitive  
12 landscape.”

13 89. In January 2023, Archeology Southwest directly responded to the  
14 2022 Draft EIS’s assertion that BLM had not identified any traditional cultural  
15 properties or sacred sites within the analysis area. Archeology Southwest  
16 explained that “the middle and lower San Pedro Valley segments that [the Project]  
17 would irrevocably alter are integral to a well-documented *cultural landscape*,” i.e.,  
18 an NRHP-eligible historic property “having exceptional integrity and significance  
19 derived primarily from its central roles in the historical, cultural, and oral  
20 traditions of at least four distinct Indigenous Nations: Apache, Hopi, Tohono  
21 O’odham, and Zuni.” (emphasis added). The organization reminded BLM that  
22 “[i]n and through meetings and communications with BLM since 2008, multiple  
23 Tribes have confirmed the landscape-scale importance of the Middle and Lower  
24 San Pedro Valley,” and directed BLM to various Tribe- and peer-reviewed  
25 resources to “substantiate” the identification of traditional cultural properties  
26 within the San Pedro Valley, and indeed, the inclusion of the Middle and Lower  
27 San Pedro Valley on the NRHP.

1           **B.     The 2023 Final EIS**

2           90.     In February 2023, BLM issued its Final EIS for the proposed Project  
3 modifications. With respect to impacts to historic and cultural resources, the 2023  
4 Final EIS asserted that “extensive tribal consultation and coordination were  
5 conducted for the initial right-of-way application and in support of the first EIS  
6 process from 2009–2015.” According to BLM, the 2023 Final EIS and right-of-  
7 way grant amendment “is a continuation of the overall [right-of-way] process, in  
8 which interested tribes have participated for over a decade.” BLM explained that  
9 “[c]onsultation with the interested tribes is on-going though the NEPA process and  
10 under Section 106 through the processes described in the project’s programmatic  
11 agreement, including by transmitting annual reports with updates to the Project to  
12 concerned tribes, as well as Class III addendum inventory reports for review and  
13 comment”. Yet, the 2023 Final EIS once again admitted that “an inventory for  
14 [traditional cultural properties] has not been completed at this time,” but also  
15 asserted that “[n]o [traditional cultural properties] or sacred sites were identified  
16 within the analysis area during the previous consultation for the 2013 [final] EIS.”  
17 BLM also once again reported that “[n]o new data are available for this Final  
18 EIS.”

19           91.     In response to comments criticizing the agency’s lackluster efforts to  
20 meaningfully consult with concerned tribes regarding the impacts to significant  
21 historic and cultural resources, BLM referred commenters to the 2013 Final EIS’s  
22 discussion of impacts to cultural resources and insisted that together with the 2023  
23 Final EIS’s discussion of the impacts to cultural resources from the proposed  
24 modifications to the right-of-way grant, the agency’s analysis of such impacts was  
25 sufficient. BLM further explained that it “is complying with the requirements of  
26 Section 106 of the NHPA for the proposed [right-of-way] amendments.”  
27 Specifically, BLM pointed to its use of a “executed programmatic agreement to

1 satisfy the requirements of Section 106 of the NHPA, including considering the  
2 potential effects of their decisions on historic properties listed on or eligible for the  
3 [NRHP].”

4  
5 **IV. CONTINUING CONCERNS REGARDING BLM’S FAILURE TO**  
6 **COMPLY WITH THE NHPA**

7 92. In February 2023, the Arizona SHPO wrote to BLM, requesting  
8 information regarding the Section 106 process in light of tribal concerns with the  
9 Project’s “adverse impacts to the cultural landscape of the San Pedro Valley and to  
10 Sobaipuri O’odham sites therein.” BLM dismissed such concerns, arguing that  
11 “the scope of the current NEPA effort . . . does not involve the route in Arizona at  
12 all.” Rather, according to BLM, the 2023 Final EIS “was done to analyze  
13 completely new routes in New Mexico” due to the original route’s conflicts with  
14 military sites. Therefore, “[c]omments about other areas”—i.e., areas outside of  
15 New Mexico, including the San Pedro Valley and its cultural resources—“would  
16 not be pertinent.” BLM did not explain how the multiple comments regarding the  
17 presence of traditional cultural properties in the San Pedro Valley were not  
18 “pertinent” to the Section 106 process—which was still ongoing at the time of the  
19 2023 Final EIS—particularly where the agency acknowledged in the 2023 Final  
20 EIS that “an inventory for [traditional cultural properties] *has not been completed*  
21 *at this time.*” Similarly, despite the addition of about 25 miles of previously  
22 unanalyzed access and construction roads, the BLM insisted that comments and  
23 concerns relating to the San Pedro Valley could not receive further consideration.

24 93. BLM reported to the Arizona SHPO that in communications with the  
25 THPO at Tohono O’odham Nation, the agency had “suggested that [the Tribe’s]  
26 issues are serious and that [BLM and the Tribe] should engage in government to  
27 government consultations.” However, in a subsequent email to the Arizona SHPO  
28 regarding these same issues, BLM dismissively suggested that the Tribes “misread



1 this situation with the [2023 Final] EIS” and that the agency “tried . . . to set the  
2 record straight, but that is not the answer that [the Tribes] want to hear.”

3 94. In March 2023, the San Carlos Apache Tribe wrote BLM to request  
4 “meaningful consultation” concerning the significant adverse impacts that the  
5 Project will have on the San Pedro Valley. The Tribe noted that it “is especially  
6 concerned about the highly intrusive, all-new transmission corridor through the  
7 San Pedro Valley,” an area that “is the fragile core for the largest expanse of  
8 unfragmented land in the Southwest” and that “includes the southern half of the  
9 San Carlos Apache Reservation.” The Tribe informed BLM that “the Valley is the  
10 home to more than 60 landforms named and remembered in our Apache language”  
11 and “also hosts thousands of localities having religious, cultural, historical, and  
12 archaeological importance to Apache, O’odham, Hopi, and Zuni peoples.”  
13 Accordingly, “the entire middle San Pedro Valley is a cultural landscape and  
14 traditional cultural property having great significance in Apache cultural and  
15 religious traditions and in those of other tribes.” The Tribe concluded that “the  
16 proposal to approve this project in advance of transparent, place-specific tribal  
17 consultations does not comport with provisions of . . . the [NHPA], Executive  
18 Order No. 13175, the recent proclamations of the Biden Administration, and other  
19 related law and policy.” The Tribe urged BLM to consider alternative routes that  
20 would avoid adverse effects to this important cultural landscape, asserting that  
21 “[u]nless and until there a transparent analysis emerges from these parties and the  
22 [2023 final EIS] reflects the Tribe’s values and concerns, the Tribe must protest  
23 the FEIS and SunZia in general.”

