ORAL ARGUMENT REQUESTED
No. 26-1199

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY,
Petitioner-Appellant,

v.

DOUG MAYES and BUREAU OF LAND MANAGEMENT,
Respondents-Appellees,

and

BISON OIL & GAS IV, LLC and VERDAD RESOURCES, LLC,
Intervenor Respondents-Appellees.

Appeal from the United States District Court
for the District of Colorado
No. 1:24-cv-01608 (Hon. Daniel D. Domenico)

APPELLANT'S OPENING BRIEF

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Pursuant to Tenth Circuit Rule 28.2(C)(3), there are no prior or related appeals.

GLOSSARY

APA	Administrative Procedure Act
APD	Application for Permit to Drill
Center	Center for Biological Diversity
BLM	Bureau of Land Management
Fee/Fee/Fed	The term for an oil and gas well that drills into federal mineral estate from a surface location not overlying the federal mineral lease.
FLPMA	Federal Land Management and Policy Act
MLA	Mineral Leasing Act
PIM	Permanent Instruction Memorandum

INTRODUCTION

The U.S. Bureau of Land Management ("BLM") is the federal agency responsible for overseeing development of federal onshore oil and gas resources. Many of BLM's permits for such development apply to "fee/fee/fed" wells—that is, wells that extract federal oil and gas using directional drilling from well pads located on non-federal lands not overlying the federal minerals. This case concerns BLM's authority to condition its permits to drill fee/fee/fed wells on requirements for their surface operations.

In 2018, BLM issued Permanent Instruction Memorandum 2018-014 ("PIM 2018-014" or "PIM") to direct how staff must process applications for permits to drill ("APDs") fee/fee/fed wells. The PIM confirms such wells require a BLM drilling permit. Ordinarily, such permits contain commonsense terms to reduce wildlife disruption, truck traffic, equipment noise, flaring and off-gassing, toxic leaks, and other impacts. However, the PIM claims that for fee/fee/fed wells, BLM has no authority to impose conditions on the permittee's surface operations except to assure production accountability for royalties. No analysis of the applicable statutory text accompanies this conclusion.

The result is a gaping loophole with profound consequences. BLM plays a key role in ensuring that federal oil and gas is developed in a manner that is safe and responsible. Under the PIM, companies can evade such oversight by simply moving their well pads off the lease surface—a burgeoning practice due to horizontal drilling technologies. And so they are: a sizable share of federal drilling today occurs through fee/fee/fed wells that lack federal safeguards to protect the environment, public health, and adjacent public lands.

The legal position staked out in PIM 2018-014 is wrong. Accordingly, the Center for Biological Diversity ("Center") brought this Administrative Procedure Act ("APA") action seeking to set aside the PIM and a set of BLM decisions permitting fee/fee/fed wells ("APD Decisions") under the PIM in Colorado's Pawnee National Grassland. The Grassland is a popular recreation destination for Center members who now suffer the wells' impacts on air quality, wildlife viewing, scenic backroads, and natural quiet. The Center challenges those BLM actions on one ground: they rest on a legal error, as BLM has more authority over fee/fee/fed wells than the PIM asserts.

The district court improperly dismissed the Center's amended petition at the pleading stage for lack of Article III standing and, in the alternative, for failure to state a claim. The district court agreed the Center sufficiently alleged injury-in-fact, as its members recreate amid the wells at issue, yet found causation and redressability lacking because BLM cannot control private drilling from continuing at these well pads. This improperly disregarded well-pleaded allegations that the APD Decisions result in more noise, dust, traffic, pollution, and wellpad activity than would otherwise occur, harming members. That sufficed, as "the existence of other contributors" to an injury does not affect standing. *Sierra Club v. U.S. EPA*, 964 F.3d 882, 889 (10th Cir. 2020).

The district court further erred in its alternative holding that the Center failed to state a claim. The amended petition plausibly alleges that BLM misapprehended its legal authority over fee/fee/fed surface operations, and agency action "may not stand if the agency has misconceived the law." *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). In concluding that the agency's legal position was correct, the district court misconstrued the issue and laws granting BLM broad authority to regulate federal mineral development, including to minimize environmental harm.

Accordingly, this Court should reverse the district court's judgment and remand the case for further proceedings.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this action under 28 U.S.C. § 1331 because the claims arise under the laws of the United States. The district court entered final judgment on March 24, 2026. Add-35-36.[1] Petitioner timely noticed its appeal on May 22, 2026. 2-Appx-467. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the Center adequately pleaded Article III standing to challenge the APD Decisions by alleging that the oil and gas drilling activity they authorize will harm members who recreate nearby, regardless of the possibility that private drilling activity also contributes similar harms.

[1] Citations to the addendum are in the form "Add-Page." Citations to the appendix are in the form "Volume-Appx-Page."

2. Whether the Center adequately pleaded Article III standing to challenge PIM 2018-014 by alleging that it causes members harm through its effects on hundreds of fee/fee/fed wells blighting the Pawnee National Grassland, and other regions members frequent, by foreclosing otherwise routine environmental mitigation that would abate members' health, aesthetic, and recreational harms.

3. Whether BLM has authority to condition a permit to drill a fee/fee/fed well on requirements for the associated surface operations that go beyond production accountability.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutory provisions are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

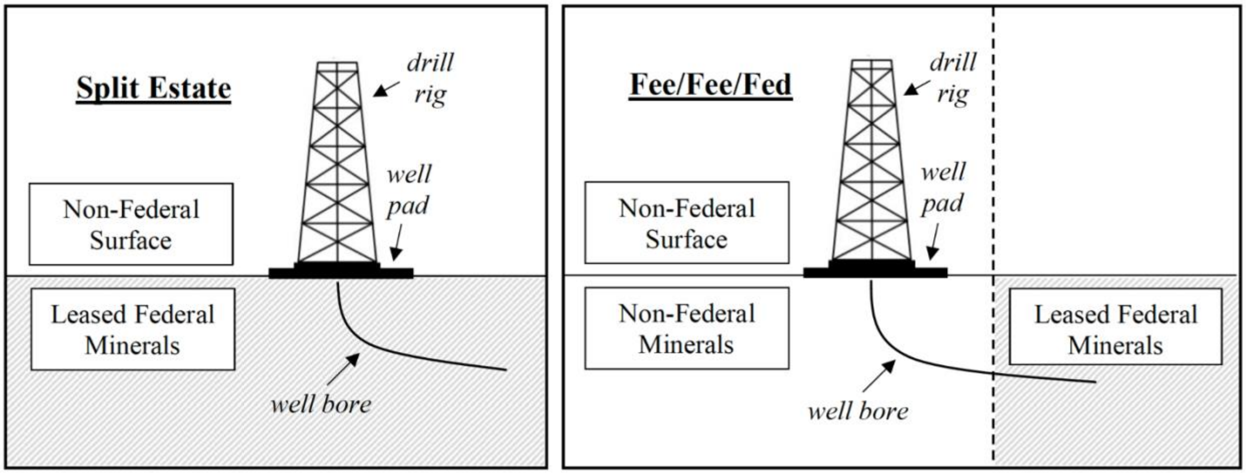
I. Factual Background

A. Fee/Fee/Fed Wells and PIM 2018-014

"The American West contains millions of acres platted into alternating squares of public and private land in a manner resembling a checkerboard." *Iron Bar Holdings, LLC, v. Cape*, 131 F.4th 1153, 1156 (10th Cir. 2025). The board is three dimensional. The checkerboard on the surface is a legacy of land grants along rights-of-way for infrastructure like railroads. *See generally Marvin M. Brandt Revocable Tr. v. United States*, 572 U.S. 93, 96-97 (2014). A different checkerboard beneath the surface is the legacy of legislation, such as the Stock Raising Homestead Act of 1916, that granted settlers surface ownership but reserved the mineral rights, creating split estates. *See generally Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 49-51 (1983).

This checkerboard ownership pattern, paired with advances in directional drilling technology, allows companies to extract federal oil and gas deposits from non-federal land. *See* 1-Appx-045. This occurs in two distinct scenarios. First is the "split estate" well, in which the drill site is located on non-federal surface overlying the target federal minerals. 1-Appx-076. Second is the "fee/fee/fed" well, in which the drill site is located on non-federal surface outside the bounds of the target federal lease. *Id.* In both scenarios, the checkerboard ownership pattern means that federal lands are often nearby. *See, e.g.*, 2-Appx-418.

Figure 1: Split Estate and Fee/Fee/Fed Development



BLM has long regulated split-estate wells in "essentially the same manner" as wells on federal surface, 72 Fed. Reg. 10,308 (Mar. 7, 2007), though in coordination with the surface owner, 43 C.F.R. § 3171.19. Yet its approach to fee/fee/fed wells differs substantially. In 2018, BLM issued Permanent Instruction Memorandum 2018-014, entitled "Directional Drilling Into Federal Mineral Estate From Well Pads on Non-Federal Locations." 1-Appx-025-43. The PIM dictates how BLM staff process APDs for fee/fee/fed wells. 1-Appx-026.

The PIM confirms that an "APD approval is necessary before an operator may drill into the Federal mineral estate itself." 1-Appx-032. However, it concludes that "BLM's jurisdiction extends to surface facilities on entirely non-Federal lands solely to the extent of assuring production accountability for royalties," such as "prevention of theft, loss, waste, and assuring proper measurement[.]" 1-Appx-026. From this conclusion, BLM claims it lacks authority to "require mitigation" of surface impacts as it ordinarily does for wells on BLM-managed land or split estate. 1-Appx-034. The PIM further claims that BLM lacks authority "to require a bond to protect non-Federal surface owner interests." 1-Appx-032. The PIM names the MLA and FLPMA but is devoid of any analysis of the applicable statutory text.

Instruction Memoranda like the PIM are "binding on BLM." *Petan Co. of Nev.*, 186 IBLA 81, 2015 WL 7628316, *13 (2015); *see also Lassen Motorcycle Club*, 133 IBLA 104, 1995 WL 702844, *4 (1995) (IMs are "controlling on the agency."). In permitting fee/fee/fed wells, including those challenged here, BLM staff thus treat PIM 2018-014 as binding and cite it as the basis for excluding mitigation measures BLM ordinarily requires, 1-Appx-078, such as:

- timing and siting restrictions for wildlife protection,
- air pollution mitigation, such as flaring controls,
- chemical vapor and gas leak prevention,
- toxic spill prevention, like pit liners or double-walled tanks,
- visual standards for color or design to blend into landscape,

- downward-facing, shielded lighting,
- pit and tank covers to avoid bird entrapment,
- noise shields or mufflers, and
- remote monitoring to reduce well-pad activity and traffic.

1-Appx-066; 1-Appx-160-65; 1-Appx-194; 1-Appx-229-47; 1-Appx-249-58.

State regulatory approvals are also required for oil and gas drilling, including on federal surface. However, state rules are often far less stringent or effective. 1-Appx-162-64. Thus, BLM applies its own mitigation requirements and enforcement capacity to reduce surface impacts for all but fee/fee/fed wells, *id.*—including split estate wells located on private or state surface, 72 Fed. Reg. at 10,308.

B. Challenged APD Decisions

Nearly every drilling permit BLM approves in Northeastern Colorado today entails a fee/fee/fed well. 1-Appx-078. This appeal concerns 12 such permits BLM recently approved in two decisions ("APD Decisions"). 1-Appx-079-81.[2] Each APD Decision applied PIM 2018-014 as the basis for withholding any mitigation measures pertaining to the

[2] The Center does not appeal the dismissal of its claim against the Dittmer APD decision.

surface operations and exemplifies the harms from the ongoing implementation of the PIM in Colorado and elsewhere. 1-Appx-080-81.

BLM issued the first decision on April 11, 2024, approving two APDs submitted by Bison IV Operating LLC for the same "Boomhog" well pad. 1-Appx-079; *see also* 2-Appx-366-67 (decision record). The Boomhog pad is located on a narrow strip of private land sandwiched between two large federal public land tracts within the Pawnee National Grassland. 1-Appx-079. The well site is located within a half mile of federal public lands to the east and west, along a primary route for public access to one of the largest sections of public lands in the National Grassland. 1-Appx-079-80. BLM's approval of the two APDs allows Bison to drill, complete, and operate two horizontal oil and gas wells that will enter and extract federal minerals beneath the federal public lands just east of the Boomhog pad. 1-Appx-080.

BLM issued the second decision, approving ten APDs submitted by Verdad Resources LLC, on May 10, 2024. 1-Appx-080; *see also* 2-Appx-505 (decision record). This "Speed Goat" decision approves drilling from two well pads on a private parcel within the Pawnee National Grassland and less than a quarter mile from federal public lands to the north and east. 1-Appx-080. BLM's approval of the ten Speed Goat APDs allows Verdad to drill, complete, and operate horizontal oil and gas wells that will enter and extract federal minerals just east of the Speedgoat pad. 1-Appx-080.

