**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.

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS (ECF 27)

INTRODUCTION

Petitioner Center for Biological Diversity ("Center") respectfully opposes the renewed Motion to Dismiss brought by Respondents Doug Mayes and Bureau of Land Management (hereafter "BLM"). ECF 27 (July 16, 2025). BLM again moves to dismiss for lack of standing and failure to state a claim. For the reasons below, the Court should deny BLM's motion.

BACKGROUND

Petitioner incorporates the background set forth in this Court's May 29, 2025 Order (ECF 23).

LEGAL STANDARDS

Petitioner incorporates its prior recitation of the Rule 12(b)(6) and 12(b)(1) standards. ECF 12-2 at 4.

ARGUMENT

I. THE CENTER HAS STANDING TO CHALLENGE THE APD DECISIONS.

To establish Article III standing, the Center must demonstrate: (i) that at least one of its members has suffered an injury-in-fact; (ii) a causal connection between that injury and the challenged actions; and (iii) a non-speculative likelihood 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).

The Center adequately pled standing to challenge the three Application for Permit to Drill ("APD") decisions. *See* Amd. Pet. ¶¶ 15-75; ECF 31 at 2-5. Regarding injury-in-fact, this Court has already recognized that injuries as the Center alleges, including "loss of enjoyment of the Pawnee National Grassland," are sufficient. ECF 23 at 6. BLM does not contest injury. ECF 27.

Regarding causation, BLM ignores key facts to claim the Center alleges an inadequate "geographic nexus." Consider first the Speed Goat APDs: Center members recreate on two small National Grassland parcels immediately adjacent to the Speed Goat site (within a quarter-mile). Amd. Pet. ¶¶ 31, 65; *see also* Nichols Decl. ¶¶ 50-52; Zukoski Decl. ¶¶ 30-36. Each parcel is only about a mile square, meaning Speed Goat's impacts to scenery, noise, and wildlife would reach their entirety. *See* Zukoski Decl. ¶ 33 & Zukoski Ex. 1. The Petition alleges Speed Goat operations will mar scenic views from those sites (Amd. Pet. ¶¶ 65, 68, 73), diminish wildlife viewing (*id*. ¶¶ 69, 34-38), and disturb the natural quiet (*id.* ¶¶ 68, 70, 43-46). Furthermore, it describes how traffic to service Speed Goat operations affects a key road Center members use for Grassland access. *Id*. ¶¶ 65, 70, 73; *see also* Nichols Decl. ¶¶ 49-52; Reetz Decl. ¶¶ 41-42; Zukoski Decl. ¶¶ 7-9, 30-32. These facts establish the requisite "geographic nexus." *See Diné Citizens*, 923 F.3d at 843 (establishing nexus through use of areas "twenty miles" from certain APDs).

Regarding the Boomhog APDs, BLM again ignores key portions of the Petition. *See* Amd. Pet. ¶¶ 31, 64, 68-74 (specifying member use of areas exposed to Boomhog harms); *see also* Nichols Decl. ¶¶ 45-48, 55; Reetz Decl. ¶¶ 40-42; Zukoski Decl. ¶¶ 24-29. Noting that the Center described Boomhog-adjacent Grassland sections as "large," BLM speculates that impacts might not reach the actual location of members' activities. ECF 27 at 8. Yet the adjacent Grassland sections, though large, are still "only four or five miles across at their widest." Zukoski Decl. ¶ 26 & Zukoski Ex. 1 (map). Visual, noise, or wildlife disruption from Boomhog therefore affects most if not all these Grassland areas. *See* Amd. Pet. ¶¶ 35, 69 (wildlife impacts at multiple miles), ¶¶ 40-41 (visual impacts "from a couple miles away" and further at night), ¶ 45 (noise impacts up to five miles away). Crucially, members also rely on the same roads as Boomhog's truck traffic and access these Grassland sections from lands within a half-mile of the Boomhog site; thus, to reach any hypothetical unaffected area, they must use Boomhog-affected areas. *Id.* ¶¶ 24-25, 31, 35-37, 40-47, 64, 68-70.

