

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-1608-DDD

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

DOUG MAYES, in his official capacity  
as Field Manager for the U.S. Bureau of Land  
Management’s Royal Gorge Field Office, and  
BUREAU OF LAND MANAGEMENT,

Respondents,

and

BISON OIL & GAS IV, LLC and VERDAD  
RESOURCES LLC,

Intervenor-Respondents.

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**PETITIONER’S OPPOSITION TO INTERVENORS’ MOTION TO DISMISS (ECF 28)**

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Petitioner Center for Biological Diversity (“Center”) respectfully opposes the Motion to Dismiss brought by Intervenor Bison Oil & Gas and Verdad Resources. ECF 28 (July 16, 2025). Intervenor claim that Petitioner lacks standing, that Permanent Instruction Memorandum 2018-014 (“PIM 2018-014” or “PIM”) is not a final agency action, and that one of Petitioner’s claims is moot. For the reasons stated below, the Motion should be denied.

## **ARGUMENT**

### **I. THE CENTER HAS STANDING.**

To establish Article III standing, the Center must demonstrate that: (i) at least one of its members has suffered an injury in fact; (ii) there is a causal connection between that injury and the challenged decision; and (iii) it is likely, as opposed to speculative, that a favorable decision will redress the injury. *See Diné Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 840-41 (10th Cir. 2019). Injury-in-fact may rest on harm to “aesthetic and recreational values” of an area a member uses. *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 183, (2000). A “substantial risk” of harm suffices, *Citizens for Const. Integrity v. United States*, 57 F.4th 750, 760 (10th Cir. 2023), and the challenged action need only “contribute[] to the alleged injuries,” *Sierra Club v. U.S. EPA*, 964 F.3d 882, 888 (10th Cir. 2020). The Center easily surpasses these hurdles.

#### **A. Standing to Challenge the APD Decisions.**

The Boomhog, Speed Goat, and Dittmer projects pose numerous risks of injury to Center members. First, each is located within and contributes to the Denver metro/northern Front Range “severe” ozone nonattainment area, where Center members live. Elevated ozone levels pose health risks to members, create unsightly smog, and deter outdoor recreation. Amended Petition (“Amd. Pet.”), ECF 24, ¶¶ 4, 38, 53-56; *see also* Decl. of Jeremy Nichols ¶ 55; Decl. of Polly Reetz ¶¶ 31, 40; Decl. of Robert Ukeiley ¶ 14; Decl. of Ted Zukoski ¶¶ 15, 19 (attached hereto).<sup>1</sup> The incremental contribution of each APD decision to these ozone-related injuries is alone

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<sup>1</sup> This Court may consider affidavits to resolve disputed jurisdictional facts. *See S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1152 (10th Cir. 2013).

sufficient for standing. *See Utah Physicians for a Healthy Env't v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1242-49 (10th Cir. 2021) (holding that residents of a non-attainment area can trace injuries from polluted air to any “defendant that emits the injurious pollutant” in the non-attainment area, even if a “negligible fraction”); *Conservation Law Found., Inc. v. Academy Express, LLC*, 129 F.4th 78 (1st Cir. 2025) (“air-pollutant exposure is an injury-in-fact, regardless of whether additional harms attend that exposure”).

Center members also recreate in, and have plans to return to, specific areas negatively affected by the APDs. *See* Nichols Decl. ¶¶ 44-52; Zukoski Decl. ¶¶ 24-35. For example, Center members regularly visit public lands a half-mile from the Boomhog site and quarter-mile from Speed Goat. Nichols Decl. ¶¶ 44-52 & Nichols Ex. 1 (map); Zukoski Decl. ¶¶ 24-25, 30-31 & Zukoski Ex. 1 (map). These APDs’ impacts—including scenic degradation, dust, and noise and light pollution—will be readily “apparent from the adjacent Grassland areas and diminish their recreational value.” Nichols Decl. ¶¶ 49, 51; *see also* Zukoski Decl. ¶¶ 25, 31 (“close proximity” of APD sites “to parts of the Grassland I enjoy visiting means it is likely to harm my experience on return trips”). Moreover, each APD will contribute to depletion and displacement of wildlife for miles beyond the immediate well-site. *See* Nichols Decl. ¶¶ 47, 51; Ukeiley Decl. ¶¶ 16-17. Boomhog and Speed Goat also lie alongside and will introduce heavy truck traffic to the same scenic roads that Center members depend on to traverse the Grassland, deterring wildlife, creating noise audible in nearby Grassland areas, generating unsightly and unhealthy dust, and posing safety hazards. *See* Nichols Decl. ¶¶ 47-52; Zukoski Decl. ¶¶ 27, 32; Reetz Decl. ¶ 41.