C. The Center and Its Members

The Center for Biological Diversity ("Center") is a national, nonprofit conservation organization dedicated to the protection of species and wild places. 1-Appx-048. The Center has roughly 80,000 members throughout the United States, including individuals whose day-to-day lives and recreation are harmed by the APD Decisions and other federal oil and gas development occurring pursuant to PIM 2018-014. *Id.* Among those members are Jeremy Nichols, Polly Reetz, and Robert Ukeiley, 1-Appx-048-49, who submitted declarations attesting to such harms, 1-Appx-140-297. Each lives in the Denver area or along Colorado's Front Range. 1-Appx-048. These members have a long history recreating in the Pawnee National Grassland, 1-Appx-049-52, where they have observed and experienced harms of fee/fee/fed operations "bleed[ing] over into the public lands" of the Grassland, 1-Appx-267, and diminishing their birds and wildlife, natural quiet, scenic beauty, and air quality, 1-Appx-054-

65; *see also* 1-Appx-150-60; 1-Appx-266-70; 1-Appx-278-84; 1-Appx-288-97. These members also recreate near and suffer harm from the Speed Goat and Boomhog APD Decisions. 1-Appx-062-65.

D. District Court Proceedings

On June 10, 2024, the Center filed suit seeking to set aside the PIM and the Boomhog and Speed Goat APD decisions, 5 U.S.C. § 706(2)(A), alleging that they rest on an erroneous view of BLM's legal authority. Petition (ECF 1). The government moved to dismiss the petition for lack of standing, and the Boomhog and Speed Goat permittees moved to intervene. Add-18. The district court granted both motions. *Id.* In granting that initial motion to dismiss, the district court found that the Center had not alleged a sufficient geographic nexus to the areas affected by the challenged actions. Add-20.

Two weeks later, the Center filed an amended petition with standing details ordinarily reserved for summary judgment, including pages of additional factual allegations, photographs, and a map documenting precise portions of the Grassland members use and minute details of project impacts. 1-Appx-048-66. BLM and Intervenors each moved to dismiss the amended petition. 1-Appx-085-115. BLM argued that the Center lacks standing and failed to state a claim. 1-Appx-086. Intervenors argued that the Center lacks standing, that the PIM is not a final agency action, and that the Center's APD claims are moot. 1-Appx-102-03. Although not required at the pleading stage, the Center submitted four standing declarations in support of its briefs opposing the motions to dismiss. 1-Appx-126; 1-Appx-140-297.

On March 23, 2026, the district court granted both motions to dismiss, holding that although the PIM is a final agency action and the APD claims are not moot, the Center had failed to establish Article III standing and, alternatively, failed to state a plausible claim for relief. Add-16-34. The court entered final judgment the next day. Add-35-36. This appeal followed.

II. Legal Background

A. Property Clause of the U.S. Constitution

BLM's power in this case ultimately derives from the Property Clause of the U.S. Constitution, which 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. Congress's Property Clause 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, 539-40 (1976).

The proprietary power refers to the "rights incident to ownership," which empowers Congress to "prohibit absolutely or fix the terms on which its property may be used." *Light v. United States*, 220 U.S. 523, 536 (1911). Congress may 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 such conditions may concern use of non-federal property. *See, e.g.*, *id.* (affirming Congress's power to condition the right to site a dam on federal land on an agreement to distribute its power to a municipal entity); *Fed. Power Comm'n v. Idaho Power Co.*, 344 U.S. 17, 21-24 (1952) (affirming Congress's power to condition a license to cross federal land on licensee's agreement to carry federal power on its powerlines). Federal minerals are federal property to which the Property Clause power attaches.

B. Federal Land Policy and Management Act of 1976 ("FLPMA")

BLM's general legislative charter is FLPMA. *See* 43 U.S.C. § 1701 *et seq*. FLPMA assigns responsibility to BLM for managing vast federal land interests, including minerals. *See id.* §§ 1731-32. The cornerstone of FLPMA is a mandate to "manage the public lands under principles of multiple use and sustained yield." *Id.* § 1732(a). *Public land* is defined as any "land and interest in land" BLM manages, such as mineral rights. *Id.* § 1702(e). *Multiple use* requires BLM to balance the "various resource values" of public lands—including "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic" values—in a manner that avoids "permanent impairment of the productivity of the land and the quality of the environment." *Id.* § 1702(c).

FLPMA broadly authorizes BLM to "regulate … the use, occupancy, and development of the public lands" "under such terms and conditions as are consistent with such law[.]" *Id.* § 1732(b). It may do so "through easements, permits, leases, licenses, published rules, or other instruments." *Id.* Mineral production is one "use" of public lands subject to this regulatory authority. *Id.* § 1702(l).

Environmental protection is a crucial aspect of BLM's regulation of resource extraction under FLPMA. Congress's charge to manage for "multiple use" requires BLM to account for environmental values and avoid "permanent impairment of the … quality of the environment." 43

U.S.C. § 1702(c). BLM's "sustained yield" mandate reinforces that it must maintain in perpetuity the environmental resources of public lands. *Id.* § 1702(h). FLPMA also declares a national policy that public lands be managed to "protect the quality of … ecological, environmental, air and atmospheric, water resource, and archeological values[.]" *Id.* § 1701.

To that same end of environmental protection, FLPMA separately charges BLM with taking "any action necessary to prevent unnecessary or undue degradation" of public lands. *Id.* § 1732(b). Finally, FLPMA broadly authorizes BLM to promulgate "rules and regulations to carry out the purposes of [FLPMA] and of other laws applicable to the public lands," *id.* § 1740, and "regulations necessary to implement the provisions of [FLPMA] with respect to the management, use, and protection of the public lands," *id.* § 1733(a).

C. Mineral Leasing Act of 1920 ("MLA")

FLPMA works in conjunction with statutes governing specific land uses, such as the Mineral Leasing Act ("MLA"). Under the MLA, the Secretary of Interior[3] may lease deposits of oil and gas owned by the

[3] The Secretary of Interior has transferred its onshore minerals responsibilities to BLM. *See* 43 C.F.R. § 3160.0-3.

United States. 30 U.S.C. §§ 181, 226. A federal oil and gas lease conveys the right to explore for and develop oil and gas deposits in the lease bounds for the lease term, in exchange for royalty and other payments. *Id.* § 226; *see also* 1-Appx-021.

The MLA specifies certain stipulations the Secretary must include in all leases but gives the Secretary broad discretion to attach others "as he may deem necessary … for the protection of the interests of the United States … and for the safeguarding of the public welfare." 30 U.S.C. § 187.[4] Under BLM's standard lease form, the leaseholder agrees to "conduct operations in a manner that minimizes adverse impacts to the land, air, and water, to cultural, biological, visual, and other resources, and to other land uses or users" and comply with any "reasonable measures deemed necessary by [BLM] to accomplish" those requirements. 1-Appx-023. In contrast with other lease clauses, this provision is not limited to operations on the "leased lands" or "leased premises." *Id.*

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[4] Congress recently amended the MLA to specify that leases shall not include "stipulations or mitigation requirements not in the approved resource management plan." Public Law 119-21 § 50101, 139 Stat. 72, 139 (July 4, 2025) (codified at 30 U.S.C. § 226(a)(2)(A)). This does not affect existing leases, *see Landgraf v. USI Film Products*, 511 U.S. 244, 265-80 (1994), or conditions in drilling permits, *see* Oil and Gas Leasing, 91 Fed. Reg. 38,084, 38,097 (June 24, 2026).

The MLA also subjects lease development to "exacting restrictions and continuing supervision by the Secretary." *Boesche v. Udall*, 373 U.S. 472, 477-78 (1963). This includes responsibility to "regulate all surface-disturbing activities conducted pursuant to any lease," 30 U.S.C. § 226(g), to "determine reclamation and other actions as required in the interest of conservation of surface resources," *id.*, to suspend all lease development in the "interest of conservation of natural resources," *id.* § 209, and to require a 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 after the abandonment, *id.* § 226(g). The Secretary may also "prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes" of the MLA. *Id.* § 189.

This Court has instructed that the MLA "should be broadly construed in order for the Secretary to properly carry out his proprietary function" over federal minerals. *Hannifin v. Morton*, 444 F.2d 200, 202 (10th Cir. 1971). Others have described the MLA as granting "sweeping authority" to BLM, *Indep. Petroleum Ass'n of Am. v. DeWitt*, 279 F.3d 1036, 1039 (D.C. Cir. 2002), and providing for "extensive regulation of oil exploration and drilling." *Ventura Cnty. v. Gulf Oil Corp.*, 601 F.2d 1080, 1083 (9th Cir. 1979).

D. BLM Oil and Gas Permitting

Pursuant to the MLA and FLPMA, BLM has promulgated comprehensive regulations governing all stages of federal oil and gas leasing and development. *See generally* 43 C.F.R. parts 3000 to 3180. Relevant here, part 3170 sets detailed requirements for the development of leased oil and gas deposits.

The APD is a key step in the process. Under BLM regulations, an APD is required "for each proposed well … to develop an onshore lease for Federal or Indian oil and gas." 43 C.F.R. § 3171.5. The APD package must include a drilling plan and surface use plan of operations. *Id.* § 3171.4. "The operator cannot commence either drilling operations or preliminary construction activities before the BLM's approval of the APD." *Id.* § 3171.17(b). BLM may attach any "reasonable mitigation measures" to an APD to "minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights." *Id.* § 3171.13(a)(2). Once the APD is approved, "[t]he operator must comply with the provisions of the approved APD and applicable laws, regulations, and Notices to Lessees[.]" *Id.* § 3171.17(c).

BLM regulations also subject lease operations to exacting restrictions for environmental protection. For example, "[t]he operator must conduct operations to minimize adverse effects to surface and subsurface resources," *id.* § 3171.17(a), and provide for "adequate protection of surface resources, groundwater, and other environmental components," *id.* § 3171.8(a)(2). These provisions apply broadly to federal mineral extraction *operations*, without a geographic limitation specifying that the surface lands on which they occur must also be federal.[5]

SUMMARY OF ARGUMENT

The district court improperly dismissed the Center's petition for lack of standing and, in the alternative, for failure to state a claim.

1. The Center adequately pleaded Article III standing to challenge the APD Decisions. Center members recreate on public lands in the Pawnee National Grassland that sit beside the disputed wells. The

[5] By contrast, other provisions in part 3170 expressly specify otherwise. *See, e.g.*, *id.* § 3171.8(b) ("on-lease surface disturbance"); *id.* § 3171.8(e)(8) ("off-lease" facilities); *id.* § 3178.6(b) (wellhead "not located on the producing lease"); *id.* § 3171.18(b) ("on-lease activities" and "actions . . . on the lease"); *id.* § 3171.8(a)(5) ("surface is privately owned").

APD Decisions authorize new drilling and well operations there to extract federal oil and gas. The petition alleges those activities will generate new air pollution, truck traffic, noise, odors, scenic disruption, and wildlife disruption—and that such impacts will reach specified Grassland segments members use, injuring their recreational enjoyment and health. It logically follows that vacating the APD Decisions will redress members' harms by prohibiting the federal activities they allege will harm them.

Although private drilling at these sites might continue and contribute similar harms, "the existence of other contributors" does not affect standing. *Sierra Club*, 964 F.3d at 889. Vacating the federal permits would reduce the extent and duration of drilling, traffic, noise, emissions, and well pad activity, redressing members' injuries—at least to some extent, which is all that Article III requires. Speculation by the district court that "largely the same" harm might result if the federal permits were vacated did not defeat redressability, as it contradicted the petition's allegations and statements by the agency and developers that fewer wells and environmental harms would result.

2. The Center adequately pleaded Article III standing to challenge PIM 2018-014. Inexplicably, the district court dismissed this claim without any unique analysis. Yet the PIM applies far more broadly, including to over 250 fee/fee/fed wells that have been approved or remain pending in a corner of the Grassland that Center members frequent. The PIM causes harm by foreclosing routine environmental mitigation measures that would otherwise abate the noise, emissions, traffic, wildlife disturbance, and other fee/fee/fed well impacts. The petition plausibly alleges that, if the PIM were vacated, BLM would likely apply routine mitigation measures to such fee/fee/fed wells that redress members' injuries, at least to some extent—which is again all that Article III requires.

3. The Center stated plausible APA claims that turn on simple questions of statutory construction. Agency action "may not stand if the agency has misconceived the law." *Chenery*, 318 U.S. at 94. Here, the Center plausibly alleged that the challenged actions rest on an erroneous view of the law: that BLM lacks authority to condition fee/fee/fed permits on requirements for their surface operations, except to ensure production accountability. BLM has far more authority.

3.A. One obvious source of such authority is FLPMA, which broadly authorizes BLM to "regulate … the use, occupancy, and development of the public lands." 43 U.S.C. § 1732(b). The term "public lands" includes by definition any "interest in land," such as minerals. *Id.* § 1702(e). Because fee/fee/fed surface operations "develop[]" federal mineral resources, BLM may "regulate" them, including to reduce environmental harm, consistent with its multiple-use mandate. *See id.* § 1701(a)(8). The district court found there is no such power because only the "minerals" can be regulated, but the statute's plain text extends to "development of" those minerals. Fee/fee/fed surface operations qualify under any definition of "mineral development," as they drill and extract federal minerals.