Regarding all three APDs, BLM fails entirely to engage with the Center's allegations of harm due to air pollution, *id*. ¶¶ 49-56, 66, 74, which alone confer standing. Center members live in the EPA-designated Denver/Front Range ozone nonattainment area, where ozone pollution harms them. *Id.* ¶¶ 4, 55, 66, 74, 122-23. The challenged APDs contribute to these injuries by emitting ozone-causing pollutants in this nonattainment area. *Id.* ¶¶ 74, 122-23; Nichols Decl. ¶ 30. The Tenth Circuit has held that residents of a nonattainment area have a sufficient geographic nexus to any "defendant that emits the injurious pollutant" in that nonattainment area. *Utah Physicians for a Healthy Env't v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1245-49 (10th Cir. 2021).

In disputing causation, BLM relies upon a recent case stressing identification of a "radius" of harm. *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 144 F.4th 296, 306-10 (D.C. Cir. 2025). However, the D.C. Circuit acknowledged this standard is difficult to reconcile with *Diné Citizens*, which is binding here in the Tenth Circuit. *Id.* at 311. This Court recognized as much when previously rejecting BLM's demand for a defined impact radius. ECF 23 at 10 n.3. Even if a "specified radius" of harm were the standard, the Center amply meets it. The Petition alleges impact ranges for wildlife (¶ 36), viewsheds (¶¶ 40-41), noise (¶¶ 44-45), and pollution (¶ 55), also establishing member use of areas within these distances of the challenged APDs. *See* Amd. Pet. ¶¶ 31, 63, 66-74; Nichols Decl. ¶¶ 44-55 & Nichols Ex. 1; Reetz Decl. ¶¶ 40-42; Zukoski Decl. ¶¶ 24-36 & Zukoski Ex. 1.

On redressability, BLM questions how additional mitigation, reclamation, or bonding would redress the Center's harms. ECF 27 at 10-11. But vacating the APDs would prohibit their operations entirely, providing complete redress. The Petition also specifies measures BLM would likely apply were it to reapprove the APDs—measures that address members' specified harms from pollution, noise, traffic, visual, or wildlife disturbance. *See infra* pp. 6-7. BLM also speculates that if the APDs were vacated, drilling for non-federal minerals might still occur. ECF 27 at 11. That is irrelevant, as vacatur would still redress the harms attributable to the *federal* mineral extraction, by shortening the duration and extent of operations. It suffices that "an injury" would likely be "reduced to some extent." *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 902 (10th Cir. 2012).

II. THE CENTER HAS STANDING TO CHALLENGE PIM 2018-014.

The Center also adequately pled standing to challenge Permanent Instruction Memorandum ("PIM") 2018-014. Standing for this claim does not "rise or fall" with the APD challenges, because the PIM applies far more broadly and causes members independent harm.

In the Pawnee National Grassland alone, 93% of wells BLM has approved since June 2018 are Fee/Fee/Fed. *See* Decl. of Sarah Stellberg ¶¶ 12. Most of this activity occurs within a small, about 15-mile-square corner of the Grassland. *Id.* ¶ 10; *see also* Amd. Pet. ¶¶ 26, 30-32. BLM has approved roughly 250 Fee/Fee/Fed wells there since 2018, and more are pending. Stellberg Decl. ¶ 11. Center members frequent this same corner to visit some of the largest contiguous sections of public land in the Grassland. *See* Amd. Pet. ¶ 31, Figure 1. Given the sheer amount of Fee/Fee/Fed drilling there, large radius of oil and gas impacts, and overlap of member recreation, the Center amply shows a geographic nexus to this area affected by the PIM. Members' residence in the same ozone nonattainment area as myriad Fee/Fee/Fed wells approved under the PIM also demonstrates standing. *See* Amd. Pet. ¶¶ 4, 74; *Utah Physicians*, 21 F.4th at 1246-49.