Intervenors assert causation is lacking because BLM’s legal error did not result in “fewer mitigation conditions” being attached to these APDs. ECF 28 at 9. But the APD decisions

explicitly omit mitigation requirements *because of* the PIM. Amd. Pet. ¶¶ 141, 146, 150. This issue is also irrelevant to standing. The Center need only establish that the APDs decisions themselves injure Center members—something it has amply established above. It “does not matter” whether those injuries are “directly related to the” claimed legal violation. *Citizens for Const. Integrity*, 57 F.4th at 760–61) (citing *WildEarth Guardians v. U.S. BLM*, 870 F.3d 1222, 1232 (10th Cir. 2017) (The “legal theory and the standing injury need not be linked.”)).

Next, Intervenor claim the Petition “omits ... any allegations” that the challenged APD decisions will cause “new consequences or elevated injuries.” ECF 28 at 10. That is plainly false. The Petition amply explains how the challenged APDs cause and contribute to harms in specific areas members use, such as by emitting air pollutants, adding disruptive truck traffic, marring scenery, and impacting birds and wildlife. *See* Amd. Pet. ¶¶ 62-75; *see also* Nichols Decl. ¶¶ 43-55; Reetz Decl. ¶¶ 39-42; Zukoski Decl. ¶¶ 24-37. As this Court recognized, ECF 23 at 11, the existence of other contributing causes does not defeat standing.

Vacating the decisions would redress these harms by prohibiting operations pursuant to the challenged APDs. Intervenor contend that vacating the federal APDs would “not necessarily preclude” continued extraction of non-federal minerals. ECF 28 at 11. This ignores that vacatur of the APDs would eliminate the harms attributable to extraction of the federal minerals, such as by lessening the duration of operations and emissions, providing redress. *Consumer Data Indus. Ass’n v. King*, 678 F.3d 898, 903 (10th Cir. 2012) (favorable ruling need only “alleviate the injury to some extent”).

Intervenor finally contend that all mitigation measures the Center seeks “were in fact incorporated into the APDs” already. ECF 28 at 11. Even if true, this argument fails because

vacating the APDs would nonetheless provide redress by outright prohibiting operations under these APDs. The record also refutes Intervenor's. The handful of measures they volunteered for the Boomhog and Speed Goat projects, such as use of grid power and pipeline takeaway, *see* ECF 10-1 at 26, fall short of the routine protections BLM could apply absent the PIM to directly address Petitioner's harms. *See, e.g.,* Nichols Decl. ¶¶ 36-37 (noting the PIM forecloses otherwise applicable measures like buffer zones; timing restrictions; noise, dust, and air pollution abatement; and reclamation obligations) & Nichols Ex. 15 (examples of conditions BLM imposes on non-Fee/Fee/Fed wells). The APD decisions omitted such mitigation *because of* the PIM. Amd. Pet. ¶¶ 141, 146, 150. Accordingly, it is likely that a favorable ruling correcting BLM's legal error would lead BLM, if reapproving these wells at all, to apply at least *some* additional measures partially redressing harm to Center members.

**B. Standing to Challenge PIM 2018-014.**

The challenged APDs represent only a sample of the harm PIM 2018-014 causes to Center members. The Center also independently challenges the PIM due to extensive ongoing injuries from Fee/Fee/Fed approvals under this directive—and a substantial risk of harm from new ones. Amd. Pet. ¶¶ 18-61; *see also* Nichols Decl. ¶¶ 6-42; Reetz Decl. ¶¶ 9-33; Ukeiley Decl. ¶¶ 3-17; Zukoski Decl. ¶¶ 3-16. In the Pawnee National Grassland, for example, Center members recreate in the same 15-mile-square Grassland segment where BLM has already approved over 250 Fee/Fee/Fed wells under the PIM and another dozen are pending. *See* ECF 32 at 5. Center members also recreate in other areas where they are harmed by the implementation of the PIM. Amd. Pet. ¶¶ 19, 27-29; Nichols Decl. ¶¶ 6, 14-16.