3.B. Another obvious source of authority is the MLA, which directs BLM to "regulate all surface-disturbing activities conducted pursuant to any lease" and to "determine reclamation and other actions as required in the interest of conservation of surface resources." 30 U.S.C. § 226(g). The plain text of both clauses extends to the surface operations for fee/fee/fed wells. Fee/fee/fed surface operations are conducted "pursuant to" the lease, as they must be done in compliance with lease stipulations;

they carry out the lessee's contractual obligation to diligently develop; and they depend on the lease for authorization because they drill, extract, and handle federal minerals. And the "reclamation" clause separately authorizes requirements for surface resource protection. Unlike surrounding provisions, Congress limited neither of these powers to the lease bounds, so that absent limitation should not be inferred. The district court found that fee/fee/fed surface operations are not "pursuant to" the federal lease because drillers can begin some preparatory activity without a lease. This logic fails, as once operations begin drilling or extracting federal minerals, a valid federal lease and drilling permit are required authorizations.

3.C. Apart from these statutes, BLM has contractual rights under its standard oil and gas lease to dictate how fee/fee/fed surface operations are conducted. Section 6, entitled "Conduct of operations," requires the leaseholder to conduct its operations in accordance with BLM conditions to minimize environmental impacts, including modification of facility siting or design. Unlike other clauses of the lease, this provision is not limited to the "leased lands," meaning that absent limitation should not be inferred. The parties to federal oil and gas lease contracts freely agree to be bound by those terms, which are consistent with BLM's authority under the MLA to establish lease stipulations for safeguarding the public welfare. 30 U.S.C. § 187.

3.D. These straightforward textual interpretations do not permit BLM to regulate private lands. The minerals produced by these wells are property of the United States. Conditioning the right to extract them is an exercise of proprietary authority over the minerals, no more. The surface owner retains a genuine choice whether to accept such conditions in exchange for the right to drill federal oil from its land. By the same token, if an energy company chooses to avail itself of publicly owned oil and gas, it must take the strings attached for protection of the public interest.

STANDARD OF REVIEW

This court reviews de novo the dismissal of a complaint under Rules 12(b)(1) and 12(b)(6). *Silva v. United States*, 45 F.4th 1134, 1137 (10th Cir. 2022); *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1152 (10th Cir. 2013). To survive a Rule 12(b)(6) motion, a complaint need only "allege sufficient facts to state a claim for relief plausible on its face." *Silva*, 45 F.4th at 1137 (citation omitted). The Court must accept all well-pleaded allegations as true and view them in the light most favorable to the plaintiff. *Id*; *Palma*, 707 F.3d. at 1152.

ARGUMENT

I. THE CENTER ADEQUATELY PLEADED STANDING.

The Center exceeded its standing burden at the pleading stage. 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).[6]

Because this appeal arises on a motion to dismiss under Rule 12(b)(1), the "burden in establishing standing is lightened considerably." *Petrella v. Brownback*, 697 F.3d 1285, 1292 (10th Cir. 2012). The Court "must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Waller*

[6] The other two elements of associational standing are uncontested, for good reason. The interests the Center seeks to protect are germane to its organizational purposes, and the relief it seeks does not require participation of individual members. *See Diné Citizens*, 923 F.3d at 840.

v. City & Cnty. of Denver, 932 F.3d 1277, 1282 (10th Cir. 2019) (citation omitted). At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice," and courts must "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)).

The Center easily surpassed these hurdles. Its members recreate near the disputed wells, which harm their health and recreational enjoyment. Yet the district court improperly rejected the amended petition's factual allegations and record evidence in favor of a speculative theory that private drilling would fully replace members' harms if the federal decisions were vacated. The district court also failed to separately analyze standing for the PIM claim before dismissing it. This Court should reverse the dismissal on standing grounds.

A. The Center Sufficiently Alleged Standing to Challenge the APD Decisions.

1. Injury-in-Fact.

"As a general rule … environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *Palma*, 707 F.3d at 1155 (quotations omitted). This can be done by establishing that members have a "geographic nexus to the affected areas" such that they "may be expected to suffer the environmental consequences of the challenged action." *Diné Citizens*, 923 F.3d at 841 (quotation omitted). A "substantial risk" of harm suffices. *Citizens for Const. Integrity v. United States*, 57 F.4th 750, 760 (10th Cir. 2023).

The district court below easily recognized the sufficiency of the Center's injury allegations, finding "[t]he Center plausibly pleaded harm to their members through reduced use and enjoyment of the Pawnee National Grassland." Add-19. For the Speed Goat site, Center members regularly visit and will return to two sections of the Grassland within a quarter-mile of the site. 1-Appx-054; 1-Appx-063. For the Boomhog site, Center members recreate in and will return to two sections of the Grassland within a half-mile of the site. 1-Appx-054; 1-Appx-063. The amended petition alleges that the Speed Goat and Boomhog operations will mar scenic views, diminish wildlife viewing, disturb the natural quiet and feeling of solitude, and expose members to harmful air pollutants while at the Grassland. 1-Appx-064-65. The Grassland parcels members use near Speed Goat are each only about a mile square, meaning Speed Goat's impacts would reach their entirety. *See* 1-Appx-295-96. The Grassland parcels they use near Boomhog are each only four or five miles across at their widest, so Boomhog will affect much of them. 1-Appx-293; 1-Appx-166-68; 1-Appx-273-74. Center members must also pass by these projects or encounter their truck traffic while recreating in the Grassland, harming their experience on these scenic roadways. 1-Appx-064; *see also* 1-Appx-169-71; 1-Appx-273; 1-Appx-289-96. These facts allege a sufficient "geographic nexus" to the harms of these wells. *Diné Citizens*, 923 F.3d at 841 (finding sufficient nexus through use of areas "twenty miles" from certain APDs due to the distance impacts travel).

The member declarations further elaborate. As one member explained about encountering the Speed Goat site on a recent visit:

> The Speed Goat activity was incredibly disruptive from each [nearby Grassland segment], with what looked like a small village of industrial development cropping up just over a small rise in the landscape. The area around a small road that turns off Road 127 was transforming into a frenzy of truck and equipment activity[.] … The trucks and other equipment were audible the whole time.

1-Appx-169.

The Center also alleged member injuries due to exposure to air pollution from the APD Decisions, 1-Appx-065, a well-recognized injury-in-fact, *see Sierra Club*, 964 F.3d at 888. Of particular concern, the Speed Goat and Boomhog projects are within, and will contribute ozone to, the Denver metro/northern Front Range "severe" ozone nonattainment area. 1-Appx-065. Members will be exposed to such ozone pollution as they recreate in the Grassland, which poses health risks, creates unsightly smog, and ultimately deters their outdoor recreation. *Id*. This is particularly true for ozone, as "there is no threshold concentration below which ground-level ozone is known to be harmless." *Clean Wisconsin v. EPA*, 964 F.3d 1145, 1158 (D.C. Cir. 2020); *see also* 1-Appx-060; 1-Appx-74-75; 1-Appx-158.

Ultimately, these impacts injure Center members "in part by causing them to avoid areas they might otherwise recreate in search of less impaired locations elsewhere, as well as to curtail activities due to pollution risks." 1-Appx-060. This is sufficient injury alone. *See Friends of the Earth v. Laidlaw*, 528 U.S. 167, 182-83 (2000) (holding that plaintiffs who "would use" environmentally affected areas, but "refrained" from doing so, established injury-in-fact).

2. Causation

The district court erroneously concluded that the Center's amended petition fell short of plausibly alleging causation. Add-21-23. To demonstrate causation, the Center must show "a substantial likelihood that the defendant's conduct caused plaintiff's injury in fact." *Santa Fe All. for Pub. Health & Safety v. City of Santa Fe*, 993 F.3d 802, 814 (10th Cir. 2021) (citation omitted). Showing that a challenged action "contributes to the members' alleged injuries" satisfies the burden. *Sierra Club*, 964 F.3d at 888.

Here, causation should be an easy inquiry. The APD Decisions directly authorize the federal mineral extraction activity that the Center alleges will harm members. Resisting this straightforward conclusion, the district court found causation lacking because it is "possible" the APD Decisions cause no harm beyond that attributable private mineral drilling at those sites, which BLM does not control. Add-22. The district court erred in several ways.

First, the district court seemed to believe that because BLM has no control over the portion of a fee/fee/fed well that traverses private minerals, the APD Decisions conceivably cause no drilling. Add-21

("[T]he harms come from drilling, but … do the APDs actually cause the drilling? I am not so sure."). This makes little sense. Without BLM's approval of permits to drill, the federal minerals cannot be drilled, and thus the approval causes drilling. *See* 43 C.F.R. § 3171.5.

What does drilling the federal minerals entail? It entails operating a towering drill rig and other heavy machinery to drill and frack the federal wellbore, as well as long-term operations (traffic, workers, equipment, flaring) at the wellpad to operate the well. 1-Appx-055-61; 1-Appx-151-58. The PIM itself acknowledges that BLM permits for fee/fee/fed wells are, at a minimum, responsible for "effects related to drilling and operating the Federal wellbore (e.g., dust, noise, traffic)" and operating surface facilities "in support of the Federal well." 1-Appx-028-29.

This is loud, unsightly, smelly, and hazardous. 1-Appx-055-61; 1-Appx-151-58. In short, even if the APD Decisions could only be deemed responsible for part of the fee/fee/fed well operations, that would support standing.

Moreover, in this case, record evidence showed that the fee/fee/fed wells would not have been drilled but for the federal permits—that is, are entirely attributable to the APD Decisions. For example, in analyzing the Speed Goat APDs, BLM explained that if it did not approve the 10 new fee/fee/fed wells, the developer would only proceed with a smaller project involving fewer private or split-estate wells. 2-Appx-480. BLM made similar statements as to Boomhog, suggesting that if the APDs were denied, fewer wells would be drilled from the pad. *See* 2-Appx-377. Thus, the harms from the fee/fee/fed wells are attributable to the APD Decisions.

Second, the district court speculated that the Center's injuries might be "largely the same" if only the private drilling were to occur at the pads. Add-22. Yet this improperly discredited the Center's well-pleaded allegations that the APD Decisions cause more harm than would otherwise occur, such as new pollution, trucks, noise, smells, and industrial disturbances that contribute to and worsen harms from ongoing oil and gas activity. *See* 1-Appx-064-66; *see also* 1-Appx-166-72; 1-Appx-273-74; 1-Appx-293-96 (declarations). The district court was bound to accept those allegations as true and "construe them in the light most favorable to" the Center. *Waller*, 932 F.3d at 1282. That private drilling may exacerbate these harms is immaterial, as "the existence of other contributors" does not affect standing. *Sierra Club*, 964 F.3d at 889; *see also Dep't of Com. v. New* York, 588 U.S. 752, 768 (2019) (holding that "traceability is satisfied" when the alleged harm is "likely attributable at least in part" to the challenged action).

Further, although not required at the pleading stage, record evidence confirmed what the petition alleged. BLM's environmental assessments for the APD Decisions, for example, each describe air pollutants associated with the "federal portion" of the well pad activity. 2-Appx-378; 2-Appx-476. As for Speed Goat, BLM explained that denying the APDs would result in less environmental harm, due to a "lack of impacts from expanding the well pad and drilling the new wells," including "less traffic, noise, and activity surrounding the [long-term] operation of the wells, and the lesser area of [wildlife] habitat lost to well pad expansion." 2-Appx-496. And fewer wells and less operational activity without the APDs would shrink impacts on grassland birds. 2-Appx-497.

Third, the district court erred in finding causation and redressability lacking because there is no guarantee that private drilling would not replace the harms of terminated federal permits. Add-21-22.

But redress need not be certain: a plaintiff need only "show a predictable chain of events" for which judicial relief would likely redress the injury. *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 121 (2025). The amended petition clears that bar. Without the BLM permits, the harms attributable to developing the federal minerals would disappear, providing redress even if private drilling continued.

Perhaps the district court was speculating that permittees would respond by drilling *more* private minerals than they otherwise would, replacing the harms of federal extraction. Yet speculation about whether otherwise-predictable redress might be undermined by hypothetical third-party activity does not make redress unlikely. *See Diamond Alt. Energy*, 606 U.S. at 102 ("[C]ourts should exercise caution before denying standing because of a claimed lack of redressability rooted in .... speculation."). Particularly at the pleading stage, the Center was not required to affirmatively dispel such hypothetical possibilities of replacement injury. *See W. Watersheds Project v. Grimm*, 921 F.3d 1141, 1149 (9th Cir. 2019) (holding that "speculation" that a third party would replace harms caused by challenged agency action "does not defeat standing") (cleaned up).

In any event, record evidence *did* refute this speculative hypothetical. Intervenor permittees themselves attested that if the APD Decisions were vacated, it would prohibit drilling of those fee/fee/fed wells while also making other wells on the same pad or broader spacing unit *less likely*, given interrelated development plans and contracts. One employee attested that if the Center's relief against that Speed Goat APD Decision were granted, it may "stop [the company's] future plans for fully developing its assets within the drilling and spacing unit in which the APDs are situated." 1-Appx-018. "The timing and success of the drilling schedule heavily depends on … BLM's issuance of APDs," the same representative explained. 1-Appx-019. If "unable to produce the Boomhog wells," another stated, "Bison may be unable to preserve the schedule necessary to maintain some of [its] federal leases" in the same communitization agreement. 1-Appx-012.