24 95. In March 2023, the Tohono O’odham Nation also wrote to BLM to  
25 again express its longstanding concerns with the Project’s impacts on the San  
26 Pedro Valley. The Tribe noted its “well-documented cultural, religious, ancestral,  
27 and oral history connections with the Arizona lands on which the [Project] is

1 proposed to be constructed.” According to the Tribe, “[t]he concerns of the  
2 Tohono O’odham Nation have been expressed for many years in a long series of  
3 consultation meetings with [BLM],” yet “[m]any of these concerns have not been  
4 addressed regarding visual impacts to the San Pedro River Valley, an important  
5 ‘traditional cultural landscape’ significant to the Tohono O’odham Nation and  
6 other Tribes in Arizona.” The Tribe also noted its longstanding “concerns over  
7 direct impacts to individual cultural resource sites that will be destroyed by” the  
8 Project’s construction and access roads. Despite these concerns, “[i]nput . . .  
9 regarding adverse impacts to individual cultural sites and the San Pedro River  
10 Valley Traditional Cultural Place has largely been ignored,” as have  
11 “[r]ecommendations to move the [Project] out of the San Pedro Valley Traditional  
12 Cultural landscape.” The Tribe requested that BLM “resume consultations with  
13 the affected Tribes regarding adverse impacts to the cultural landscape of the San  
14 Pedro Valley and individual cultural sites, with the goal of moving the proposed  
15 [Project] out of the valley.”

16 96. In March 2023, Archaeology Southwest filed a formal protest to the  
17 2023 Final EIS. The protest focused on two primary issues: “(a) inadequate BLM  
18 attention to cultural resource identification, analysis, and impact assessment and  
19 avoidance; and (b) [failure] to complete meaningful consultations with federally  
20 recognized Tribes who consider the San Pedro Valley to be part of their  
21 Territories.” According to the protest, BLM’s failure to meaningfully consider  
22 these two issues “resulted in an FEIS that is premature and incomplete because  
23 essential cultural resource and Tribal consultation data and perspective were  
24 excluded from the FEIS analysis of alternatives, especially the No Action  
25 Alternative.” In April 2023, BLM denied Archaeology Southwest’s protest.

26 97. In June 2023, BLM responded to the San Carlos Apache Tribe’s  
27 March 2023 letter. BLM informed the Tribe that the agency considered routing

1 alternatives during the 2013 Final EIS process. According to the agency, “the  
2 route chosen balanced the considerations of diverse stakeholders and resource  
3 concerns.” BLM explained that the 2023 Final EIS process was initiated primarily  
4 “to find a different route in New Mexico . . . due to factors concerning the White  
5 Sands Missile Range.” BLM insisted that since 2018, “all consulting parties” have  
6 been “provided detailed cultural resource inventory reports and invited to  
7 comment and provide information on those reports.” BLM did not state whether  
8 an inventory for traditional cultural properties had been completed for the entire  
9 Project area and provided to the parties. Additionally, although BLM insisted that  
10 it had attended several meetings with consulting parties, including affected Tribes,  
11 in order to “provide updates” on the Project and “address questions and concerns”  
12 from the Tohono O’odham Nation and the San Carlos Apache, BLM did not  
13 specifically address those concerns in its response. Nor did the agency discuss any  
14 process for the resolution of the concerns expressed by the San Carlos Apache at  
15 those meetings or in its March 2023 letter. Instead, BLM asserted, without  
16 evidence, that “[a]dverse effects to many identified cultural resources were  
17 avoided in both Arizona and New Mexico.” BLM concluded that efforts to avoid,  
18 minimize, and mitigate adverse effects to historic properties would be detailed in  
19 the forthcoming HPTP, and invited the San Carlos Apache to participate in the  
20 development of the document.

21 98. In July 2023, BLM transmitted the proposed HPTP to Consulting  
22 Parties in Arizona. BLM noted that the only HPTP developed at the time was to  
23 assess the “direct, physical effects of the [Project].” At a meeting with Consulting  
24 Parties to discuss the document, BLM explained that “another HPTP [will be]  
25 developed to resolve the adverse visual effects and other indirect effects to historic  
26 properties.” BLM did not explain how its plan to bifurcate the assessment,  
27 mitigation, and resolution of adverse effects to such an important cultural

1 landscape as the San Pedro Valley was consistent with either the Programmatic  
2 Agreement, which contemplated a single HPTP addressing all adverse effects to  
3 historic properties for each state, or the agency’s obligations to engage in  
4 comprehensive consultation to avoid, minimize, and mitigate direct and indirect  
5 impacts to historic and cultural properties under the NHPA.

6 **V. THE ONGOING HPTP PROCESS**

7 **A. Development Of The HPTP For Direct/Physical Effects**

8 99. In August 2023, BLM finalized its proposed HPTP for direct and  
9 physical adverse effects to historic properties Arizona. The finalized HPTP  
10 explained that “[a] separate treatment plan is being prepared to address additional  
11 adverse effects including visual, indirect, and other effects, such as those to  
12 tribally sensitive properties, as well as cumulative effects.” Thus, the second, yet-  
13 to-be-developed HPTP will resolve “effects that extend beyond physical effects,”  
14 including visual, indirect, and other effects.