BLM, again, does not dispute injury-in-fact. BLM contests causation by arguing Center members are "harmed by PIM 2018-014 only through its implementation when approving APDs." ECF 27 at 9. The Court may easily reject this argument. "Fairly traceable" does not require that an action be the "very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997). Accordingly, the Supreme Court has long recognized that injury from a high-level decision may be shown through a "concrete application that threatens imminent harm to [plaintiffs'] interests." *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009). BLM's own case illustrates this point. In *Utility Air Regulatory Group v. EPA*, 320 F.3d 272 (D.C. Cir. 2003), standing was lacking only because the challenged EPA manual had yet to be applied to any permitting decisions harming plaintiff. *Id.* at 277-78. Here, the Center demonstrates just what these standards require: harm from concrete applications of the PIM.

Regarding redressability, BLM first claims that redressability hinges on "the choices of independent actors not before this Court," ECF 27 at 10, but it hinges here only on BLM. Redressability also does not require certainty that BLM will attach more mitigation on remand. In a case asserting an agency "misinterpreted the law," reconsideration of the harmful decision is sufficient redress—even if the agency may reach the same result on other grounds. *See FEC v. Akins*, 524 U.S. 11, 25 (1998). Regardless, it is likely BLM would apply at least *some* ameliorative measures to Grassland Fee/Fee/Fed wells, because staff cite the PIM as their sole rationale for omitting environmental mitigation requirements BLM applies to other wells. *See* Amd. Pet. ¶¶ 58-59, 138, 146, 150, 154; ECF 31 at 10.

Second, BLM claims the Petition lacks "specificity" regarding how additional mitigation would ameliorate their injuries. Yet the Petition details specific measures, routine for other wells but foreclosed by the PIM, that would address Center members' specified injuries from pollution, noise, traffic, visual, or wildlife disturbance. *See* Amd. Pet. ¶ 58 ("wildlife protections," air pollution controls, "traffic restrictions," and "noise controls"); ¶ 75 ("buffer zones around bird nesting sites," wildlife mitigation, traffic restrictions, "noise and dust abatement," "sound barriers," and measures to reduce "visual impacts"); *see also* Nichols Decl. ¶¶ 36-42; Zukoski Decl. ¶¶ 23, 37; Reetz Decl. ¶¶ 32-36; Ukeiley Decl. ¶¶ 20-23.

III. THE PETITION STATES VALID CLAIMS FOR RELIEF.

The Petition asserts that PIM 2018-014 and the challenged APD decisions are based on a misinterpretation of BLM's authority over Fee/Fee/Fed wells and are therefore "arbitrary, capricious, … or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A). Amd. Pet. ¶¶ 155-66. Agency action based on an erroneous legal premise must be set aside under the APA. *See SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (agency action "may not stand if the agency has misconceived the law"); *Sea-Land Serv., Inc. v. Dep't of Transp.*, 137 F.3d 640, 646 (D.C. Cir. 1998) (Agency action "cannot be sustained where it is based not on the agency's own judgment but on an erroneous view of the law.") (cleaned up).

In its Motion to Dismiss, BLM attacks a claim the Petition does not make: that BLM is "require[d]" to "regulate non-federal lands in the same manner BLM regulates federal lands." ECF 27 at 12, 13, 16. The Petition presents a simpler question: does BLM have *any* more authority over Fee/Fee/Fed wells than the PIM asserts? If it does, that legal error requires reversal, whether the authority is discretionary or different than for other wells. *See Sea-Land Serv.*, 137 F.3d at 646 ("[A]gency action, however permissible as an exercise of discretion, cannot be sustained where it is based not on the agency's own judgment but on an erroneous view of the law."). This issue also does not concern BLM regulation of *non-federal land* but exercise of BLM's proprietary authority over *federal minerals.*[1]

The Petition plausibly alleges that BLM misapprehended its authority over Fee/Fee/Fed wells. Amd. Pet. ¶¶ 80-119, 132-66. Specifically, the PIM asserts that BLM lacks authority to regulate surface operations for Fee/Fee/Fed wells except to ensure "production accountability for royalties." ECF 12-2 at 3, 8-9, 11. On this basis, it asserts BLM lacks "authority" to impose mitigation, reclamation, or bonding requirements pertaining to Fee/Fee/Fed surface operations. *Id.* These assertions are wrong. As explained below, the MLA, FLPMA, and general statutory delegations give BLM broader authority over the surface operations for Fee/Fee/Fed wells, including for environmental protection.