Finally, the district court also erred in concluding that member injuries from ozone pollution are not traceable in part to the APD Decisions. Add-23. The Center was only required to allege that each APD Decision "contributes to" those pollution injuries. *Sierra Club*, 964 F.3d at 888. It did so by alleging that members recreate in close geographic proximity to the APD sites and also live in the non-attainment area to which the wells contribute ozone. 1-Appx-064-65. "Those who reside in [an air pollution non-attainment] area can fairly trace injuries they suffer from the polluted air to any contributor of prohibited emissions in the area." *Utah Physicians for a Healthy Env't v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1246 (10th Cir. 2021).

The district court asserted that *Utah Physicians*' causation holding applies only to Clean Air Act suits. Add-23. That cannot be. First, injuries caused by a defendant's air pollution are a common basis for standing in contexts beyond Clean Air Act suits. *See, e.g.*, *Diné Citizens*, 923 F.3d at 843. Second, traceability is an irreducible constitutional minimum that applies regardless of the statutory violation at play. *See Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979) ("In no event … may Congress abrogate the Art. III minima"). Because the traceability burden does not differ for a Clean Air Act claim, the same geographic proximity held sufficient in *Utah Physicians* to fairly trace an injury to the pollutant discharge should suffice here.

3. Redressability

Redressability and causation are in some senses "flip sides of the same coin." *Diamond Alt. Energy*, 606 U.S. at 111. To satisfy redressability, the Center must show a likelihood "that the injury will be redressed by a favorable decision." *Laidlaw*, 528 U.S. at 181. This requires only that "*an* injury" would likely be "reduced *to some extent*." *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 902-04 (10th Cir. 2012) (citations omitted).

The Center's requested relief of vacating the APD Decisions would prohibit operations they authorized. 1-Appx-066. Vacatur would thus eliminate the drilling and well-pad operations required for federal mineral extraction at these locations. By reducing the duration and extent of emissions, traffic, dust, noise, and wildlife disturbance, this would at least partially redress the health, aesthetic, and recreational injuries of Center members. 1-Appx-064-66.

Moreover, as the amended petition detailed, even if the APDs were remanded for reconsideration with the unlawful constraints of PIM 2018-014 corrected, there are numerous measures BLM would then likely apply—measures that address members' specified harms from pollution, noise, traffic, visual, or wildlife disturbance. *See infra* § I.B.3; 1-Appx-066. The APD Decisions omitted such mitigation because of the PIM. 1-Appx-080-81. Accordingly, the Center plausibly alleged that a favorable ruling correcting BLM's legal error would likely lead BLM, if reapproving these wells at all, to apply at least some additional measures that partially redress harm to Center members.

The district court's redressability analysis was flawed for the same reasons as its causation analysis. *See supra* § I.A.2. As for the alleged air pollution injuries, the district court further erred in finding redressability lacking on the basis that BLM has no authority to alter APD Decisions based "on purely air pollution grounds." Add-23. That is immaterial because vacatur would simply eliminate emissions attributable to the APD Decisions. It is also wrong: BLM has plain authority to impose permit conditions that reduce air pollution, such as flaring limits. *See* 1-Appx-162 ("BLM also has developed air resource best management practices that can be required as Conditions of Approval for any permit to drill"); 1-Appx-246 (lease provision authorizing BLM to require air quality mitigation).

B. The Center Sufficiently Alleged Standing to Challenge PIM 2018-014.

The first claim in the Center's amended petition is a challenge to PIM 2018-014 itself. 1-Appx-081-82. Inexplicably, the district court dismissed this claim for lack of standing without any unique analysis. Yet the standing inquiries for the PIM and APD claims are not identical: the PIM applies far more broadly and causes members harm in hundreds of additional on-the-ground applications beyond those from the separately-challenged APD Decisions (discussed in section I.A above). *See* 1-Appx-129-32; 1-Appx-053-54; 1-Appx-266-69; 1-Appx-160; 1-Appx-278-79; 1-Appx-289-92.

1. Injury-in-Fact

The Center adequately pleaded injury attributable to the PIM through its broad application to all fee/fee/fed wells drilled in public lands its members frequent, such as "the Pawnee National Grassland in Colorado" and "Thunder Basin National Grassland in Wyoming." 1-Appx-053. The amended petition alleges that fee/fee/fed wells are causing ongoing injury to member use and enjoyment of these public lands, such as for wildlife-oriented recreation or scenic enjoyment. *See* 1-Appx-055-61. And in addition to existing and ongoing injuries from fee/fee/fed developments to date, the Center's members face a substantial risk of harm from new and pending applications. 1-Appx-45-46; 1-Appx-53-54; 2-Appx-418-19.

In the Pawnee National Grassland, for example, the vast majority of oil and gas activity is attributable to fee/fee/fed wells approved under the PIM. 2-Appx-418-19. BLM has permitted over 250 fee/fee/fed wells under the PIM since 2018 in the same 15-mile-square Grassland segment that Center members frequent. *Id.* Many future applications are pending there. *Id.*

As the Center has alleged, development of these fee/fee/fed oil and gas wells injures Center members when recreating in the Pawnee National Grassland by leading them to encounter less wildlife, 1-Appx-056-57; deteriorating the scenic beauty, 1-Appx-057-58; "intrud[ing] upon the natural quiet," 1-Appx-059; and contributing to the spread of invasive species that deteriorate native species they wish to see, 1-Appx-057. Fee/fee/fed operations authorized under the PIM also expose Center members to harmful air pollutants when recreating in the Grassland. 1-Appx-060-61. Heavy truck traffic required for the construction and operation of these projects harms members by deterring wildlife, disturbing the natural quiet and feeling of solitude, generating unsightly and unhealthy dust, and posing safety hazards. *See* 1-Appx-059 (petition); 1-Appx-155-57; 1-Appx-268; 1-Appx-289-91 (declarations).

Ultimately, all these impacts injure Center members "in part by causing them to avoid areas [in which] they might otherwise recreate in search of less impaired locations elsewhere." 1-Appx-060. That is sufficient injury-in-fact alone. *See Laidlaw*, 528 U.S. at 182-83 (holding that plaintiffs who "would use" environmentally affected areas, but "refrained" from doing so, established injury-in-fact).

The amended petition alleges that fee/fee/fed wells "lie close to the boundaries of the public lands that constitute the Pawnee National Grassland, often merely a half- or quarter-mile away, and their impacts reach into Grassland areas Petitioner's members visit and diminish their experiences there." 1-Appx-054; *see also* 1-Appx-054; 2-Appx-418 (maps). These facts allege a sufficient "geographic nexus" to the harms of these wells. *Diné Citizens*, 923 F.3d at 841 (finding sufficient nexus through use of areas "twenty miles" from wells due to the distance impacts travel).

Further, this slate of development under the PIM also contributes to harmful ozone levels in the Grassland and nonattainment area in which Center members live. 1-Appx-060-61; 1-Appx-065. There, ozone pollution poses health risks, creates unsightly smog, and deters their outdoor recreation, *id.*, all injuries-in-fact. *See Sierra Club*, 964 F.3d at 888; *Physicians for a Healthy Env't*, 21 F.4th at 1242.

2. Causation

The Center has plausibly alleged that the PIM "contributes to [its] members' alleged injuries," *Sierra Club*, 964 F.3d at 888, from ongoing fee/fee/fed developments by limiting BLM's capacity to regulate and mitigate their impacts. 1-Appx-034.[7] The directive is "binding on BLM," *Petan Co. of Nev.*, 186 IBLA 81, 2015 WL 7628316, *16 (2015), and BLM staff cite the PIM as their sole rationale for omitting environmental mitigation requirements the agency applies to other wells, *see* 1-Appx-078; *see also* 2-Appx-303; 2-Appx-307; 2-Appx-314; 2-Appx-319; 2-Appx-325; 2-Appx-336; 2-Appx-345; 2-Appx-364 (examples of APDs excluding such requirements "in full compliance with," "[s]ubject to," "in accordance with," and "per" PIM 2018-014). Thus, PIM 2018-014 contributes to the

[7] The PIM states that BLM lacks "authority to require mitigation of surface disturbances." 1-Appx-034. And even if an operator volunteers measures, the PIM circumscribes BLM's capacity to enforce them. 1-Appx-038.

Center's injuries by causing BLM officials to withhold safeguards against harmful wildlife, scenic, noise, or pollution impacts.

3. Redressability

Again, redressability and causation are in some senses "flip sides of the same coin." *Diamond Alt. Energy*, 606 U.S. at 111. Here, as the amended petition detailed, the Center's requested relief of vacating PIM 2018-014 would eliminate BLM's sole justification for withholding ordinary environmental mitigation requirements for fee/fee/fed wells. 1-Appx-061-62. This would provide redress because then, BLM would predictably apply previously foreclosed but otherwise routine measures to fee/fee/fed developments that abate members' harms. Such measures reduce wildlife disruption, truck traffic, equipment noise, flaring and off-gassing, toxic leaks, and other impacts. *See* 1-Appx-061; *see also* 1-Appx-160-61 (detailing otherwise-applied measures the PIM forecloses); 1-Appx-248-60 (further examples of conditions BLM imposes on non-fee/fee/fed wells). The Center thus plausibly alleged that if PIM 2018-014 were vacated, its members' injuries would likely be "reduced to some extent." *Consumer Data Indus. Ass'n*, 678 F.3d at 903.

Moreover, regardless of the likely scope or details of mitigation BLM may implement on remand, redress also would occur through the reconsideration of a harmful agency action that was infected with legal error. *See FEC v. Akins*, 524 U.S. 11, 25 (1998) (confirming that redressability in a case asserting an agency "misinterpreted the law" does not require the plaintiff to establish that the agency will reach a different result on remand). Disabusing BLM of its misapprehension of its authority is itself redress, in addition to the redress from the stronger environmental protections that would subsequently result.

II. THE CENTER STATED PLAUSIBLE CLAIMS FOR RELIEF.

The district court also erred in dismissing the Center's APA claims for failure to state a claim, under Federal Rule of Civil Procedure 12(b)(6). Add-26-34. The APA instructs a reviewing court to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action "may not stand if the agency has misconceived the law." *Chenery*, 318 U.S. at 94.

The agency actions here rested on BLM's view that it lacks jurisdiction over the surface operations for fee/fee/fed wells except to ensure "production accountability for royalties." 1-Appx-026. This appeal thus turns on a purely legal question: does BLM have any more authority than the PIM asserts? The answer is yes. The plain text of FLPMA, the MLA, and BLM's own lease contracts give BLM far broader authority to condition permits to drill fee/fee/fed wells on surface operation requirements, such as for environmental protection. Accordingly, the Center stated plausible claims for relief under the APA, and this Court should reverse the district court's contrary finding.

A. PIM 2018-014 Is Contrary to FLPMA.

1. BLM Misapprehended Its FLPMA Authority to "Regulate … the Development" of Federal Minerals.

FLPMA directs BLM to "regulate … the use, occupancy and development of the public lands." 43 U.S.C. § 1732(b). It defines "public lands" to encompass "any land and *interest in land* owned by the United States" and administered by BLM. *Id.* § 1702(e) (emphasis added). Mineral resources are an "interest in land." 43 C.F.R. § 3160.0-5. Accordingly, FLPMA authorizes BLM to "regulate" the "development" of federal minerals. 43 U.S.C. § 1732(b). BLM "shall" do so consistent with "multiple use" principles, *id.* § 1732(a), which include the protection of environmental values, *id.* § 1701(a)(8). Although fee/fee/fed surface operations are located on non-federal surface, they nonetheless "develop[]" federal mineral resources under any sense of that word as they extract federal oil and gas for commercial use. *See United States v. Osage Wind, LLC*, 871 F.3d 1078, 1090 (10th Cir. 2017) (explaining the well-settled notion that "mineral development" includes operations associated with removing minerals for commercial use).

Consequently, because the surface operations for fee/fee/fed wells "develop[]" federal minerals, FLPMA authorizes BLM to "regulate" those surface operations consistent with FLPMA's multiple-use principles, such as through operational restrictions to protect the environment attached as permit conditions. 43 U.S.C. §§ 1732(a)-(b), 1701(a)(8). BLM has yet to articulate a cogent theory as to why FLPMA should be read otherwise. *See* 2-Appx-428-29.

This statutory power is not contingent on BLM's surface ownership. Consider, for example, an APD seeking to drill federal oil and gas from private land near a raptor nest. The applicant could conceivably construct the well pad with only the surface owner's approval. However, it could not proceed to drill or extract federal minerals from that pad without a BLM permit. To protect nesting raptors, BLM could simply deny the permit or attach a condition requiring drilling to await chicks fledging from the nest. Knowledge of those BLM terms might also prompt the operator to voluntarily relocate its pad away from the nest. Both restrictions fall comfortably within BLM's authority under 43 U.S.C. § 1732(b), as they merely dictate how federal minerals may be used or developed. This example illustrates BLM's error in suggesting its lack of surface ownership forecloses surface-operation conditions pursuant to its broad FLPMA authority to "regulate … [the] development" of federal minerals. 43 U.S.C. § 1732(b).