15 100. Remarkably, despite letters dating back over a decade informing  
16 BLM that the San Pedro Valley was considered by several Consulting Parties to be  
17 traditional cultural property and constitute a cultural landscape, BLM asserted that  
18 the area had only been “recently identified” as such. BLM insisted that the San  
19 Pedro Valley “will be considered in the second [HPTP],” which will ostensibly  
20 “allow for a more-focused consideration of the mitigation of direct visual and  
21 tribal effects,” which are still subject to additional tribal and Consulting Party  
22 consultations at certain sites. BLM did not explain how deferral of consideration  
23 of adverse effects (including direct effects) to the culturally significant San Pedro  
24 Valley until the last possible stage in the Project planning process could be  
25 squared with its obligations to “initiate[] [the Section 106 process] early in the  
26 undertaking’s planning, so that a broad range of alternatives may be considered  
27 during the planning process,” and to ensure that its actions do not restrict or

1 foreclose the “consideration of alternatives to avoid, minimize or mitigate the  
2 undertaking's adverse effects on historic properties.”

3 101. On August 3, 2023, the Arizona SHPO submitted highly critical  
4 comments on BLM’s proposed HPTP, noting that it was “greatly concerned by the  
5 lack of consideration of tribal values in the proposed research.” Significantly, the  
6 SHPO articulated its “strong[] belie[f] that the HPTPs prepared in conjunction  
7 with Section 106 of the [NHPA] compliance should address adverse effects to *all*  
8 *classes* of historic properties adversely affected by an undertaking.” In particular,  
9 the SHPO noted its “concern [over] the lack of discussion regarding landscape  
10 level effects to historic properties,” for “[a]s the BLM is aware, consulting parties  
11 to the [Project] programmatic agreement have identified the San Pedro Valley as a  
12 cultural landscape.” Accordingly, the SHPO “recommend[ed] that documentation  
13 and [NRHP] evaluation of this landscape (and any others that might be identified)  
14 utilizing appropriate historic contexts be considered as mitigation,” which “could  
15 then be used to help address landscape level effects to historic properties.”

16 102. Relatedly, the SHPO admonished BLM’s inadequate discussion of  
17 cumulative effects to historic properties in the HPTP, noting that BLM merely  
18 “identifies *potential* cumulative adverse effects at several sites.” Moreover, with  
19 respect to the resolution of cumulative adverse effects, the HPTP merely identifies  
20 “additional data recovery” without explaining why such mitigation is appropriate  
21 or whether other mitigation methods were considered. The SHPO thus  
22 recommended “adding discussion . . . that addresses the nature and conditions  
23 under which these cumulative effects may occur.” The SHPO further urged that  
24 “all forms of mitigation—not just archaeological data recovery—should be  
25 presented.” In light of the serious deficiencies in the HPTP, the SHPO concluded  
26 that the document should be revised to address all comments. Only after those

1 deficiencies are corrected can the SHPO “better evaluate the adequacy of the  
2 proposed archaeological sampling strategies.”

3 103. In August 2023, the San Carlos Apache Tribe, Tohono O’odham  
4 Nation, and Archaeology Southwest jointly submitted a notice of dispute to the  
5 Secretary of the Interior, BLM, and the ACHP regarding BLM’s compliance with  
6 the NHPA in connection with the Project. Specifically, the parties “dispute[d] the  
7 BLM’s historic property identification process and the BLM’s failure to properly  
8 address the adverse effects to historic properties affected by the [Project].”

9 According to the parties, “BLM . . . disregarded [their] requests to identify and  
10 consider [traditional cultural properties], including the likelihood that the San  
11 Pedro Valley itself is a [traditional cultural property] or traditional cultural  
12 landscape eligible for listing in the [NRHP].” The parties noted that “[o]n  
13 numerous occasions over more than a decade,” they had advised BLM “of the  
14 presence of [traditional cultural properties] and of the cultural salience of the San  
15 Pedro Valley as a whole.” Yet, despite multiple requests for additional  
16 consultations with affected Tribes and their knowledgeable representatives, the  
17 parties alleged that BLM had yet to engage in any meaningful consultation and  
18 review of traditional cultural properties that will be irreparably altered and harmed  
19 by the Project. The Tribe and the Nation also alleged that they “ha[d] not been  
20 provided the opportunity for meaningful government-to-government  
21 consultation.” The parties reminded BLM of its obligations under Joint Secretarial  
22 Order No. 3403 to “give consideration and deference to Tribal proposals,  
23 recommendations, and knowledge that affect management decisions on such  
24 lands,” and requested that BLM immediately come into compliance with the  
25 NHPA.

26 104. In August 2023, BLM responded to the San Carlos Apache Tribe,  
27 Tohono O’odham Nation, and Archaeology Southwest’s joint dispute. BLM

1 asserted that it had only been informed of the identification of the middle San  
2 Pedro Valley as a traditional cultural property through the March 2023 letters  
3 submitted by the Tohono O’odham Nation and the San Carlos Apache Tribe.  
4 According to BLM, upon receiving this information, the agency began to consult  
5 regarding the Project’s adverse effects on the Valley. BLM did not acknowledge  
6 that, in fact, letters dating back over a decade had informed the agency of the  
7 cultural and historic significance of the Valley to several tribes. Nor did BLM  
8 acknowledge that by ignoring the overwhelming evidence supporting the  
9 identification of the San Pedro Valley as traditional cultural property—which  
10 again, had been submitted to the agency for over a decade—until at least March  
11 2023, BLM skewed its Section 106 process from the beginning.