The PIM injures Center members by causing, in hundreds of on-the-ground applications, harms like those described above for the individual APDs—Fee/Fee/Fed developments diminish wildlife-oriented recreation, scenic enjoyment, natural quiet, and experiences on backroads used for public land access. *See* Nichols Decl. ¶¶ 18-28; Reetz Decl. ¶¶ 15-19, 25-30; Zukoski Decl. ¶ 5-6, 10-21; Ukeiley Decl. ¶¶ 6-10. They also contribute to injurious air pollution, particularly within the “severe” ozone nonattainment area in eastern Colorado. *See* Nichols Decl. ¶¶ 29-31 & Nichols Exs. 9-12; Reetz Decl. ¶ 31; Ukeiley Decl. ¶ 14; Zukoski Decl. ¶¶ 15; *supra* pp. 2-3. Such impacts constitute injury-in-fact, as this Court already recognized. *See* ECF 23 at 11-12; *Diné Citizens*, 923 F.3d at 843; *Utah Physicians*, 21 F.4th at 1241; *S. Utah Wilderness All.*, 707 F.3d at 1156.

Causation and redressability are also satisfied. The PIM contributes to these injuries by causing BLM officials to withhold routine environmental safeguards from Fee/Fee/Fed wells that would otherwise reduce harmful wildlife, scenic, noise, or pollution impacts. *See* Amd. Pet. ¶¶ 138, 146; Nichols Decl. ¶¶ 36-42; Zukoski Decl. ¶¶ 11-23; Reetz Decl. ¶¶ 34-36. Accordingly, there is a non-speculative likelihood that the requested relief would prompt BLM to apply at least *some* additional ameliorative measures to Fee/Fee/Fed wells in the Grassland, providing redress. *See Utah*, 536 U.S. at 464; *see also* ECF 32 at 6-7. For example, like BLM does when authorizing non-Fee/Fee/Fed wells, it could impose spatial or timing restrictions around bird nesting or big game habitat, improving members’ wildlife viewing. *See, e.g.*, Nichols Decl. ¶¶ 36-42. BLM could also require noise and dust abatement; traffic controls; and air quality reduction measures, reducing health and recreational injuries. *Id.*

Intervenors' arguments misrepresent the facts and standing doctrine. **First**, they suggest Center members lack injury because the PIM does not restrict public land access. ECF 28 at 3. However, it is sufficient that "aesthetic and recreational values of the area will be lessened by the challenged activity," harming Center members. *Laidlaw*, 528 U.S. at 183.

**Second**, Intervenors claim PIM 2018-014 causes no injury as mere "non-binding guidance." See ECF 28 at 2-3. That is wrong. Instruction Memoranda like the PIM are "binding on BLM." *Petan Co. of Nev.*, 186 IBLA 81, 97 (2015). This case is thus unlike *Util. Air Regul. Grp. v. EPA*, 320 F.3d 272, 278 (D.C. Cir. 2003), in which the challenged manual "in no way" bound agency staff and had yet to be applied to any injurious permitting decision.

**Third**, Intervenors claim the PIM does "nothing" to prevent BLM from mandating any environmental controls. ECF 28 at 3-6. However, this question lies at the heart of the merits, and in evaluating standing, the Court must presume the Center "will prevail on its merits argument." *WildEarth Guardians v. U.S. EPA*, 759 F.3d 1196, 1207 (10th Cir. 2014). Intervenors are also wrong. The PIM explicitly limits the environmental controls BLM may impose on Fee/Fee/Fed surface operations based on erroneous legal conclusions. Amd. Pet. ¶¶ 132–35. For example, the PIM states that BLM lacks "authority to require mitigation of surface disturbances." ECF 12-2 at 11. BLM staff cite the PIM as prohibitory when omitting such conditions on Fee/Fee/Fed wells. See *infra* p. 10. Intervenors cite procedural requirements that remain applicable under the PIM, like studies under NEPA, but these are not in dispute. The point is that BLM erroneously concluded it could go no *further*. While Intervenors point to the PIM's bond coverage requirement, ECF 28 at 5, they ignore its explicit prohibition against bonds covering surface impacts, which proves Petitioner's point. ECF 12-2 at 9 (bond must "address downhole concerns

only”). Thus, both text and practice refute Intervenor’s contention that “nothing” in the PIM restricts BLM’s ability to mandate environmental protections. ECF 28 at 6.

Although Intervenor offers the prospect of voluntary mitigation, ECF 28 at 5, this exception just confirms the rule: the PIM prohibits BLM from mandating its *own* mitigation measures based on erroneous legal conclusions about BLM’s jurisdiction. Even if an operator volunteers measures, the PIM circumscribes BLM’s capacity to enforce them. *See* ECF 12-2 at 15.