2. BLM Misapprehended Its FLPMA Authority to "Prevent Unnecessary or Undue Degradation" to Public Lands.

FLPMA further authorizes BLM to "take any action necessary to prevent unnecessary or undue degradation of the [public] lands." 43 U.S.C. § 1732(b). The impacts of fee/fee/fed oil and gas development—pollution, noise, visual, or wildlife—often extend miles beyond the well pad. 1-Appx-056-61. Checkerboard ownership patterns and physical limits to horizontal wellbore lengths mean BLM-managed public lands are frequently in range of those impacts. *See, e.g.*, 2-Appx-418.

If a fee/fee/fed well will cause "unnecessary" or "undue" degradation to nearby BLM-managed public lands, FLPMA requires BLM to take action to prevent it. 43 U.S.C. § 1732(b). One obvious action BLM may take to prevent that degradation is to condition its approval of the APD on mitigation or modifications designed to reduce offsite harms. Accordingly, this FLPMA provision also gives BLM authority over fee/fee/fed surface operations beyond "assuring production accountability." Specifically, BLM can attach permit conditions needed to ensure fee/fee/fed well surface operations cause no "unnecessary or undue degradation" to nearby public lands. *Id.*

The possibility of impacts rising to this threshold is not remote. BLM has adopted varying definitions of "unnecessary" and "undue" degradation over the years, but most embody the commonsense idea that if harm can be avoided using industry-standard mitigation, it is "unnecessary." *See, e.g.*, 43 C.F.R. § 6101.4 (withdrawn by 91 Fed. Reg. 25,787 (May 12, 2026)) (defining as "harm to land resources or values that is not needed to accomplish a use's stated goals"); *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 76 (D.C. Cir. 2011) (defining as "something more than the usual effects anticipated from appropriately mitigated [oil and gas] development.") (citation omitted). Insofar as fee/fee/fed wells lack standard mitigation measures BLM requires when permitting all other federal wells, including split-estate wells, the resulting degradation is presumably "unnecessary."

Thus, BLM's assertion that it lacks jurisdiction over fee/fee/fed surface operations except for "production accountability" is also inconsistent with its FLPMA authority to "take any action necessary" to ensure such operations cause no "unnecessary or undue degradation" to nearby public lands. 43 U.S.C. § 1732(b).

3. The District Court Misconstrued Both the Center's Claims and FLPMA.

The district court rejected the Center's FLPMA arguments only after misconstruing the legal issue and plain statutory text.

First, the district court mistook the Center's petition as asking the Court to find that BLM has "plenary regulatory authority over non-federal lands." Add-29. That fundamentally misstates the issue. The question is whether BLM has authority to condition the right to extract federal minerals—property of the United States—on a permittee's agreement to comply with accompanying operational standards. That is an exercise of proprietary authority over the minerals, no more. *See*

Light, 220 U.S. at 536. The owner of the property where those operations would occur faces no direct BLM regulation, and it retains a genuine choice whether to accept the conditions in exchange for the permit.

Second, the district court appeared to confuse the two FLPMA directives in 43 U.S.C. § 1732(b) discussed above: regulation of use, occupancy, and development of public land interests and prevention of unnecessary or undue degradation. Add-31. The district court read the latter provision as some kind of *constraint* on the former, suggesting that BLM's authority to "regulate" federal oil and gas development is limited to actions necessary to avoid unnecessary or undue degradation. *Id.* Taking this misstep further, the district court concluded that BLM may only avoid "degradation" to the same resource being directly regulated—here, minerals. *Id.* Based on those two mistaken premises, the district court rejected the Center's FLPMA argument because "BLM has taken appropriate actions to make sure the minerals are not unduly degraded." *Id.*

No party advocated for this muddled interpretation, which cannot be reconciled with FLPMA's plain text. The "regulate … the use, occupancy, and development" provision and the "unnecessary or undue degradation" provision are distinct mandates separated by several sentences. 43 U.S.C. § 1732(b). Nothing in the text supports the district court's conclusion that the latter provision is an exclusive limit on BLM's regulatory authority in the former. If Congress meant that BLM could *only* act to avoid unnecessary or undue degradation, it would have used the words "shall only." It did not. Courts "ordinarily resist reading words or elements into a statute that do not appear on its face." *Bates v. United States*, 522 U.S. 23, 29 (1997).

The district court's reading fails on the text alone, but it is also counter to the statute's purpose, binding case law, and decades of settled understanding. FLPMA's multiple-use mandate was intended to give the Secretary of Interior "considerable administrative flexibility" to ensure their various resources are preserved. *Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1305 (10th Cir. 1999), *aff'd,* 529 U.S. 728 (2000). Yet the district court's interpretation would instead straightjacket the agency by prohibiting BLM from regulating *any* public land uses—not just fee/fee/fed wells—except to prevent excessive levels of degradation.

But that is wrong. The Department of Interior has long acknowledged that its regulatory power under FLPMA "is not limited to" preventing unnecessary or undue degradation. *See Min. Pol'y Ctr. v. Norton*, 292 F. Supp. 2d 30, 47 (D.D.C. 2003). This Court and others agree that the unnecessary-or-undue-degradation mandate is a distinct directive and grant of authority. *See, e.g.*, *Utah Shared Access All. v. Carpenter*, 463 F.3d 1125, 1129 (10th Cir. 2006) (noting that this "statutory requirement" only "[f]urther underscore[s] the BLM's duty to protect the environment"); *Nat. Res. Def. Council v. McCarthy*, 993 F.3d 1243, 1246-47 (10th Cir. 2021) ("FLPMA *also* requires the BLM to 'take any action necessary to prevent unnecessary or undue degradation of the lands'") (emphasis added); *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 76 (explaining that this unnecessary-or-undue-degradation obligation is "distinct" from others); *cf. Sierra Club v. Hodel*, 848 F.2d 1068, 1078 (10th Cir. 1988), *overruled on other grounds by Vill. of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992) (holding that identical language in 43 U.S.C. § 1782(c) grants "expansive powers").

Neither was the district court correct that the unnecessary-or-undue-degradation mandate is limited to harm to the same tract or resource being regulated. *See* Add-31. No party advocated for that reading, which is again irreconcilable with both text and purpose. The duty applies broadly to *any* "degradation of the lands," 43 U.S.C. § 1732(b), and does not contain the limitation the district court implied. Both the agency and courts thus sensibly read FLPMA's unnecessary-or-undue-degradation mandate as requiring consideration of harm to "other resources and land uses, including those … outside the area of operations." *Island Mountain Protectors*, 144 IBLA 168, 1998 WL 344223, *28 (May 29, 1998) (decision of the Interior Board of Land Appeals); *Nat. Res. Def. Council*, 993 F.3d at 1247 (degradation to scenic quality, wildlife from off-road vehicle use); *Theodore Roosevelt Conservation P'ship*, 661 F.3d at 76 (degradation to "natural environment" from oil and gas development); *Hodel*, 848 F.2d at 1085 (effects of road improvements on adjacent wilderness).

The district court's interpretation is also irreconcilable with FLPMA's overarching multiple-use mandate, which calls for "harmonious and coordinated management of the various" public lands and their resources. 43 U.S.C. §§ 1732(a), 1702(c). That duty would be hollow if each public land use or tract were only ever weighed against itself, their interactions ignored by BLM. Fortunately, the Center's plain-text interpretation leads to no such absurd results.

B. PIM 2018-014 Is Contrary to the MLA.

1. BLM Misapprehended Its MLA Authority to "Regulate All Surface Disturbing Activities" and Ensure "Conservation of Surface Resources."

The MLA 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). The statutory text, context, and purpose indicate that both powers extend to fee/fee/fed surface operations.

The text should be dispositive. As for the first clause, the key dispute is whether surface operations for a fee/fee/fed well are conducted "pursuant to" the lease. BLM's position is that subsection 226(g) excludes fee/fee/fed surface operations because "pursuant to" the lease actually means "on [the surface of]" the lease. 1-Appx-098. This contravenes the statute's plain text and basic interpretive canons.

First, words in a statute should be given their "ordinary meaning." *Wis. Central Ltd. v. United States*, 585 U.S. 274, 277 (2018). The ordinary definitions of "pursuant to" are "in accordance with," "[i]n carrying out," "in compliance with," and "[a]s authorized by." Pursuant To, Black's Law Dictionary (12th ed. 2024). Lay dictionaries define the term similarly.[8] In the context of a contract, as is the case here, the most natural meaning is to indicate an action being carried out in accordance with the provisions of the contract.

Fee/fee/fed surface operations are conducted "pursuant to" the lease under any definition. They must be done "[i]n compliance with" and "in accordance with" the lease, which sets detailed requirements for lease development. 1-Appx-021-24; *see also Boesche*, 373 U.S. at 477-78 (explaining that federal oil and gas leases are issued subject to "exacting restrictions and continuing supervision by the Secretary"). These lease requirements extend to the leaseholder's "[c]onduct of operations," which must "minimize[] adverse impacts to the land, air, and water." 1-Appx-023 (BLM Form 3100-11 § 6). This clause is not limited to operations on

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[8] *See, e.g.*, Merriam-Webster's Collegiate Dictionary 950 (11th ed. 2020) ("in carrying out"; "in conformity with"; "according to"); The American Heritage Dictionary of the English Language 1431 (4th ed. 2000) ("In accordance with"); Webster's New World College Dictionary 1182 (5th Ed. 2020) ("following upon"; "in accordance with"); Oxford English Dictionary (7th Ed. 2012) ("in accordance with").

the "leased lands" or "leased premises," unlike other provisions of the lease. 1-Appx-023 (*Id.* §§ 4-6).

For similar reasons, the surface operations also "carry[] out" the lease, as they constitute performance of the lessee's contractual obligation to "exercise reasonable diligence in developing ... leased resources." 1-Appx-023 (*Id.* § 4). The surface operations for a fee/fee/fed well are also "authorized" by the lease, because they depend on the lease for authority to "drill for, mine, extract, remove, and dispose of" federal oil and gas. 1-Appx-021 (*Id.* at 1).

Second, the material-variation canon of construction also refutes BLM's claim that "pursuant to the lease" means "on the lease." 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.").

The second clause of 30 U.S.C. § 226(g) separately empowers BLM to "determine reclamation and other actions as required in the interest of conservation of surface resources." BLM does not say why this would not authorize the agency to subject off-lease operations to requirements to protect surface resources. Perhaps BLM believes the power is impliedly limited to the lease bounds, but again, the fact that Congress expressly limited other clauses to the lease site means that absent limitation should not be inferred here. *See Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (absent provisions should not be inferred where "Congress has shown that it knows how to adopt the omitted language").

Whether Congress spoke directly to this fee/fee/fed scenario or anticipated well pads being placed off the lease surface is "irrelevant." *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998). "[T]hat a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity … [but] breadth." *Id.* (cleaned up). And "Congress's failure to speak directly to a specific case that falls within a more general statutory rule" does not "create[] a tacit exception" to that rule. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 669 (2020).

Statutory context and purpose further support the Center's plain-text interpretation. Congress undeniably granted BLM the greater power to suspend development of the leased minerals altogether to protect the environment. *See* 30 U.S.C. § 209; 30 C.F.R. § 3103.42(a). If BLM has the greater power to deny development to protect the environment, it would be strange if BLM did not also have the lesser power to merely condition development to achieve the same end. *Cf. United States v. Midwest Oil Co.*, 236 U.S. 459, 476 (1915) ("the greater [power] includes the less").

The government's interpretation would also undermine Congress's clear desire that federal oil and gas be developed responsibly, without undue social and environmental costs. Congress's concern expressly extended to damage reaching beyond "the lease tract" to encompass "any lands or surface waters adversely affected." 30 U.S.C. § 226(g). BLM's interpretation flies in the face of Congress's intent by opening a gaping loophole in BLM's authority to require responsible development operations and "safeguard the public welfare." 30 U.S.C. § 187.

BLM's interpretation also contradicts the settled understanding of its own Interior Board of Land Appeals (IBLA) that BLM can impose permit conditions reaching federal mineral development activities on non-federal land. *See Cominco American Inc.*, 26 IBLA 329, 1976 WL 14332, *5-7 (1976) (affirming restrictions on mine yard and hauling road operations on private lands); *Grindstone Butte Project*, 24 IBLA 49, 1976

WL 14168, *2 n.3, 5-6 (1976) (affirming reclamation requirement for private lands disturbed in connection with federal project).

The specific commands in 30 U.S.C. § 226(g) are reinforced by BLM's more sweeping authority "to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Chapter[.]" 30 U.S.C. § 189. That is "a broad grant of authority." *Arch Min. Corp. v. Lujan*, 911 F.2d 408, 415 (10th Cir. 1990). Balancing resource extraction with environmental stewardship is one of the MLA's manifest purposes, and BLM has authority "to do any and all things necessary to carry out" that purpose. 30 U.S.C. § 189. Conditioning fee/fee/fed drilling permits to reduce their environmental damage fits comfortably within this power.