12         105. For example, by refusing to make a reasonable and good faith effort  
13 to identify the San Pedro Valley as a traditional cultural property during the 2014  
14 NEPA and NHPA processes, BLM avoided its duty at that time to “develop and  
15 evaluate alternatives or modifications to the [Project] that could avoid, minimize,  
16 or mitigate adverse effects on” the San Pedro Valley, when the portion of the  
17 Project that runs through the area was initially approved. By the time that BLM  
18 finally acknowledged in its letter that the San Pedro Valley is a traditional cultural  
19 property, the siting for the Arizona portion of the Project was a *fait accompli*.  
20 Hence, in its August 2023 response to the joint dispute, BLM asserted that despite  
21 tribal concerns, “the [P]roject will not be rerouted, as that portion of it was  
22 approved in January 2015.” Instead, BLM invited the disputing parties to work  
23 with the agency through the ongoing HPTP process to resolve the Project’s  
24 adverse effects on historic and cultural properties. BLM thus deferred  
25 consideration of the Project’s adverse effects on the San Pedro Valley until the  
26 development of a second HPTP—i.e., at a juncture in the decisionmaking process  
27 where BLM would no longer consider alternatives that would avoid adverse

1 effects to historic and cultural properties, and would instead consider only how to  
2 mitigate such effects.

3 **B. The Final HPTP For Direct/Physical Effects**

4 106. In September 2023, BLM notified the Consulting Parties that the  
5 HPTP for direct, physical effects “has been finalized in consultation with the  
6 Arizona SHPO.”

7 107. On October 5, 2023, Archaeology Southwest emailed BLM on  
8 behalf of the objecting parties (i.e., Archaeology Southwest, the Tohono O’odham  
9 Nation, and the San Carlos Apache Tribe) to offer a “roadmap” for resolving the  
10 parties’ disputes with the agency regarding the Project. The parties noted that the  
11 Programmatic Agreement made “no mention of a second HPTP,” but rather  
12 references “*an* HPTP for each state that will address the effects of the proposed  
13 [Project] on historic properties during the [Project], including traditional cultural  
14 properties.” The parties informed BLM that they had not received any “reference  
15 to or consultation with” the consulting parties regarding the proposed second  
16 HPTP. The parties therefore notified BLM that their “dispute now includes  
17 BLM[’s] inattention to [Programmatic Agreement] stipulations” requiring BLM  
18 to: (1) “if possible, *avoid* adverse effects to all types of historic properties, with  
19 input from Consulting Parties,” including by “*realignment of the transmission*  
20 *line*” (emphasis added); and (2) “[w]here avoidance is not possible . . . [to]  
21 minimize or mitigate adverse effects to historic properties if possible, with input  
22 from Consulting Parties.”

23 108. Regarding BLM’s decision to develop a second HPTP to resolve  
24 “non-physical adverse effects to historic properties, such as effects that are visual,  
25 indirect, or to tribal values,” the objecting parties argued that neither the NHPA,  
26 nor its implementing regulations, nor the Programmatic Agreement “provide any  
27 basis for partitioning adverse effects to historic properties in terms of physical and



1 non-physical.” The parties asserted that BLM’s “attempt to erect such a partition  
2 without prior consultation . . . appears to be . . . arbitrary and capricious,”  
3 including because such a division would “limit options for dispute resolution.”  
4 The parties urged BLM to comply with the terms of the Programmatic Agreement  
5 moving forward, including by preparing a single HPTP to address all adverse  
6 effects to historic properties.

7 109. The objecting parties reminded BLM of its responsibility, pursuant  
8 to the NHPA and its implementing regulations, to identify historic properties  
9 through “a reasonable and good faith effort,” (quoting 36 C.F.R. § 800.4(b)1), and  
10 assess potential adverse effects to those properties. The parties urged BLM to,  
11 consistent with those obligations, complete the identification of and assessment of  
12 adverse effects to historic properties within the Project’s APE, as that process is  
13 “integral to the framing and substance of the efforts . . . to resolve potential  
14 adverse effects.” The parties “again direct[ed] BLM[’s] attention to [their] varied  
15 notices and advisements, delivered to BLM in good faith since at least 2009, of the  
16 presence and significance of [traditional cultural properties] in the San Pedro  
17 Valley.”

18 110. The parties requested that BLM respond to its objections by  
19 confirming its commitment to the NHPA, its implementing regulations, and the  
20 Programmatic Agreement, and by providing concrete steps that the agency  
21 planned to take to ensure its compliance with same as respects the identification,  
22 assessment, and resolution of the Project’s adverse effects on traditional cultural  
23 properties and/or cultural landscapes in or comprising the San Pedro Valley. The  
24 objecting parties further urged BLM to “prioritize the avoidance of potential  
25 adverse effects to historic properties, especially [traditional cultural properties]  
26 and cultural landscapes” in and comprising the San Pedro Valley, in accordance  
27 with the NHPA, its implementing regulations, and the Programmatic Agreement.

1           111. In October 2023, the ACHP informed BLM of its “concerns with  
2 how [the final HPTP for direct/physical effects] and other reports and  
3 communications have been characterized.” Specifically, the ACHP took issue with  
4 the HPTP’s reliance on “‘archaeological methods’ to resolve adverse effects on  
5 historic properties and the suggestion that it defers consideration of ‘Tribal values’  
6 to a future treatment plan.” The ACHP admonished BLM that “[c]onsidering  
7 ‘Tribal values’ through consultation should occur throughout the 106 process and  
8 reflected agreements and treatment plans,” and further, that “Section 106  
9 implementing regulations at 36 CFR § 800.4(c)(1) state that federal agencies shall  
10 acknowledge the special expertise of Tribes in assessing the eligibility of historic  
11 properties that may possess religious and cultural significance to them.” The  
12 ACHP reminded BLM that such “expertise extends to understanding what actions  
13 may cause adverse effects to those properties as well as the treatment methods that  
14 may be appropriate and necessary to resolve those adverse effects—regardless of  
15 the nature or type of historic property being affected.” Because federal agencies—  
16 including BLM—do not possess this “special expertise,” they “should rely on  
17 Tribes to provide feedback as to whether proposed treatment methods may or may  
18 not be appropriate, such as an overreliance on testing and data recovery, which in  
19 and of itself may constitute an additional adverse effect.”