## **II. PIM 2018-014 IS A FINAL AGENCY ACTION.**

PIM 2018-014 is a “final agency action” subject to judicial review under the APA, 5 U.S.C. § 704. Agency action is “final” if it (1) “mark[s] the consummation of the agency’s decisionmaking process” and (2) is an action “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Finality is evaluated “pragmatically, rather than inflexibly.” *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183, 1189 (10th Cir. 2014).

The first *Bennett* prong is easily met. This factor asks “whether an action is properly attributable to the agency itself and represents the culmination of that agency’s consideration of an issue,” or is, instead, “only the ruling of a subordinate official, or tentative.” *NRDC v. Wheeler*, 955 F.3d 68, 78 (D.C. Cir. 2020). Here, the PIM is neither “tentative” nor “interlocutory,” *Bennett*, 520 U.S. at 178, but rather “comes to a definitive conclusion” about BLM’s statutory authority over Fee/Fee/Fed wells. *Scenic Am., Inc. v. U.S. Dep’t of Transp.*, 836 F.3d 42, 56 (D.C. Cir. 2016). The PIM gives no indication that its legal conclusions can be revisited in later permitting decisions, and BLM staff treat the PIM as binding. *See infra* p. 10;



*U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 598 (2016) (finding finality where a legal determination about scope of jurisdiction was “typically not revisited”). The Deputy Director of BLM—no mere subordinate—issued the PIM, further confirming it reflects the agency’s settled position. *See POET Biorefining, LLC v. EPA*, 970 F.3d 392, 404 (D.C. Cir. 2020) (finding finality where “no mere subordinate issued” guidance).

Intervenors claim the PIM is “tentative” because it merely outlines procedures BLM must follow when processing APDs. ECF 28 at 8. However, the PIM goes beyond procedure and definitively resolves BLM’s legal position on its authority over Fee/Fee/Fed wells, limiting the conditions BLM staff may apply when permitting them. The Court must evaluate finality based on *these* “elements of the [PIM] petitioners challenge.” *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021-22 (D.C. Cir. 2000). Cases confirm that an agency’s definitive legal determination constitutes a final agency action even if it will only be applied in later proceedings. *See, e.g., id.* at 1022 (finding guidance final because it articulated a legal position EPA would follow in later permits); *Ctr. For Native Ecosystems v. Cables*, 509 F.3d 1310, 1329 (10th Cir. 2007) (“If an agency has issued a definitive statement of its position ... the agency’s action is final notwithstanding the possibility of further proceedings.”); *Nat’l Env’t’l Dev. Ass’n’s Clean Air Project v. EPA* (“NEDACAP”), 752 F.3d 999, 1007 (D.C. Cir. 2014) (finding directive final because it “provides firm guidance to enforcement officials about how to handle” later permitting decisions).

The second *Bennett* prong is also met. The PIM has “legal consequences” for BLM staff by limiting their discretion to mandate mitigation, reclamation, and bonding when permitting Fee/Fee/Fed wells. Courts have consistently held that agency guidance has legal consequences if

it binds—formally or practically—agency staff to a particular legal position. *See Texas v. EEOC*, 933 F.3d 433, 441 (5th Cir. 2019) (“guidance documents binding [agency] and its staff to a legal position produce legal consequences or determine rights and obligations, thus meeting the second prong of *Bennett*.”); *Appalachian Power*, 208 F.3d at 1021-22 (ostensibly non-binding guidance reflecting EPA’s legal interpretation of statutory monitoring requirements had sufficient “legal consequences” because it effectively bound agency officials in later permitting); *POET Biorefining, LLC v. EPA*, 970 F.3d 392, 405 (D.C. Cir. 2020) (agency guidance “construing existing law” satisfied second *Bennett* prong because agency applied it “as if it were binding”); *see also Hawkes*, 578 U.S. at 599; *NRDC v. EPA*, 643 F.3d 311, 319-20 (D.C. Cir. 2011); *NEDACAP*, 752 F.3d at 1007.

Here, the Department of Interior considers Instruction Memoranda to be “binding.” *Petan Co. of Nev.*, 186 IBLA 81, 97 (2015); *Lassen Motorcycle Club*, 133 IBLA 104, 108 (1995) (IMs are “controlling on the agency.”). BLM staff also treat PIM 2018-014 as binding. For example, APD decisions frequently state they are made “in full compliance with ... [PIM] 2018-014.” Ex. A at 25. Agency staff cite the PIM as prohibiting their application of environmental mitigation to Fee/Fee/Fed wells. *See* Exhibit A at 4, 8; *id.* at 20, 37, 46; *id.* at 15, 26, 65 (excluding requirements “[s]ubject to,” “in accordance with,” and “per” PIM 2018-014, respectively).