Finally, if there were any doubt about the scope of these MLA provisions, this Court should heed its own instruction that they "should be broadly construed in order for the Secretary to properly carry out his proprietary function" over federal minerals. *Hannifin*, 444 F.2d at 202.

2. The District Court Misconstrued the MLA and What Authorizes Fee/Fee/Fed Well Drilling.

The district court's substantive engagement with the MLA was both meager and incorrect. It found that "pursuant to" a lease is best read as "permitted by" the lease. *See* Add-30; *but see supra* § I.B.1 (discussing other possible definitions). Under that definition, the district court reasoned that fee/fee/fed surface operations are not "pursuant to" the lease because "drillers can begin surface-disturbing activities without BLM approval." Add-30-31. That premise only goes so far: once a driller proceeds to surface-disturbing activities that implicate federal minerals—such as drilling into or extracting them—a valid federal lease and permit are required. *See* 43 C.F.R. § 3171.17(b). The lease is what authorizes the operator to engage in any operations that drill, extract, and otherwise handle federal minerals. *See* 1-Appx-021. These activities requiring BLM authorization through a valid mineral lease entail surface disturbance, such as drilling, heavy vehicle operations, equipment use, and other actions that alter vegetation, soil, or terrain—and thus are subject to BLM regulation under 30 U.S.C. § 226(g).

In short, even if "pursuant to" the lease were best read as "permitted by" the lease, the PIM's legal position is still contrary to the MLA. The district court erred in its concise misreading otherwise.

C. The PIM Is Contrary to BLM's Lease Terms.

In addition to its statutory authority, BLM has contractual rights under its standard oil and gas lease to dictate the manner in which leased federal minerals are developed.

The MLA gives the Secretary broad discretion to attach conditions to a mineral lease "as he may deem necessary … for the protection of the interests of the United States … and for the safeguarding of the public welfare." 30 U.S.C. § 187. Pursuant to this authority, BLM's standard lease form contains a section entitled "Conduct of operations." 1-Appx-023. It requires the leaseholder to "take reasonable measures deemed necessary by lessor" to "minimize[] adverse impacts to the land, air, and water, to cultural, biological, visual, and other resources, and to other land uses or users," including "modification to siting or design of facilities." *Id.*

These terms are not limited to the lease surface. Whereas other lease clauses are limited to the "leased lands" and "leased premises," these operational and reclamation requirements omit that limitation. *Id.* That omission must be presumed intentional. *See* Scalia & Garner, *supra*, at 170 ("a material variation in terms suggests a variation in meaning.").

Further, the lease contracts "give controlling effect not merely to extant Department of Interior regulations but also to ones 'hereafter promulgated.'" *Indep. Petroleum Ass'n of Am. v. DeWitt*, 279 F.3d 1036, 1037 (D.C. Cir. 2002); *see also* 1-Appx-021. BLM regulations require operators to "conduct operations to minimize adverse effects to surface and subsurface resources," 43 C.F.R. § 3171.17(a), and allow BLM to attach Conditions of Approval to an approved APD to "ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights," *id.* § 3171.13(a)(2). Unlike other provisions in part 3170, these requirements are not limited to operations on the lease, *supra* p. 20 n.5, so that absent limitation should not be inferred.

The leaseholders freely agree to be bound by these terms, which are consistent with BLM's authority under the MLA to establish lease stipulations for safeguarding the public welfare. 30 U.S.C. § 187. Accordingly, quite apart from the statutory provisions noted above, the PIM misapprehended the scope of BLM's contractual authority to impose conditions on fee/fee/fed surface operations for reasons well beyond "production accountability."

D. Longstanding Supreme Court Precedent Reinforces these Property Clause Delegations.

The Court need not go beyond the text, structure, and purpose of FLPMA, the MLA, and lease contracts to resolve this appeal. However, should the Court find ambiguity, longstanding Supreme Court precedent instructs that it should be resolved to affirm BLM's power.

Congress has through a series of general statutes delegated the Secretary of Interior its "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 (1963). These include 43 U.S.C. § 2, which charges the Secretary with "perform[ing] all executive duties … in anywise respecting such public lands," and 43 U.S.C. § 1457, which charges the Secretary with "supervision of public business relating to … [p]ublic lands, including mines."

Given the breadth of these statutes, the Supreme Court has established a general principle: even if another statute "does not in itself confer" a particular authority concerning public land interests to the

Secretary, "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 Corp. of the Catholic Bishop of Nesqually v. Gibbon*, 158 U.S. 155, 167 (1895); *Cosmos Expl. Co. v. Gray Eagle Oil Co.*, 190 U.S. 301, 309 (1903). This is consistent with the interpretive canon that statutes written in broad language should be given broad application. *See* Scalia & Garner, *supra*, at 101 ("the presumed point of using general terms is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions."). However, these cases also draw on Congress's unique power as a proprietor and Congress's need to give the Secretary latitude in responding to "matters not foreseen" that occur "in the administration of such large and varied" public land interests. *Knight v. United Land Ass'n*, 142 U.S. 161, 181 (1891); *United States v. Midwest Oil Co.*, 236 U.S. 459, 474 (1915).

Courts regularly rely on this line of Supreme Court precedent to reaffirm the Department of Interior's authority over public land matters not explicitly described in more specific statutes. *See, e.g.*, *Midwest Oil*, 236 U.S. at 474; *Hannifin*, 444 F.2d at 202; *United States v. Ohio Oil Co.*, 163 F.2d 633, 639-40 (10th Cir. 1947); *Silver State Land, LLC v. Schneider*, 843 F.3d 982, 989-90 (D.C. Cir. 2016).

These cases reinforce that BLM has the disputed power here. It is beyond question that Congress itself could condition the right to use federal minerals on requirements for associated surface operations, wherever they may occur. *See Light*, 220 U.S. at 536; *San Francisco*, 310 U.S. at 29-30. The plenary power entrusted to the Department of Interior thus encompasses that same authority, unless "taken away by some affirmative provision of law." *Cosmos*, 190 U.S. at 309. There is no such affirmative prohibition. To the contrary, the MLA and FLPMA clearly reaffirm BLM's power. *See supra* § II.A-B; *see also Silver State Land, LLC*, 843 F.3d at 992 (holding that FLPMA "does not limit the Secretary's plenary power"); *Boesche*, 373 U.S. at 481 (explaining that the MLA sought to "expand, not contract, the Secretary's control").

The district court improperly flipped this presumption on its head, holding that the Center must overcome a heightened clear-statement burden of "clear congressional authorization." Add-32-34. This is so, the district court reasoned, because attaching surface operation conditions to a fee/fee/fed drilling permit would reflect a transformative "expansion of power" and "encroach on traditional state territory[.]" Add-33. The MLA and FLPMA are sufficiently clear to overcome any such clear statement canon, *supra* § II.A-B, but in any case, neither triggering condition is present.

First, the disputed power is neither "unheralded" nor "transformative." *West Virginia v. EPA*, 597 U.S. 697, 724 (2022). BLM has pervasively regulated federal mineral development, including on private and state lands, for decades. The disputed power would give BLM no greater authority over fee/fee/fed permits than it already enjoys for split-estate wells, a closely-analogous scenario. *See* 72 Fed. Reg. at 10,308 (explaining that BLM regulates split-estate wells in "essentially the same manner" as wells on federal surface). Similarly, the relevant MLA and FLPMA provisions are far from mouseholes. These are primary directives of these statutes, written in expensive terms. *See Bradford v. U.S. Dep't of Lab.*, 101 F.4th 707, 726 (10th Cir. 2024) (similarly "expansive language" was no "mousehole").

Second, management of federal minerals has never been a traditional province of states. The Property Clause places that responsibility squarely with Congress, which has pervasively regulated federal oil and gas development for over a century under laws including the MLA. Intruding no further on state regulators than longstanding federal regulation of split-estate and federal-surface wells, the disputed power would simply ensure the same mix of federal and state rules applies to *all* federal drilling. Federalism-based canons are simply not triggered here due to this "history of significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000).

The district court grounded its argument in inapposite cases: *Virginia Uranium, Inc. v. Warren*, 848 F.3d 590 (4th Cir. 2017) and *Utah Native Plant Society v. U.S. Forest Service*, 923 F.3d 860 (10th Cir. 2019). Both described the presumption against preemption, which has no place here. *See New York v. FERC*, 535 U.S. 1, 17-18 (2002) (explaining that the presumption does not apply when merely "defining the proper scope of the federal power"). Both cases are also readily distinguishable. *Utah Native Plant* was a preemption dispute about whether the U.S. Forest Service could prohibit Utah officials 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. Similarly, *Virginia Uranium* involved a preemption dispute about whether an Atomic Energy Act provision authorizing federal regulation of uranium mining "on federal lands" preempted state power over all uranium mining, including of private deposits. 848 F.3d 590 at 596. This case involves no such preemption dispute or attempted intrusion into purely state or private affairs.

Finally, any clear-statement canons have doubtful applicability to exercises of federal authority over federal mineral property. The government "has a much freer hand" in exercising proprietary authority than when exercising traditional regulatory authority. *Bradford*, 101 F.4th at 726 (quotation omitted); *cf. United States v. Pheasant*, 129 F.4th 576, 582 (9th Cir. 2025) (finding that the nature of Property Clause authority favors greater "deference to Congress's choice about the degree of responsibility to assign" the Executive Branch).

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the district court and remand for further proceedings.

DATED: August 14, 2026

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REQUEST FOR ORAL ARGUMENT

Appellant believes that oral argument would be of assistance to this Court and respectfully requests oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,927 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word for Mac in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ Sarah Stellberg
Sarah Stellberg

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that (1) all required privacy redactions have been made; (2) any paper copies of this document submitted to the Court are exact copies of the version filed electronically; and (3) the electronic submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Bitdefender Antivirus (version 10.3.3.10), and according to the program are free of viruses.

/s/ Sarah Stellberg
Sarah Stellberg

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Sarah Stellberg
Sarah Stellberg

ADDENDUM:

PERTINENT STATUTES AND REGULATIONS

TABLE OF CONTENTS

U.S. Const. Art. IV § 3, cl. 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

30 U.S.C. § 187

Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired

No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

30 U.S.C. § 189

Rules and regulations; boundary lines; State rights unaffected; taxation

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

30 U.S.C. § 226

Leasing of oil and gas parcels

* * *

(g) Regulation of surface-disturbing activities; approval of plan of operations; bond or surety; failure to comply with reclamation requirements as barring lease; opportunity to comply with requirements.

The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, 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. No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, 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 after the abandonment or cessation of oil and gas operations on the lease. * * *

* * *

43 U.S.C. § 1702

Definitions

* * *

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

* * *

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and
(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

* * *

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

* * *

43 U.S.C. § 1732

Management of use, occupancy, and development of public lands

(a) Multiple use and sustained yield requirements applicable; exception

The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) Easements, permits, etc., for utilization through habitation, cultivation, and development of small trade or manufacturing concerns; applicable statutory requirements

In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 1767 of this title, withdrawals under section 1714 of this title, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 1737(b) of this title: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 1744, section 1782, and subsection (f) of section 1781 of this title and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

* * *

43 U.S.C. § 1740

Rules and regulations

The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of Title 5, without regard to section 553(a)(2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical.

43 C.F.R. § 3171.13

Approval of APDs.

(a) The BLM has the lead responsibility for completing the environmental review process, except in the case of NFS lands.

(1) The BLM cannot approve an APD or Master Development Plan until the requirements of certain other laws and regulations including NEPA, the National Historic Preservation Act, and the Endangered Species Act have been met. The BLM must document that the needed reviews have been adequately conducted. In some cases, operators conduct these reviews, but the BLM remains responsible for their scope and content and makes its own evaluation of the environmental issues, as required by 40 CFR 1506.5(b).

(2) The approved APD will contain Conditions of Approval that reflect necessary mitigation measures. In accordance with 43 CFR 3101.1–2 and 36 CFR 228.107, the BLM or the FS may require reasonable mitigation measures to ensure that the proposed operations minimize adverse impacts to other resources, uses, and users, consistent with granted lease rights. The BLM will incorporate any mitigation requirements, including Best Management Practices, identified through the APD review and appropriate NEPA and related analyses, as Conditions of Approval to the APD.

* * *

43 C.F.R. § 3171.17

General operating requirements—operator responsibilities.

(a) In the APD package, the operator must describe or show, as set forth in this subpart, the procedures, equipment, and materials to be used in the proposed operations. The operator must conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform with currently available technology and practice. While appropriate compliance with certain statutes, such as NEPA, the National Historic Preservation Act, and the Endangered Species Act, are Federal responsibilities, the operator may choose to conduct inventories and provide documentation to assist the BLM or the surface managing agency to meet the requirements of this paragraph (a). The inventories and other work may require entering the lease and adjacent lands before approval of the APD. As in staking and surveying, the operator should make a good faith effort to contact the surface managing agency or surface owner before entry upon the lands for these purposes.