20           112. The ACHP also noted that BLM’s approach of developing multiple  
21 HPTPs for each state (i.e., an HPTP to address direct/physical adverse effects and  
22 a second HPTP to address indirect and “other” effects to traditional cultural  
23 properties) “is inconsistent with the terms of the [Programmatic Agreement],”  
24 which called for a single HPTP for each state addressing all of the adverse effects  
25 to historic properties and cultural resources therein. The ACHP recommended that  
26 BLM reconcile these approaches, and posited that “BLM cannot authorize

1 construction until all parts of this report (considering all aspect's *[sic]* of the  
2 undertaking's effects on historic properties) have been finalized and approved."

3 113. Also in October 2023, the Pueblo of Zuni informed BLM that it was  
4 joining the August 2023 dispute submitted by the Tohono O'odham Nation, San  
5 Carlos Apache Tribe, and Archaeology Southwest. The Pueblo of Zuni entered the  
6 dispute "because the BLM has failed to identify, evaluate, and consider the effects  
7 of the proposed [Project] on Zuni (as well as other Tribal) properties of traditional  
8 religious and cultural importance located within the [APE]." Additionally, "the  
9 identification, evaluation, assessment of effect(s) and resolution of adverse effects  
10 is demonstrably determined solely through the narrow disciplining of Western  
11 archaeology and the associated limiting ontological view of the environment." The  
12 Pueblo of Zuni asserted that "[t]he Zuni people have a strong traditional cultural,  
13 heritage, and religious connections to the San Pedro Valley" that are "well  
14 documented." Yet, BLM has yet to acknowledge or document historically  
15 significant landmarks or cultural landscapes. The Pueblo of Zuni urged BLM to  
16 "acknowledge and act upon [its] fiduciary, statutory, and regulatory obligations"  
17 to the Native American Tribes and peoples affected by the Project and "to follow  
18 the fundamental dictates of the NHPA."

19  
20 **VI. ISSUANCE OF THE INITIAL LNTP AND MEETINGS TO**  
21 **ADDRESS ADVERSE EFFECTS ON HISTORIC AND CULTURAL**  
22 **PROPERTIES**

23 114. On September 26, 2023, BLM issued an LNTP authorizing SunZia  
24 Transmission, LLC to "proceed with construction on segments of the project area  
25 crossing state and private lands in the San Pedro Valley." To discharge its Section  
26 106 obligations, BLM argued that "there are no historic properties present in the  
27 transmission structure spans and roads subject to this LNTP." However, BLM did  
28 not explain how allowing construction to begin in an area that the agency itself

1 recognized as a traditional cultural property prior to concluding any type of review  
2 of adverse direct and indirect effects on that property was consistent with the  
3 NHPA and its implementing regulations. Nor did BLM acknowledge that by  
4 authorizing construction on state and private lands adjacent to culturally  
5 significant federal lands in the San Pedro Valley, the agency effectively foreclosed  
6 consideration of alternatives to avoid, minimize, or mitigate adverse effects on the  
7 traditional cultural property prior to the conclusion of the Section 106 process.

8 115. On the basis of BLM’s September 26, 2023 LNTP, SunZia  
9 Transmission, LLC began construction of the Project in the San Pedro Valley,  
10 including grading, site clearing, vegetation tagging, and removal and placement of  
11 heavy equipment in sensitive areas. On information and belief, these activities  
12 adversely affected historic properties, including traditional cultural properties and  
13 cultural landscapes, prior to the completion of the Section 106 and government-to-  
14 government consultation processes required by the NHPA, its implementing  
15 regulations, and the Programmatic Agreement.

16 116. On October 31, 2023, the Tohono O’odham Nation, joined by the  
17 San Carlos Apache Tribe and Archaeology Southwest, implored the Secretary of  
18 Interior to intervene and “halt the unlawful and deeply harmful destruction of the  
19 San Pedro Valley.” The parties “specifically request[ed] that [the Secretary]  
20 withdraw or suspend the [LNTP] . . . for the Arizona portion of the [Project].” The  
21 parties informed the Secretary that the LNTP had been issued “based on BLM’s  
22 acceptance of a flawed and incomplete historic property inventory report that  
23 BLM knew did not identify or address many of the historic properties the Tribes,”  
24 including traditional cultural properties that the parties and others had “repeatedly  
25 advised” BLM are present in the area. Indeed, for over a decade the parties had  
26 “advised BLM of the presence of [traditional cultural properties] and of the  
27 cultural salience of the San Pedro Valley as a whole.” Additionally, the LNTP had

1 been issued “in advance of the completion of both the historic property  
2 identification process and the [HPTP] adversely affected by the [Project].” The  
3 parties additionally alleged that BLM had issued the LNTP without any advance  
4 notice to consulting parties, and prior to the resolution of the parties’ August 2023  
5 dispute, which identified the San Pedro Valley as a historic property eligible for  
6 listing in the NRHP. The parties reminded the Secretary of BLM’s responsibility  
7 pursuant to Joint Secretarial Order No. 3403 to “give consideration and deference  
8 to Tribal proposals, recommendations, and knowledge that affect management  
9 decisions on such lands.” Yet, according to the parties, “[i]nstead of shouldering  
10 these obligations and meeting Section 106 requirements for compliance with the  
11 [NHPA] in consultation with Tribes, BLM has made clear its intentions to  
12 prioritize [SunZia Transmissions, LLC’s] interests.” The parties thus requested the  
13 Secretary’s immediate intervention to ensure BLM complied with its statutory,  
14 regulatory, and fiduciary responsibilities to Native American Tribes.

15       117. On November 8, 2023, BLM responded to the Tohono O’odham  
16 Nation, joined by the San Carlos Apache Tribe and Archaeology Southwest’s  
17 October 31, 2023 letter to inform the parties that BLM ordered “an immediate  
18 temporary suspension of [SunZia Transmissions, LLC’s] activities authorized  
19 within the San Pedro Valley LNTP.” BLM requested to meet with the parties  
20 “within the next 5 days to consult regarding your objections and [to] discuss a path  
21 forward.”