Intervenors concede the PIM binds BLM but claim it must also bind courts to qualify as final agency action. ECF 28 at 8. That is obviously wrong. To begin, agency legal interpretations *never* bind courts. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 384-87 (2024). Moreover, a document need only bind agency staff to have sufficient legal consequences. *See Nat’l Org. of Veterans’ Advocs., Inc. v. Sec’y of Veterans Affs.*, 981 F.3d 1360, 1379-82 (Fed.

Cir. 2020) (rejecting argument that legal interpretation in manual lacked legal consequences where it bound front-line adjudicators but not administrative appeals court); *Texas*, 933 F.3d at 444 (“what is important for the finality analysis” is that the “Guidance binds the agency that promulgated it”). Nor must a document carry the “force and effect of law” to be a final agency action. *POET Biorefining*, 970 F.3d at 406; *Texas*, 933 F.3d at 442 (“What matters is whether the document has practical binding effect”) (cleaned up).<sup>2</sup>

Intervenors’ case, *Center for Auto Safety v. NHTSA*, 452 F.3d 798 (D.C. Cir. 2006), is inapposite. The policy guidelines at issue there made recommendations for manufacturers but did not bind agency officials, who “remained free to exercise discretion” to depart from them. *Id.* In contrast here, PIM 2018-014 binds BLM staff to a particular legal interpretation and cabins their discretion in later permitting decisions.

The PIM also has legal consequences for Fee/Fee/Fed well developers by relieving them of requirements, allowing them to “rely on [the PIM] as a norm or safe harbor by which to shape their actions.” *Gen. Elec. Co. v. EPA*, 290 F.3d 377, 383 (D.C. Cir. 2002); *see also Texas*, 933 F.3d at 442 (“That the agency’s action binds its staff or creates safe harbors [for regulated parties] demonstrates that legal consequences flow from it”).

For example, the PIM purports to exempt Fee/Fee/Fed operators from certain APD submission requirements in 43 C.F.R. § 3162.3-1 and Onshore Order No. 1. *See* ECF 12 at 12-13. It also provides Fee/Fee/Fed operators a safe harbor by explaining that BLM “may not cite the operator with an Incident of Noncompliance” for constructing surface facilities before

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<sup>2</sup> That the PIM may be revoked or amended, ECF 28 at 8 n.2, does not alter its finality. “The possibility of revision ‘is a common characteristic of agency action, and does not make an otherwise definitive decision nonfinal.’” *POET Biorefining*, 970 F.3d at 404.

obtaining an APD, relieving them from 43 C.F.R. § 3162.3-1(c). It also purports to relieve Fee/Fee/Fed operators of their obligation to post a bond sufficient to ensure “restoration of any lands or surface waters adversely affected by lease operations,” 30 U.S.C. § 226, by limiting bonds to “downhole concerns only.” ECF 12 at 12. Intervenor fails to address these legal consequences, which independently satisfy *Bennett*’s second prong.

In sum, the PIM reflects BLM’s settled position on its authority over Fee/Fee/Fed wells, and operator obligations for such wells, carrying legal consequences for both BLM officials and developers. Accordingly, it constitutes a “final agency action” subject to APA review.

### **III. PETITIONER DOES NOT RAISE A “PROGRAMMATIC” CHALLENGE.**

Intervenor claims the Petition is an improper “programmatic” challenge barred by *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004) (“*SUWA*”) and *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990). They are confused. *SUWA* addressed a different type of APA claim: one under 5 U.S.C. § 706(1) challenging agency *inaction*. The Court held that a viable § 706(1) claim requires allegations an agency failed “to take a discrete agency action that it is required to take.” *SUWA*, 542 U.S. at 64. Here, the Center only brings claims under § 706(2) challenging actions BLM has already taken: PIM 2018-014 and drilling permits. An APA claim challenging a “final agency action” under § 706(2) is subject to different standards. *See Nat’l Ass’n of Home Builders v. U.S. Army Corps of Engineers*, 417 F.3d 1272, 1280-81 (D.C. Cir. 2005) (distinguishing between § 706(1) and § 706(2)). Accordingly, *SUWA* is inapposite.