A. BLM's Plenary Authority Under General Statutory Delegations Encompasses Fee/Fee/Fed Surface Operations.

The U.S. Constitution's Property Clause grants Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. This authority is "without limitations" and includes the "powers both of a proprietor and of a legislature over the public domain." *Kleppe v. New Mexico*, 426 U.S. 529, 535, 539-40 (1976). Congress can "prohibit absolutely or fix the terms on which its property may be used." *Light v. United States*, 220 U.S. 523, 536 (1911). Congress has discretion to fashion such conditions "consistent with its views of public policy," *United States v. City & Cnty. of San Francisco*, 310 U.S. 16, 29-30 (1940), and may attach

[1] Similarly, BLM oversight of Fee/Fee/Fed surface operations would not infringe on private property rights. A private surface owner must volunteer to allow a Fee/Fee/Fed well on its land and its surface rights do not include the right to extract federal minerals. Moreover, this power would not reach a surface owner's private conduct on its property.

conditions affecting conduct on non-federal land. *See id.*; *Fed. Power Comm'n v. Idaho Power Co.*, 344 U.S. 17, 21-24 (1952). Congress may also regulate activities on non-federal property that affect federal lands. *See Kleppe*, 426 U.S. at 538.

Federal minerals are federal property. It is thus beyond question that the Property Clause empowers Congress to condition the right to extract federally-owned oil and gas on surface operations being conducted in a particular manner, even on non-federal surface. *See Light*, 220 U.S. at 536; *San Francisco*, 310 U.S. at 29-30.

Congress has delegated its Property Clause authority over public lands and minerals to the Secretary of Interior, through a series of general statutes. Under 43 U.S.C. § 2, the Secretary "or such officer as he may designate" is charged with "perform[ing] all executive duties … in anywise respecting such public lands." Under 43 U.S.C. § 1457, the Secretary is charged with "the supervision of public business relating to … [p]ublic lands, including mines."

The Supreme Court has interpreted these statutes as granting the Secretary "plenary authority over the administration of public lands, including mineral lands." *Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 336-37 (1963); *see also Boesche v. Udall*, 373 U.S. 472, 476-77 (1963). Accordingly, even if another statute "does not in itself confer" a particular authority concerning federal land interests, "in the absence of some direction to the contrary, the general statutory provisions before mentioned vest it in the [Secretary]." *Cameron v. United States*, 252 U.S. 450, 461 (1920); *see also Cosmos Expl. Co. v. Gray Eagle Oil Co.*, 190 U.S. 301, 309 (1903) ("Unless taken away by some affirmative provision of law, the [Secretary] has jurisdiction over the subject."). Courts have repeatedly relied on this presumption to affirm inherent BLM authority over federal minerals beyond its specific statutory delegations. *See, e.g.*, *Silver State Land, LLC v. Schneider*, 843 F.3d 982, 986 (D.C. Cir. 2016); *Hannifin v. Morton,* 444 F.2d 200, 202 (10th Cir. 1971).

Applied here, these cases instruct that "[u]nless taken away by some affirmative provision of law," *Cosmos*, 190 U.S. at 309, these general statutory delegations empower BLM to regulate Fee/Fee/Fed surface operations. Far from stripping BLM of such power, the MLA and FLPMA confirm it, as explained below.

B. FLPMA and MLA Confirm BLM Authority Over Fee/Fee/Fed Surface Operations.

FLPMA directs BLM to "regulate … the use, occupancy and development of the public lands." 43 U.S.C. § 1732(b). BLM must do so "in a manner that will protect the quality of … ecological, environmental, air and atmospheric … values." *Id.* § 1701(a)(8). BLM claims § 1732(b) excludes Fee/Fee/Fed surface operations because they occur on "*non-federal* lands." ECF 27 at 15. But FLPMA defines "public lands" as "any land and *interest in land* owned by the United States." 43 U.S.C. § 1702(e) (emphasis added). Mineral estate is an "interest in land." By its plain terms, this provision thus authorizes BLM to "regulate" the "development" of federal minerals, including to protect environmental values. *Id.* § 1732(b). Fee/Fee/Fed surface operations "develop[]" federal minerals, thus falling within the statute's plain terms. BLM calls this result "illogical," but without explanation. ECF 27 at 15.[2]

[2] *Virginia Uranium, Inc. v. Warren*, 848 F.3d 590, 596 (4th Cir. 2017) is inapposite. The question there was whether a statute authorizing regulation of uranium mining "on federal lands" implicitly granted regulatory power over *all* uranium mining (including private deposits). In contrast here, the disputed power involves only federal minerals, which fall within FLPMA's explicit definition of "public lands."