22       118. On November 14, 2023, the Hopi Tribe informed BLM that it was  
23 joining the objections submitted by the Tohono O’odham Nation, San Carlos  
24 Apache Tribe, Pueblo of Zuni, and Archaeology Southwest. The Hopi Tribe also  
25 expressed its concern that “BLM proceeded to approve two final environmental  
26 impact statements and the substandard [HPTP]—all - without [an] effective effort

1 to place the archaeological surveys in the broader contexts of region-scale Hopi,  
2 O'odham, Zuni, or Apache history and geography.”

3 119. Also on November 14, 2023, BLM met with officials from the  
4 Tohono O’odham Nation, San Carlos Apache Tribe, Pueblo of Zuni, the Hopi  
5 Tribe, and Archaeology Southwest in an attempt to resolve the parties’ concerns  
6 with the Project. Because tribal representatives were unable to attend given the  
7 short scheduling, BLM acknowledged that the meeting “did not constitute  
8 government-to-government consultation.” On information and belief, BLM  
9 informed attendees that the agency granted the right-of-way through the San Pedro  
10 Valley in 2015 and cannot consider re-routing the Project.

11 120. On November 24, 2023, BLM responded to the objections raised by  
12 the Tohono O’odham Nation, San Carlos Apache Tribe, Pueblo of Zuni, the Hopi  
13 Tribe, and Archaeology Southwest and offered “an explanation of the why and  
14 how the [agency] intends to proceed.” As an initial matter, BLM asserted that the  
15 agency and objecting parties “have two different interpretations of what has  
16 occurred over the last 14 years through the development and subsequent  
17 implementation of the Programmatic Agreement for the Project,” and that those  
18 differences “serve as the basis for [BLM’s] response to most of the objections  
19 raised and explain the BLM’s intended approach for proceeding through the  
20 Programmatic Agreement process.” To wit, BLM insisted that despite over a  
21 decade of correspondence highlighting the importance of the San Pedro Valley to  
22 the Tribes, the agency “did not receive sufficient details through consultation or  
23 otherwise about the San Pedro Valley to previously consider the Valley, or  
24 resources within it, a [traditional cultural property].”

25 121. BLM acknowledged that the Tribes consider “any construction  
26 within the [San Pedro Valley] [to be] an adverse effect, as defined in the  
27 Programmatic Agreement,” and that the only resolution of that adverse effect “is

1 to re-route the transmission line out of the San Pedro Valley because that would  
2 constitute avoidance of an adverse effect under the Programmatic Agreement.”  
3 However, BLM insisted that “the Programmatic Agreement does not offer the  
4 parties re-routing as a resolution or avoidance measure” because “BLM does not  
5 have the ability to reconsider the 2015 approval of the transmission line, especially  
6 for a segment of the transmission line that is on non-federal land and therefore  
7 outside of the BLM’s direct jurisdiction.” BLM did not acknowledge that adverse  
8 impacts to historic properties on private or state land are, at minimum, an indirect  
9 effect of BLM’s decision to issue a right-of-way authorization to accommodate the  
10 Project, and as such, BLM must consider, analyze, and ultimately, work to avoid,  
11 minimize, or mitigate those effects pursuant to the NHPA and its implementing  
12 regulations. Nor did BLM acknowledge that the selected route alternative for the  
13 segment that runs through the San Pedro Valley “has the most BLM land” of all of  
14 the alternatives considered for the segment. BLM’s decision with respect to the  
15 management and use of those federal lands has a significant impact on the route  
16 selection.

17         122. BLM likewise acknowledged the Tribes and Archaeology  
18 Southwest’s objections, including the assertion that the agency ignored  
19 information provided since at least 2009 regarding the San Pedro Valley’s  
20 eligibility as a historic place by virtue of comprising a traditional cultural property,  
21 as well as the argument that “BLM’s proposed approach of considering San Pedro  
22 Valley as a potential TCP and preparing a second [HPTP]” is “impermissible  
23 under the Programmatic Agreement.” However, BLM “fundamentally disagree[d]  
24 with the objections,” arguing that the “objections continue to rest on a factually  
25 unsupported premise that the Tribes provided the BLM with sufficient information  
26 to suggest San Pedro Valley was a potential [traditional cultural property], . . . and  
27 that the BLM failed to consult with Tribes to evaluate San Pedro Valley consistent

1 with [the Programmatic Agreement].” BLM insisted that it “did not receive any  
2 specific information suggesting the San Pedro Valley should be considered a  
3 [traditional cultural property] as part of the [Programmatic Agreement] process.”  
4 BLM thus refused to acknowledge the numerous comments submitted to the  
5 agency throughout the NEPA and NHPA planning processes by various  
6 Consulting Parties and other stakeholders explaining the significance—and putting  
7 the agency on notice—of the San Pedro Valley to the Tribes, including the 2009  
8 scoping comments submitted by Archaeology Southwest and the National Trust  
9 for Historic Preservation, which *specifically stated* that the preferred Project route  
10 in the lower San Pedro Valley “could significantly impact a landscape of  
11 significance to Native American groups.” Instead, BLM held the party line,  
12 insisting that the agency adhered to the consultation process demanded by the  
13 NHPA, its implementing regulations, and the Programmatic Agreement.

14         213. Instead, BLM insisted that the issue of the San Pedro Valley as a  
15 potential traditional cultural property was first broached to the agency in “late  
16 February 2023” by the Tohono O’odham Nation’s THPO. BLM argued that upon  
17 receiving comments submitted by the Nation and others in March 2023 raising the  
18 same point—i.e., that the San Pedro should be considered a traditional cultural  
19 property—the agency “immediately endeavored to consult to understand more  
20 from the Tribes about the area.” The agency insinuated that its efforts to engage  
21 with the Tribes regarding this important cultural landscape at such a late hour in  
22 the Project planning process merited special praise, since “BLM did so even  
23 though it had issued its right-of-way authorization decision in 2015”; “had spent  
24 nearly 6 years conducting inventories, evaluating properties, and developing  
25 treatment plans to resolve adverse effects”; and, together with Consulting Parties,  
26 “were getting close to finalizing the [HPTP].” BLM then relied on the purported  
27 “lateness of the information,” coupled with the assertion that “pausing the



1 considerable, long-term effort to get to the [HPTP] [would be] both unreasonable  
2 and disruptive to SunZia’s construction timeline,” as justification for its decision  
3 to develop “an addendum or second [HPTP].” BLM admitted that its “reasons  
4 were less about whether the Programmatic Agreement specifically allowed for a  
5 second (or addendum) [HPTP] and more about the timing of the request to  
6 consider San Pedro Valley as a potential [traditional cultural property].”  
7 According to BLM, despite the fact that the plain terms of the Programmatic  
8 Agreement call for a *single* HPTP for each state, the agency’s chosen approach of  
9 developing a second HPTP to address the adverse effects of the Project on the San  
10 Pedro Valley *while ground-disturbing activities in the Valley are ongoing* and  
11 adversely impacting the very historic property the HPTP is being developed to  
12 address “was—and still is—a reasonable solution.”