(b) The operator cannot commence either drilling operations or preliminary construction activities before the BLM's approval of the APD. A copy of the approved APD and any Conditions of Approval must be available for review at the drill site. Operators are responsible for their contractor and subcontractor's compliance with the requirements of the approved APD and/or Surface Use Plan of Operations. Drilling without approval or causing surface disturbance without approval is a violation of 43 CFR 3162.3–1(c) and is subject to a monetary assessment under 43 CFR 3163.1(b)(2).

* * *

ADDENDUM:

DISTRICT COURT ORDER AND JUDGMENT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel D. Domenico**

Civil Action No. 1:24-cv-01608-DDD-NRN

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.

ORDER GRANTING MOTION TO DISMISS

This case is about twenty-six permits to drill for federally owned oil and gas in Northeast Colorado. Bureau of Land Management claims that it lacks authority to require mitigation of certain environmental impacts from these wells because they are not on federal land. The Center for Biological Diversity sued, arguing that BLM *must* regulate these wells. The stark difference in the parties' conclusions stems from the unique Fee/Fee/Fed well ownership structure.

A Fee/Fee/Fed well is one where a non-federal entity owns the surface estate and the minerals directly beneath the surface, but through directional drilling, the well accesses federal minerals. This unique ownership structure changes BLM's regulatory relationship with the well. In the fee simple scenario, where the government owns both the surface and the mineral rights, BLM exercises its full regulatory authority. In the split estate scenario, where the government owns the minerals below the well site but not the surface, BLM has limited, but still some, regulatory authority to regulate the surface effects. *See* Doc. 9 at 3 n.3. But parties disagree on BLM's authority when its relationship with the surface becomes even more attenuated.

In 2018, BLM issued Permanent Instruction Memorandum 2018-014, bureaucratically titled "Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations."[1] The Memorandum provides the policies and procedures for approving APDs for Fee/Fee/Fed wells. It lays out what BLM is required to do: comply with the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA), and consider the cumulative effects of construction and operation of the well.[2] It also lays out what BLM cannot do: require a surface use plan, a surface bond, or mitigation of surface disturbances. *See generally* Memorandum 2018-014.

Consistent with this guidance, BLM approved twenty-six APDs for three different well pads with names of varying creativity: Boomhog,

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[1] Bureau of Land Management, Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations (Jun. 12, 2018), https://www.blm.gov/policy/pim-2018-014 [hereinafter Memorandum 2018-014].

[2] This paragraph compels the court to apologize for the use of so many acronyms; it is an aspect of these sorts of cases that may be unavoidable but is still lamentable.

Speed Goat, and Dittmer.[3] These sites are all in northeastern Colorado, near, but not on, the Pawnee National Grassland.

Petitioner sued, alleging that Memorandum 2018-14 is based on a misinterpretation of law, and so violates the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). And because the related APD approvals relied on the Memorandum, they too violate the APA. Doc. 1. Defendants previously moved to dismiss the petition for lack of standing, and Bison Oil & Gas IV and Verdad Resources moved to intervene in the matter. I granted both motions. *See* Doc. 23.

Petitioner filed its First Amended Petition for Review, again alleging that the Memorandum and APDs violate the APA. Doc. 24. The government and intervenors each moved to dismiss the petition. The government argues that Petitioner still lacks standing and fails to state a claim. Doc. 27. Intervenors argue that Petitioner lacks standing, that Memorandum 2018-014 is not a final agency action, and that Petitioner's APD claim is moot. Doc. 28.

DISCUSSION

I. Standing

"Article III of the Constitution confines the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024). To keep the Court in its constitutional lane, the Plaintiff must show standing. Without standing, the Court lacks subject matter jurisdiction, and the case must be dismissed according to Federal Rule of Civil Procedure 12(b)(1). *See Colorado Env't Coal. v. Wenker*, 353 F.3d 1221, 1227 (10th Cir. 2004). That means a

[3] Boomhog, Speed Goat, and Dittmer are the names of the well pad sites. Multiple wells can be drilled from one well pad, but each well accessing federal minerals needs its own APD. As a result, twenty-six APDs require only three well pads.

"plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 338 (2016). The "plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.*

"Where, as here, a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element." *Id.* (citation modified).

Petitioner has shown the first prong. The Center plausibly pleaded harm to their members through reduced use and enjoyment of the Pawnee National Grassland. Doc. 24 at ¶¶ 29, 63; *see also* Doc. 23 at 9.[4] The law is clear that "[a]s a general rule . . . environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1155 (10th Cir. 2013) (quotations omitted).

As with the previous motion to dismiss, the closer question is whether the Center has adequately pleaded traceability and redressability.

The second factor, whether the injury is fairly traceable to the defendant's challenged action, turns on whether the plaintiff has shown a "substantial likelihood that the defendant's conduct caused the plaintiff's injury in fact." *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005). A plaintiff "bear[s] the burden of pleading and proving

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[4] Intervenors seem to argue that the Center has not shown an injury in fact because it failed to meet the Tenth Circuit's test for injury in NEPA cases. *See* Doc. 28 at 9 (citing *Rocky Mountain Peace & Justice Ctr. v. U.S. Fish & Wildlife Serv.*, 40 F.4th 1133, 1153 (10th Cir. 2022)). But as the Intervenors recognize, the Center does not raise NEPA claims, so this test is inapplicable here.

concrete facts showing that the defendant's actual action has caused the substantial risk of harm." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013). In environmental cases, a plaintiff often must show "either its geographic nexus to, or actual use of the site where the agency will take or has taken action such that it may be expected to suffer the environmental consequences of the challenged action." *Dine Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 841 (10th Cir. 2019) (citation modified).

In its initial petition for review, the Center alleged only that its members used "areas in proximity to the drilling sites of the Colorado APD decisions." Doc. 1 at ¶ 24. I found that this conclusory statement was insufficient. Doc. 23 at 10. The Pawnee National Grassland is not one solid block, but a "300-square-mile landscape of interspersed federal public and private lands," and the federal portion of the patchwork includes "193,060 acres of public lands spread out across two administrative units." Doc. 24 at ¶ 124. But in its amended petition, Petitioner has included additional factual allegations and in response to the motions to dismiss, has included declarations from its members that explain exactly what portion of the grassland they use to show nexus.

For the Speed Goat site, Petitioners alleged that their members frequent two sections of the grassland within a quarter mile of the site. Doc. 24 at ¶ 65. Center members stated that the Speed Goat project would negatively impact views, bird watching, wildlife habitat, and the roadways used to travel there. *See* Doc. 31-1 at ¶ 51; Doc. 31-4 at ¶¶ 32, 34–35. One member stated that the sections are only a square mile each, so the project affects the entirety of both sections. Doc. 31-4 at ¶ 33.

Similarly, the Boomhog site sits within a half mile of two units that Center members use. Doc. 24 at ¶ 64. Members further state that Boomhog development will affect wildlife and bird viewing in the area, including burrowing owls, nighthawks, deer and pronghorn. Doc. 31-4 at ¶ 28. They further claim that Boomhog will affect much of these units because they are each only four or five miles across at their widest. Doc. 31-4 at ¶ 26.

Petitioner has shown that its members have used and intend to use again "the area affected by the challenged activity." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). Petitioners also confirm that their members intend to continue using these locations. Doc. 24 at ¶¶ 19–20. It has shown both "geographic nexus to the affected areas," *Dine Citizens*, 923 F.3d at 841, and "plan to make use of the specific sites," *Summers*, 555 U.S. at 499.

Petitioner's additional facts clarify what specific parts of the Grassland its members use and what harms they face, but still it "bear[s] the burden of pleading and proving concrete facts showing that *the defendant's actual action* has caused the substantial risk of harm." *Clapper*, 568 U.S. at 414 n.5 (emphasis added). This question reveals a disconnect—the harms come from drilling, but the actual action Petitioner challenges is the approving the APDs. But do the APDs actually cause the drilling? I am not so sure.

For the typical fee simple well, the answer is easily yes. There, a producer cannot drill on federal land without an APD. Petitioner argues that, here too, "vacating the APDs would prohibit their operations entirely, providing complete redress." Doc. 32 at 4. But this is not so for Fee/Fee/Fed wells, which "pass through and are capable of producing minerals from multiple non-federal mineral estates." Doc. 27 at 11. An APD is necessary for access to the federal minerals in this scenario, but not for all drilling. BLM has no control over the production of non-federal minerals from these non-federal well pads. Because the wells can produce non-federal minerals, it is unclear whether the federal permits cause the alleged harm. Put simply, I cannot trace it.

The problem is clearer when considering that "causation and redressability, are usually 'flip sides of the same coin.'" *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 606 U.S. 100, 111 (2025). The harms in this case stem from drilling—the looks, the noise, and the trucks. Petitioner has not alleged specific facts that show the APDs caused the looks, noise, and trucks. And it has not alleged any facts that allow me to conclude that if I vacated the APDs the looks, noise, and trucks would change. It is possible that these well pads rely primarily, or even exclusively, on federal APDs, and vacating the APDs would solve the members' problems. But Petitioner has not produced any evidence this is the case other than assumptions and speculation. It is also possible that the well pads would produce in largely the same way and none of the members harms would be redressed.[5]

In cases like this, where causation and redressability "hinge on the response of the regulated (or regulable) third party," it is "the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). Petitioner has not done so here.

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[5] Petitioner argues that it has shown redressability because vacating the APDs would redress the harms attributable to the federal minerals, and that it is enough that harm would be reduced "to some extent." Doc. 32 at 5 (quoting *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 902 (10th Cir. 2012)). Even if this were true, it does not solve the causation problem. The question is whether the causal link is "too speculative or too attenuated" and the link is too speculative "where it is not sufficiently predictable how third parties would react to government action." *All. for Hippocratic Med.*, 602 U.S. at 383.

Petitioner also claims standing based on the theory that the APDs contribute to air pollution injuries within the Denver/Front Range ozone nonattainment area. Doc. 32 at 4. It cites to *Utah Physicians for a Healthy Env't v. Diesel Power Gear, LLC* for the proposition that plaintiffs in a nonattainment area have standing against a "defendant that emits the injurious pollutant" in that nonattainment area." 21 F.4th 1229, 1245 (10th Cir. 2021). Unlike *Utah Physicians*, however, this is not a Clean Air Act case. *Utah Physicians* bases its analysis in no small part on what kind of suits can be brought under the Clean Air Act's citizen suit provision. *Id.* at 1244–45 ("Our view also appears to be in keeping with the view of courts in other circuits that, except in one circumstance, a person injured by air or water pollution has standing *under the CAA or the Clean Water Act*." (emphasis added)).

Because this case is not brought under the Clean Air Act, harms from air pollution are not traceable to the BLM APDs, nor is it likely that they can be redressed in this case. BLM is not the government entity primarily responsible for air pollution, so even if BLM were to redo the APDs, it could not justify altering its outcome on purely air pollution grounds. *See Wyoming v. United States Dep't of the Interior*, 493 F. Supp. 3d 1046, 1067 (D. Wyo. 2020) ("It is not a reasonable interpretation of BLM's general authority under the MLA to 'safeguard[ ] the public welfare' as empowering the agency to regulate air emissions, particularly when Congress expressly delegated such authority to the EPA under the CAA."), *opinion vacated upon repeal of regulation*, No. 20-8072, 2024 WL 3791170 (10th Cir. Aug. 13, 2024).

II. Failure to State a Claim

Even if Petitioners are right that they could trace their injuries to the APDs and could receive some relief, their claim would fail on the merits.[6]

A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) requires a court to "determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed." *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007). In doing so, the court "must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Alvarado v. KOB-TV, LLC*, 493 F.3d 1210, 1215 (10th Cir. 2007). "The burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he or she is entitled to relief." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "Mere 'labels and conclusions' and 'a formulaic recitation of the elements of a cause of action' will not suffice." *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012) (quoting *Twombly*, 550 U.S. at 555). A court will "disregard

[6] Intervenors argue that the challenge to the APDs is moot because the wells have been built, drilled, and started producing. Mootness is a high bar; the defendant must show that it is impossible for the court to provide relief. *Petrella v. Brownback*, 787 F.3d 1242, 1255 (10th Cir. 2015). "The crucial question is whether granting a present determination of the issues offered will have some effect in the real world." *Id.* (quoting *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir.2010)). As explained above, it is unclear what effect vacating the APDs would have. But now that cuts against the Intervenors. Because of that uncertainty, they have not met the high standard to show mootness.

conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable." *Id.* At this stage, the well-pleaded facts underlying a plaintiff's allegations must articulate a viable legal claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Twombly*, 550 U.S. at 555.

The APA gives courts authority to review "final agency action[s]," 5 U.S.C. § 704, and hold unlawful those that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 706(2)(A). This includes an agency action where the agency has "misconceived the law." *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 94 (1943); *see also Maez v. Mountain States Tel. & Tel., Inc.*, 54 F.3d 1488, 1505 (10th Cir. 1995) ("An administrator's action is arbitrary and capricious if it is based on a lack of substantial evidence, mistake of law, bad faith, or conflict of interest." (citation modified)).