FLPMA separately requires BLM to "take any action necessary to prevent unnecessary or undue degradation of the lands." *Id*. This provision is the "heart of FLPMA," *Mineral Policy Center v. Norton*, 292 F. Supp. 2d 30, 33 (D.D.C. 2003). The term "any action" admits no exceptions and, at minimum, would allow BLM to regulate Fee/Fee/Fed surface operations to mitigate their harm to federal surface—which typically sits adjacent to such wells. BLM's brief fails to refute or grapple with this plain text interpretation.

The MLA also directs that BLM "shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of surface resources." 30 U.S.C. § 226(g). BLM claims that subsection 226(g) excludes Fee/Fee/Fed surface operations because the key term "conducted pursuant to the lease" actually means "on federal leases." ECF 27 at 14. This contravenes the statute's plain text and basic interpretive canons.

First, words in a statute should be given their "ordinary meaning." *Wisc. Central Ltd. v. United States*, 585 U.S. 274, 277 (2018). The ordinary meaning of "pursuant to" includes "[a]s authorized by" or "[i]n carrying out." *Pursuant To*, Black's Law Dictionary (11th ed. 2019). Fee/Fee/Fed operations are conducted "pursuant to" the federal lease because they are "authorized by" the lease; an operator cannot develop federal minerals, even from non-federal surface, absent the lease. Although a contract with the surface owner is also required, the lease is still an indispensable authorization for Fee/Fee/Fed facilities to drill, handle, store, and process federal minerals. The surface operations also "carry[] out" the lease, as they constitute performance of the lessee's contractual obligations. *See* ECF 12-1 at 4 (lessee must "exercise reasonable diligence in developing … leased resources").

Second, Congress expressly limited *other* clauses of subsection 226(g) to operations "on [the] lease" or in the "lease area." 30 U.S.C. § 226(g). This textual variation is strong evidence that Congress intended something different by "pursuant to." *See* A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) ("[A] material variation in terms suggests a variation in meaning."). Other provisions of subsection 226(g) also refute any suggestion that Congress was only concerned with disturbance on the lease surface. *See* 30 U.S.C. § 226(g) (requiring bond sufficient "to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations").

BLM suggests that Congress could not have envisioned subsection 226(g) applying to horizontal wells. ECF 27 at 15. That is doubtful, as directional drilling emerged in the 1920s and achieved commercial success by the 1980s. *See generally* Christy M. Schweikhardt, Horizontal Perspective: Texas Oil & Gas Law in Light of Horizontal Drilling Technology, 34 S. Tex. L. Rev. 329, 331 (1993). Regardless, whether Congress anticipated this precise scenario is also "irrelevant." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 677 (2020). "[A] statute's application … reaches beyond the principal evil legislators may have intended" as "it is ultimately the provisions of those legislative commands rather than the principal concerns of our legislators by which we are governed." *Id.* at 674 (cleaned up); *see also Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) ("that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity … [but] breadth.") (cleaned up).

BLM next resorts to the elephants-in-mouseholes canon. That has no relevance here, as BLM regulation of oil and gas extraction from non-federal surface is no "elephant"—BLM has done this for decades for split-estate wells. The power is thus neither "unheralded" nor "transformative." *West Virginia v. EPA*, 597 U.S. 697, 700 (2022). Neither is section 226(g) a "mousehole." Far from ancillary, this is a primary directive of the MLA, written in expansive terms: BLM "shall regulate all surface-disturbing activities conducted pursuant to any lease[.]" 30 U.S.C. § 226(g). *See Bradford v. U.S. Dep't of Lab.*, 101 F.4th 707, 726 (10th Cir. 2024) (similarly "expansive language" was no "mousehole"). "Elephants-in-mouseholes" also has doubtful applicability to exercises of proprietary authority, such as BLM enjoys over federal minerals, because the government "has a much freer hand" in this context than when exercising sovereign authority to regulate. *Id*. at 726.