13         124. BLM’s response to objections also disputed the “suggestion that the  
14 Programmatic Agreement obligates the BLM to re-open its 2015 right-of-way  
15 decision and potentially re-route this transmission line segment to entirely avoid  
16 the San Pedro Valley.” BLM flatly refused to reconsider its earlier decision.  
17 Instead, BLM offered to “assume the San Pedro Valley is a [traditional cultural  
18 property] in order to immediately begin to discuss mitigation.” BLM did not  
19 explain how its approach—specifically, delaying acknowledgement of the  
20 existence of a traditional cultural property until it is ostensibly too late in the  
21 planning process to meaningfully examine measures to avoid or minimize adverse  
22 effects to the property—can be squared with its obligations under the NHPA, its  
23 implementing regulations, and/or the Programmatic Agreement.

24         125. On November 24, 2023, BLM also wrote to the ACHP to respond to  
25 the ACHP’s November 13, 2023 letter and to inform the ACHP of BLM’s plans to  
26 proceed with the Project. BLM’s letter to the ACHP largely mirrored its letter,  
27 sent on the same date, to the Tribes and Archaeology Southwest dismissing the

1 organizations' objections. Additionally, in response to the ACHP's "suggestion  
2 that the Tribes have raised this concern [regarding the status of the San Pedro  
3 Valley]," BLM "disagree[d]" with the position that it "had sufficient information  
4 of San Pedro Valley as a potential [traditional cultural property] before February  
5 2023." In response to the ACHP's "reminder of [BLM's] obligation to identify  
6 and evaluate historic properties through a reasonable and good faith effort," BLM  
7 acknowledged its obligation to "seek to identify and evaluate historic properties  
8 through a reasonable and good faith effort," but attempted to pass responsibility  
9 for the alleged lapse in communication onto the Tribes. BLM insisted that it  
10 "sought to consult with the Tribes through a reasonable and good faith effort to  
11 identify and evaluate historic properties, but "did not receive any information  
12 suggesting the potential presence of a [traditional cultural property] within San  
13 Pedro Valley other than very vague notions of a potential cultural landscape."  
14 Again, despite repeated references to the "long history of the Project supported by  
15 the record of communications," BLM refused to acknowledge the multiple  
16 comments submitted by Consulting Parties and other stakeholders explaining the  
17 importance of the San Pedro Valley to the various Tribes, and raising grave  
18 concerns about the Project's impacts on the historically and culturally significant  
19 area and its resources.

20 **VII. ISSUANCE OF THE SECOND LNTP AND ONGOING ADVERSE**  
21 **EFFECTS ON HISTORIC AND CULTURAL PROPERTIES**

22 126. On November 27, 2023, BLM issued SunZia Transmission, LLC a  
23 Second Amended LNTP, authorizing SunZia Transmission, LLC to "proceed with  
24 construction on segments of the project area crossing state and private lands in the  
25 San Pedro Valley." According to the Second Amended LNTP, "BLM believes it is  
26 appropriate to continue the process of evaluating San Pedro Valley as a potential  
27 traditional cultural property (TCP) through consultation." However, in light of

1 “the timing of the information provided by the Tribes relative to the many years  
2 the consulting parties worked towards completing the steps of the [Programmatic  
3 Agreement] process and [an HPTP],” the agency determined that it would be  
4 inappropriate to “paus[e] portions of the Project until the BLM evaluates and  
5 considers an amendment or addendum to the [HPTP] treatment plan to cover San  
6 Pedro Valley.” The agency further explained that it “was not persuaded by the  
7 objecting parties’ focus on using any evaluation of San Pedro Valley under the  
8 [Programmatic Agreement] to reconsider the BLM’s decision approving the right-  
9 of-way in 2015, as this is outside of the [Programmatic Agreement] process.”  
10 BLM did not explain how this decision is consistent with its obligations under the  
11 NHPA, its implementing regulations, or the Programmatic Agreement, including  
12 BLM’s obligation to complete the Section 106 process *prior to* the approval of . . .  
13 the undertaking or *prior to* the issuance of any license.” 36 C.F.R. § 800.1(c)  
14 (emphases added). Instead, BLM “lift[ed] the immediate temporary suspension of  
15 all activities within San Pedro Valley” and authorized SunZia Transmission, LLC  
16 “to continue activities consistent with the [initial September 27, 2023] LNTP.”

17 127. Pursuant to the terms of the September 27, 2023 and November 27,  
18 2023 LNTPs, SunZia Transmission, LLC have begun ground-disturbing activities  
19 in the San Pedro Valley. These activities, including, but not limited to, grading and  
20 road construction in preparation for construction of towers, is causing and will  
21 continue to cause serious, adverse effects to historic properties, including  
22 traditional cultural properties and cultural landscapes. For example, grading and  
23 road construction will destroy landscape connectivity essential to the religious,  
24 historic, and cultural values that the San Pedro Valley embodies for the Tribes.  
25 Additionally, construction activities will restrict the consideration of alternatives  
26 to avoid, minimize, or mitigate the adverse effects of the Project on the San Pedro

1 Valley, in accordance with the NHPA, its implementing regulations, and the  
2 Programmatic Agreement.

3 128. Construction activities are also causing the loss and displacement  
4 from the landscape of the native flora and fauna including many plants and  
5 animals sacred to the Tribes including tagging and relocation of saguaro cacti.  
6 Construction activities are also harming and will continue to harm sacred water  
7 resources including springs, seeps, and the San Pedro River itself by  
8 fundamentally changing the landscape structure and water flow across the  
9 landscape. The Plaintiffs are harmed by the irreversible, adverse effects to these  
10 historic properties, including the traditional cultural property and other historic  
11 resources in the San Pedro Valley.