Petitioner says that Memorandum 2018-014 disclaims BLM's authority to regulate Fee/Fee/Fed wells and this disclaimer is not in accordance with the Mineral Leasing Act, Federal Land Policy and Management Act, and Mineral Leasing Act for Acquired Lands. It further claims that because the APDs are based on Memorandum 2018-014, they too are based on a mistake of law.

In response, Intervenors argue that Memorandum 2018-104 is not a final agency action, and the government argues that it is consistent with the law.

A. Final Agency Action

An agency action is final if it both "mark[s] the consummation of the agency's decisionmaking process" and 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, 178 (1997) (internal quotations omitted).

Intervenors first argue that the Memorandum is not final because it is only BLM's legal interpretation of its procedures and is not legally binding. They argue that, because the Memorandum is a document focused on process, it is inherently "tentative and interlocutory." Doc. 28 at 8.

But I am persuaded by Petitioner's argument that the Memorandum resolves BLM's legal position as to its authority over surface activities. As the D.C. Circuit has held, an agency action can be practically binding, even if it is not legally binding. *See Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1020–21 (D.C. Cir. 2000). In *Appalachian Power Co.*, the D.C. Circuit found that an EPA guidance was binding because it was "the agency's settled position, a position it plans to follow in reviewing State-issued permits, a position it will insist State and local authorities comply with in setting the terms and conditions of permits issued to petitioners, a position EPA officials in the field are bound to apply." *Id.* at 1022.

The Memorandum here is much the same. As Intervenors recognize, instruction memoranda are "controlling on the agency" even if they do not have the force of law. Doc. 28 at 8 (citing *Lassen Motorcycle Club*, 133 IBLA 104, 108 (1995)). The Memorandum here is the agency's settled position that it follows in issuing APDs and that BLM field officials are bound by. Under *Appalachian Power Co.* and the cases that cite it, an agency document that "provides firm guidance to enforcement officials about how to handle permitting decisions" is final. *Nat'l Env't Dev. Assoc.'s Clean Air Project v. E.P.A.*, 752 F.3d 999, 1007 (D.C. Cir. 2014). The Memorandum here meets the two-prong test from *Bennett* because it is a binding change in policy and affects the rights and obligations of APD applicants.

B. Otherwise Contrary to Law

The only remaining question is whether Memorandum 2018-014 is contrary to law. The Center argues that the Memorandum disclaims BLM's authority over surface regulation and that this is contrary to the MLA and FLPMA which "not only authorize but *require* BLM to regulate Fee/Fee/Fed wells." Doc. 24 at ¶ 6. The government responds that there is no such power, let alone affirmative mandate in the statutes.

I begin with what Memorandum 2018-014 actually says. The Memorandum concludes that "BLM's regulatory jurisdiction is limited to Federal lands (including minerals)," so "BLM's jurisdiction extends to surface facilities on entirely non-Federal lands solely to the extent of assuring production accountability for royalties from Federal and Indian oil and gas (including prevention of theft, loss, waste, and assuring proper measurement)." Memorandum 2018-014.

From this conclusion, BLM claims it has no authority to regulate the non-federal surface in the ways it usually does: (1) " BLM has no jurisdiction to require an APD before an operator may begin pad and road construction or drilling on the non-Federal land," (2) "BLM does not have authority to require a bond to protect non-Federal surface owner interests," (3) "Neither the Federal Land Policy and Management Act (FLPMA) nor the MLA provide the BLM with authority to require mitigation of surface disturbances on non-Federal lands," and (4) "BLM's inspection and enforcement authority is generally limited to downhole and production accountability operations." *Id.*

The Memorandum does not wholly disclaim BLM's environmental responsibilities. BLM concluded that it must comply with NEPA, the

ESA, and the NHPA and may (1) "request that the operator submit additional information regarding surface operations when this information is necessary to analyze the proposed operations under NEPA, the ESA, and the NHPA;" (2) require a bond for downhole concerns; (3) "deny the APD if the inability to access the surface prevents the BLM from meeting its obligations under NEPA, ESA, or NHPA;" and (4) "propose measures that would mitigate significant impacts" to facilitate NEPA compliance. *Id.*

Petitioners argue that BLM has more authority than the Memorandum concludes. It argues that BLM focuses too much on its regulatory authority over non-federal land, and misses its authority over the federal minerals. Its argument is that the Property Clause, U.S. Const. Art. IV § 3, cl. 2, gives Congress plenary authority, that Congress delegated those powers to the Secretary of the Interior, and that the MLA and FLPMA confirm these powers.

In general, the Center is right that the Property Clause grants plenary powers to Congress to regulate federal property. *See* U.S. Const. art. IV, § 3, cl. 2 ("Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."); *Kleppe v. New Mexico*, 426 U.S. 529, 530 (1976) (describing Congress's Property Clause powers as "without limitations"). And federal minerals are federal property to which the clause's power attaches.

The Center next claims that Congress delegated this plenary power to BLM through the Secretary of the Interior, and then that this plenary power gives BLM the authority to require environmental mitigation for non-federal land. It cites to several cases which it claims confirms this plenary delegation. Doc. 32 at 9 (citing *Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 336-37 (1963); *Cameron v. United States*, 252 U.S.

450, 461 (1920); and *Cosmos Expl. Co. v. Gray Eagle Oil Co.*, 190 U.S. 301, 309 (1903)). But these cases all address the government's authority to make decisions about the disposal of government property. BLM may have been delegated the government's prerogatives as landowner, but it is quite a different argument that it this also gives it plenary regulatory authority over non-federal lands. Such a claim is one step too far.

When considering BLM's power as regulator, the Tenth Circuit has held that "as a mere grant of power 'to make all needful Rules and Regulations,' the Property Clause's plain language is not self-executing." *Utah Native Plant Soc'y v. United States Forest Serv.*, 923 F.3d 860, 866–67 (10th Cir. 2019). Without further legislation, the Property Clause does not "itself grant the [BLM] authority over [non-federal] lands adjacent to the [federal lands]." *Id.* at 867.

The Center claims it has such legislation: FLPMA and the MLA. It points to FLPMA's direction to "regulate . . . the use, occupancy, and development of the public lands," 43 U.S.C. § 1732(b) and that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values," § 1701(a)(8).[7] To this end, the Center argues that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." § 1732(b). Similarly, the MLA requires 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).

[7] The statutory definition of public lands includes "any land and interest in land owned by the United States," 43 U.S.C.A. § 1702(e), including mineral rights.

No doubt FLPMA and the MLA determine how federal lands are to be managed. But the only federal land being managed by the APDs is the federal minerals. The Memorandum recognizes this and confirms that BLM has regulatory jurisdiction over downhole interests and over surface interests "solely to the extent of assuring production accountability for royalties." Memorandum 2018-014. It confirms BLM's authority to use Federal oil and gas bonds "to address downhole concerns." *Id.* This includes plugging the well and addressing issues in case of an orphaned well. The Memorandum also recognizes that BLM will need access to the non-federal surface areas to monitor federal rights, and without this access, BLM "may order or cause the federally approved operations to be halted and the Federal well or wells shut-in." *Id.* BLM also recognizes its requirements under NEPA and that they expand depending on whether the federal minerals are accessed from a pre-existing, expanded, or new well.

The Center does not argue that the APDs improperly manage the federal minerals. Instead, its reading is that BLM must regulate non-federal property to maintain the National Grassland—even through mineral leasing decisions that are not about the grassland. The APDs do not "manage" the grassland, and the plain language of the statute does not support regulatory authority beyond what is being directly managed.

The MLA authority to regulate surface-disturbing activities is limited to surface activities "pursuant to the lease." 30 U.S.C. § 226(g). But surface activities on non-federal land are not "pursuant to the lease" when the lease is only for federal minerals. Activities "pursuant to the lease" more plainly means activities permitted by the lease. On a Fee/Fee/Fed well, drillers can begin surface-disturbing activities without BLM approval—meaning these activities are not "pursuant" to any federal lease.

Likewise, FLPMA authorizes the Secretary of the Interior to "regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands." 43 U.S.C. § 1732(b). And requires that "[i]n managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." *Id.* The most natural reading of that sentence is that "the lands" that are to be protected are those same "public lands" being managed. The Center's proposed reading would require BLM to consider all other federal interest in land when making even the smallest management decisions. It is a basic principle of statutory interpretation that courts should not find such onerous requirement hiding in vague language. *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). The "lands" being managed by the APDs are the minerals, and BLM has taken appropriate actions to make sure the minerals are not unduly degraded. FLPMA does not speak to downstream consequences to different federal lands.

The plain language of the MLA and FLPMA do not support the broad regulatory authority that the Center argues BLM can exercise. These statutes are best read to allow the government to manage the federal lands at issue in the individual decision. They cannot be read to allow one management decision to address all other federal lands.

The Center seems to try to boost the reach of these statutes by arguing that they "confirm" the general delegations of Congress's Property

Clause powers. But I cannot endorse a broader statutory reading simply because it identifies a more robust Congressional power. In fact, I must be even more circumspect.

The Petitioner's reading results in "broad, expansive power on an uncertain statutory basis." *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 639 (2026) (opinion of Roberts, C.J.). In cases like this "separation of powers principles and a practical understanding of legislative intent make [courts] reluctant to read into ambiguous statutory text the delegation claimed to be lurking there." *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (internal quotation omitted). So, even though the Center's interpretation of the statutes might be feasible "[a]s a matter of 'definitional possibilities,'" this interpretation requires "clear congressional authorization." *Id.* at 732.

Recognizing that standard, this case is similar to *Utah Native Plant Society*. There, a group sued the United States Forest Service, arguing that it should have prevented the state of Utah from releasing goats in the Manti-La Sal National Forest. *Utah Native Plant Society*, 923 F.3d at 866. It too argued that the property clause and other statues required the government to act. But the Tenth Circuit held that the Property Clause was, alone, insufficient and the statute's "broad directive that the Secretary 'make provisions for the protection against destruction by ... depredations upon the ... national forests,' hardly evidences a 'clear and manifest' purpose to encroach upon State sovereignty and override

Utah's traditional management of wildlife within its borders *outside* the Manti-La Sal National Forest." *Id.* (emphasis in original).[8]

Petitioner tries to make a similar argument here. The core of its argument is that the government's interest in land gives BLM not only plenary power over that property, but also expansive regulatory power over everything that affects *any* land that the BLM might have. The Center would read BLM's authority over federal minerals to enable it to regulate not only the property being disposed of (the minerals) and any nearby public land (the Grassland), but also activities related to the former that may impact the latter but that take place on entirely non-public land. It thus asks the court to interpret the statute to require BLM to encroach on traditional state territory. *See Virginia Uranium, Inc. v. Warren*, 848 F.3d 590, 596 (4th Cir. 2017) ("the power to regulate mining . . . has traditionally been reserved to the states"), aff'd, 587 U.S. 761 (2019).

And it does so relying only on broad statutory directives regarding "public lands" and a passing reference to the Property Clause. I do not think that "take any action necessary" is a clear statement of regulatory authority over non-federal lands. Neither does the MLA's requirement that BLM "regulate all surface-disturbing activities," clearly authorize BLM to regulate private lands merely because they are nearby. This kind of expansion of power is not something courts endorse lightly.

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[8] Because plaintiff argued that Utah's traditional police powers were preempted, the Tenth Circuit required a "clear and manifest purpose of Congress" to preempt state power. *Utah Native Plant Soc'*, 923 F.3d 860, 867 (10th Cir. 2019). This standard is not quite the same as "clear congressional authorization," but the heightened standards are analogous.

I cannot conclude that BLM has this expansive new power to regulate non-federal surface activities without a "clear congressional authorization," and the statutes Petitioner cites do not contain one. BLM's conclusion in Memorandum 2018-014 is consistent with that holding, so it is not contrary to law. Because the Memorandum is not based on a mistake of law, the APDs are not either. Petitioner's claim fails.

CONCLUSION

It is ORDERED that:

Both the government's Motion to Dismiss, **Doc. 27**, and the Intervenors' Motion to Dismiss, **Doc. 28**, are **GRANTED**; and

The Amended Petition, **Doc. 24,** is **DISMISSED without prejudice**.

DATED: March 23, 2026

BY THE COURT:

Daniel D. Domenico
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-01608-DDD-NRN

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.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is entered.

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order, filed March 23, 2026, by the Honorable Daniel D. Domenico, United States District Judge, and incorporated herein by reference as if fully set forth, it is hereby

ORDERED that judgment is hereby entered in favor of Respondents, 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, and against

Petitioner, Center for Biological Diversity. It is further

ORDERED that judgment is hereby entered in favor of Intervenor-Respondents, Bison Oil & Gas, IV, LLC and Verdad Resources, LLC, and against Petitioner, Center for Biological Diversity. It is further

ORDERED that Petitioner's Amended Complaint and action are dismissed without prejudice. It is further

ORDERED that Respondents shall have their costs by the filing of a Bill of Costs with the Clerk of this Court within fourteen (14) days of entry of judgment.

DATED at Denver, Colorado this 24th day of March, 2026.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

s/ M. Smotts
M. Smotts,
Deputy Clerk