In sum, BLM misconstrued its authority under the MLA and FLPMA.

C. The Presumption Against Preemption Does Not Apply.

In determining whether BLM misinterpreted the relevant laws, the Court must decide the best interpretation, based on the plain text and traditional interpretive tools. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2261-62 (2024). BLM suggests that a special rule of statutory interpretation applies, requiring "clear and manifest" evidence Congress intended to delegate BLM authority over Fee/Fee/Fed wells, citing *Utah Native Plant Soc'y v. U.S. Forest Serv.*, 923 F.3d 860 (10th Cir. 2019). That is wrong.

The "clear and manifest" language from *Utah Native Plant* refers to the presumption against preemption—a canon for assessing whether state law in an area traditionally reserved to the states has been preempted. *See id*. at 868.[3] It has no place here. First, this is not a preemption dispute. A case like this which simply attempts to "define the proper scope of the federal power … in an area of preexisting state regulation" does not trigger the presumption. *New York v. FERC*, 535 U.S. 1, 17-18 (2002). Second, the presumption applies only to areas of "traditional state responsibility." *E.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 453, 457 (1991) (state judge qualifications); *Jones v. United States*, 529 U.S. 848, 849 (2000) (criminal conduct); *Utah Native Plant*, 923 F.3d at 868 (wildlife on state lands). Management of federally-owned minerals has never been a traditional province of states; the Property Clause places that responsibility squarely with Congress. Third, the presumption is also inapplicable to areas with a "significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000). Congress has pervasively regulated federal oil and gas development for over a century under laws such as the MLA, including on non-federal surface. *See* 72 Fed. Reg. 10,308, 10,308 (Mar. 7, 2007) (split-estate wells regulated in "essentially the same manner" as wells on federal surface). BLM regulation of Fee/Fee/Fed wells would be no more intrusive on state authority. In any event, the statutes here are sufficiently clear to overcome any such presumption.

To the extent a special rule of construction applies, it is the inverse. Again, the Supreme Court has directed that when it comes to authority over federal minerals, "[u]nless taken away by some affirmative provision of law, the [BLM] has jurisdiction over the subject." *Cameron*, 252

[3] *Utah Native Plant* was a preemption dispute about whether the Forest Service could prohibit Utah from releasing goats onto state land—i.e., preempt Utah in the wildlife management field traditionally left to states. 923 F.3d at 867-69. The dispute here is not whether BLM can regulate Fee/Fee/Fed wells in ways that preempt state law but whether it can regulate them at all.

U.S. at 463; *see also Hannifin,* 444 F.2d at 202 (MLA "should be broadly construed in order for the Secretary to properly carry out his proprietary function" over federal minerals).

In sum, the Petition plausibly states that BLM misapprehended its authority over Fee/Fee/Fed wells. Indeed, BLM appears to *concede* error in acknowledging that its authority over their surface operations extends beyond production accountability. *See* ECF 27 at 13-14 (agreeing that BLM has authority to "regulate impacts arising from conduct on non-federal lands that may be injurious to federal lands").

CONCLUSION

The Court should deny BLM's Motion to Dismiss (ECF 27).

Respectfully submitted this 22nd day of August, 2025.

/s/ *Sarah Stellberg*
Sarah Stellberg (ID Bar # 10538)
Andrew Hursh (MT Bar # 68127109)
ADVOCATES FOR THE WEST
P.O. Box 1612, Boise, ID 83702
Telephone: (208) 342-7024
sstellberg@advocateswest.org
ahursh@advocateswest.org

Allison N. Henderson (CO Bar # 45088)
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 3024, Crested Butte, CO 81224
Telephone: (970) 309-2008
ahenderson@biologicaldiversity.org

Attorneys for Petitioner

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