12 **CLAIMS FOR RELIEF**

13 **Claim 1 – Violations of the NHPA and the APA**

14 129. Plaintiffs incorporate by reference and re-allege all allegations set  
15 forth above.

16 130. This Claim for Relief challenges Defendants’ violations of the  
17 NHPA and its implementing regulations in granting the right-of-way and  
18 authorizing construction on the Project through the September 27, 2023 and  
19 November 27, 2023 LNTPs. Plaintiffs bring this claim pursuant to the judicial  
20 review provisions of the APA, 5 U.S.C. § 706. Defendants violated the NHPA and  
21 its regulations in multiple respects through the challenged action, including but not  
22 limited to the following:

23 131. By failing to engage in meaningful consultation under Section 106  
24 and/or government-to-government consultation early in the Project planning that  
25 complies with the NHPA and its implementing regulations—including the  
26 requirements that consultation commences early in the planning process;  
27 recognizes the government-to-government relationship between the Federal

1 Government and Native American Tribes; is sensitive to the concerns and needs of  
2 Native American Tribes; and provides a reasonable opportunity to affected Tribes  
3 to identify concerns about historic properties and articulate their views on the  
4 undertaking's effects on such properties—BLM violated the NHPA, its  
5 implementing regulations, and the APA.

6 132. By authorizing Project activities that may have adverse effects on  
7 historic and cultural resources without first making a reasonable and good faith  
8 effort to identify all such resources (including traditional cultural properties)  
9 within the APE, evaluating the potential effects the Project may have on identified  
10 historic properties, and resolving the adverse effects on historic properties through  
11 the development of avoidance, minimization, and mitigation measures, BLM  
12 violated the NHPA, its implementing regulations, and the APA.

13 133. By authorizing Project activities that may have adverse effects on  
14 historic properties based on an inventory of historic properties that the agency  
15 knew or should have known was inadequate and inaccurate in light of evidence  
16 submitted to the agency, BLM violated the NHPA, its implementing regulations,  
17 and the APA.

18 134. By authorizing Project activities that may have adverse effects on  
19 historic properties based on an inadequate and inaccurate inventory of historic  
20 properties prior to the completion of the Section 106 process, BLM restricted the  
21 subsequent consideration of alternatives to avoid, minimize, or mitigate the  
22 Project's adverse effects on historic properties (including traditional cultural  
23 properties) in violation of the NHPA, its implementing regulations, and the APA.

24 135. By authorizing Project activities that may have adverse effects on  
25 historic properties prior to the completion of the HPTP process—and specifically,  
26 during the development of a second HPTP that will ostensibly address, for the first

1 time, the Project’s effects on the traditional cultural landscape of the San Pedro  
2 Valley—BLM violated the NHPA, its implementing regulations, and the APA.

3 136. By failing to identify the San Pedro Valley as a traditional cultural  
4 landscape early in the process such that alternatives to avoid, minimize, or  
5 mitigate the Project’s adverse effects on all historic properties could be  
6 meaningfully considered before the Project becomes a *fait accompli*, BLM  
7 precluded meaningful consultation and consideration of alternatives in violation of  
8 the NHPA, its implementing regulations, and the APA.

9 137. By failing to meaningfully engage with the Tribes regarding the  
10 cultural and historic significance of the San Pedro Valley and the sites contained  
11 therein—including, e.g., by relying on an inadequate and inaccurate inventory of  
12 cultural and archaeological sites that was limited to *known* sites and failed to  
13 account for tribal knowledge and expertise—despite numerous requests for  
14 additional consultation under Section 106 and/or government-to government  
15 consultations, BLM violated the NHPA, its implementing regulations, and the  
16 APA.

17 138. Absent injunctive and declaratory relieve, Plaintiffs and their  
18 interests in various historic, cultural, and other resources have been and will  
19 continue to be irreparably harmed.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs respectfully request that this Court:

22 1. Declare that Defendants violated the NHPA, its implementing  
23 regulations, and the APA in issuing the September 27, 2023 and November 27,  
24 2023 LNTPs in the San Pedro Valley prior to the completion of a legally adequate  
25 Section 106 process;

1           2.       Declare unlawful, vacate, and set aside the September 27, 2023 and  
2 November 27, 2023 LNTPs and underlying right-of-way authorization for the  
3 Project in the middle and lower San Pedro Valley;

4           3.       Enjoin Defendants from authorizing construction activities in the  
5 San Pedro Valley pending the completion of a legally adequate Section 106  
6 process that, in consultation with affected Tribes and Nations, identifies *all*  
7 historic properties, including traditional cultural properties, in the San Pedro  
8 Valley; fully considers the Project’s direct, indirect, and cumulative effects on  
9 those properties; completes an HPTP to address and resolve *all* of the adverse  
10 effects (i.e., direct, indirect, and cumulative) to *all* classes of historic properties in  
11 the San Pedro Valley; and resolves all disputes arising under that process;

12           4.       Grant Plaintiffs such temporary restraining orders or preliminary or  
13 permanent injunctions as they may request;

14           5.       Award Plaintiffs costs and reasonable attorneys’ fees as authorized  
15 by 54 U.S.C. § 307105;

16           6.       Retain jurisdiction of this action to ensure compliance with its  
17 decree; and

18           7.       Award Plaintiffs such other injunctive, equitable, and other relief as  
19 the Court may deem just and proper to provide complete relief to Plaintiffs.

20           Dated: January 17, 2024

21   Respectfully submitted,

22   /s/William S. Eubanks II

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27   Elizabeth L. Lewis

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