Neither is this the type of programmatic attack held improper in *Lujan*. There, the plaintiffs improperly challenged not “a single ... order or regulation” but rather general agency operations they dubbed a “land withdrawal review program,” which failed to qualify as a final

agency action. *Lujan*, 497 U.S. at 890 (citation omitted). Here, the Center challenges discrete actions—PIM 2018-014 and three permitting decisions—not an amorphous program. As *Lujan* confirmed, a plaintiff can challenge “a specific ‘final agency action’” even when such a challenge has “the effect of requiring a regulation, a series of regulations, or even a whole ‘program’ to be revised by the agency.” *Lujan*, 497 U.S. at 894; *id.* at 890 & n. 2.

#### **IV. PETITIONER’S APD CLAIMS ARE NOT MOOT.**

Intervenors note that during the pendency of this case, the 26 wells approved under the three challenged APD decisions have been drilled and are producing. ECF 28 at 12. Their contention that this moots Petitioner’s claims is incorrect.

A claim is only moot when it is “impossible for the court to grant any effectual relief whatever to a prevailing party.” *Petrella v. Brownback*, 787 F.3d 1242, 1255-56 (10th Cir. 2015). Whether it is “impossible to grant any effectual relief” hinges on whether the challenged action continues to harm plaintiff through “any continuing, present adverse effects.” *Chihuahuan Grasslands All. v. Kempthorne*, 545 F.3d 884, 891 (10th Cir. 2008). Demonstrating mootness is a “heavy burden” for Intervenors, who must show that present circumstances have “completely and irrevocably eradicated the effects of the alleged violation.” *Copar Pumice Co. v. Tidwell*, 603 F.3d 780, 792 (10th Cir. 2010) (quotations omitted).<sup>3</sup>

Here, the APD claims are not moot because the Boomhog, Speed Goat, and Dittmer projects will continue to harm members throughout their operational life and can still be altered

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<sup>3</sup> The Interior Board of Land Appeals cases Intervenors cite are inapposite, *see* ECF 28 at 12 n.5, as they discerned mootness on the ground that “all activity authorized by the APD’s had been carried out.” Here, the activity authorized by the APDs is ongoing, as the approvals cover “drilling, completion [of drilling], and *operation*” of the wells, as well as future “reclamation of pads and roads.” *See* Ex. B at 2, 11 (emphasis added).

in ways that provide redress. For example, if BLM properly construed its authority on remand, it could impose timing- and noise-related restrictions on truck traffic necessary to service ongoing operations. *See* Amd. Pet. ¶¶ 47, 70, 75; Nichols Decl. ¶¶ 27-28; Zukoski Decl. ¶¶ 18, 27, 32. Operational limitations could protect sensitive wildlife areas or nesting periods. Nichols Decl. ¶¶ 36-37. Existing facilities could be modified to mitigate their ongoing impacts, such as through installation of noise shields or interim reclamation of disturbed vegetation. Amd. Pet. ¶¶ 57-58, 75; Nichols Decl. ¶¶ 36-42. More robust requirements for site reclamation, omitted due to the PIM, could also mitigate long-term disturbance to wildlife and scenery. Amd. Pet. ¶¶ 58-59, 137-38; Nichols Decl. ¶¶ 36-37, 42. Operations or facilities could be altered to reduce harmful air emissions, including from flaring, venting, and traffic. Nichols Decl. ¶¶ 36-37; Ukeiley Decl. ¶ 22.

Finally, even if drilling completion rendered an APD challenge moot, the “capable of repetition yet evading review” exception would apply. Grassland wells are drilled within months of APD approval, ECF 28-1 ¶¶ 8-17; ECF 28-2 ¶¶ 6-22; Stellberg Decl. ¶ 7 (ECF 32-1), a period “too short to complete judicial review of [their] lawfulness,” and “there is a reasonable expectation” BLM will apply the PIM to future Fee/Fee/Fed APDs in the Grassland, where a dozen are currently pending, Stellberg Decl. ¶¶ 11-12. *FCC v. Consumers’ Rsch.*, 145 S. Ct. 2482, 2491 n.1 (2025).

### **CONCLUSION**

For the above-stated reasons, the Court should deny Intervenors’ Motion to Dismiss.

Respectfully submitted this 22<sup>nd</sup> day of August, 2025.

/s/ Sarah Stellberg

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing pleading contains fewer than 4,000 words excluding the case caption, signature block, certificate of compliance, and certificate of service, and complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

/s/ Sarah Stellberg

Sarah Stellberg

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2025, a copy of this filing, with attachments, was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Sarah Stellberg

Sarah Stellberg