2025 WL 457098
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NOT FOR PUBLICATION
United States Court of Appeals, Ninth Circuit.

WESTERN WATERSHEDS PROJECT, a non-profit organization; WILDERNESS WATCH, a non-profit organization, Plaintiffs - Appellants,

v.

GARY WASHINGTON, as Acting Secretary of the United States Department of Agriculture; UNITED STATES DEPARTMENT OF AGRICULTURE, a federal department; UNITED STATES FOREST SERVICE, a federal agency; BRET RUFF, as Acting District Ranger for the Glenwood Ranger District on the Gila National Forest; ED HOLLOWAY, Jr., as District Ranger for the Clifton Ranger District on the Apache-Sitgreaves National Forest, Defendants - Appellees.

No. 23-3872
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Filed February 11, 2025
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Argued and Submitted February 3, 2025 Phoenix, Arizona

D.C. No. 4:21-cv-00020-SHR

Appeal from the United States District Court for the District of Arizona Scott H. Rash, District Judge, Presiding

Before: CLIFTON, BYBEE, and BADE, Circuit Judges.

MEMORANDUM [*]

***1** Western Watersheds Project and Wilderness Watch (collectively, Plaintiffs) appeal the district court's grant of summary judgment in favor of the U.S. Forest Service and other government defendants (collectively, Forest Service) [1] on Plaintiffs' claims under the National Environmental Policy Act (NEPA). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review a grant of summary judgment de novo and review the agency's compliance with NEPA under the Administrative Procedure Act (APA). *Bark v. USFS*, 958 F.3d 865, 869 (9th Cir. 2020). "Under the APA, we may overturn an agency's conclusions when they are 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' " *Id.* (quoting 5 U.S.C. § 706(2)(A)). As the parties challenging the agency's action, Plaintiffs have the burden of persuasion. *City of Los Angeles v. FAA*, 63 F.4th 835, 842 (9th Cir. 2023).

1. Forest Service took the required "hard look" at the environmental impacts of the Stateline Project, which reauthorized livestock grazing on allotments in the Apache-Sitgreaves and Gila National Forests. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1194 (9th Cir. 2008) (citation omitted). In the **environmental assessment** (EA), findings of no significant impact (FONSIs), and the documents incorporated by reference in the EA and FONSIs, [2] the agency provided "a reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the proposed action. *Id.* (internal quotation marks and citation omitted); *see also* 40 C.F.R. § 1508.9(a) (2019). [3]

***2** Plaintiffs argue that Forest Service did not take a hard look at the effects of the proposed livestock grazing on the Mexican gray wolf, particularly regarding livestock-related wolf removals and prey displacement. But the record shows that Forest Service considered these issues (as well as other factors relevant to the project's effect on the Mexican gray wolf) and reasonably concluded that the proposed grazing was not likely to adversely affect the subspecies.

Indeed, it is undisputed that (1) the proposed grazing area did not have documented Mexican gray wolf packs, dens, rendezvous sites, or territories; (2) twelve of the thirteen active allotments were outside the wolves' occupied range and had no reported wolf sightings or instances of wolf-livestock conflict; (3) the only documented instances of wolf-livestock conflict in the proposed area did not result in removals; (4) the Mexican gray wolf population within the Mexican Wolf Experimental Population Area (MWEPA) nearly doubled between 2016 and 2020 despite higher levels of grazing than those authorized by the Stateline Project; and (5) the allotments constitute only a small portion of MWEPA. Given these facts, Plaintiffs have not shown that Forest Service's

conclusions were "unreasonable." *See Ctr. for Cmty. Action & Env't Just. v. FAA*, 18 F.4th 592, 599 (9th Cir. 2021) (citation omitted).

As for Plaintiffs' argument that Forest Service failed to take a hard look at the cumulative effects of past and future removals (both within and outside of the project area) on the genetic diversity of the Mexican gray wolf population, there is no evidence the Stateline Project is likely to cause removals. Thus, Plaintiffs have not shown that a loss of genetic diversity due to removals is a potential cumulative impact of the project. *See Ctr. for Env't L. & Pol'y v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1009 (9th Cir. 2011) (explaining that the party challenging an EA's cumulative impacts analysis has the "initial burden to show 'the potential for cumulative impact' " (quoting *Te–Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 608 F.3d 592, 605 (9th Cir. 2010))). Accordingly, Plaintiffs have not shown that the EA's discussion of the cumulative effects fails to comport with NEPA.

2. Forest Service did not act arbitrarily or capriciously when it determined that an environmental impact statement (EIS) was not necessary because the Stateline Project would not have a significant effect on "the quality of the human environment." 42 U.S.C. § 4332(C); *see also* 40 C.F.R. §§ 1501.3(a), 1501.4, 1508.9 (2019). The EA and FONSIs show that Forest Service considered "both the 'context' and 'intensity' of the possible effects" of the project. *Am. Wild Horse Campaign v. Bernhardt*, 963 F.3d 1001, 1008 (9th Cir. 2020) (quoting 40 C.F.R. § 1508.27 (2019)). Plaintiffs have not identified any facts that "raise substantial questions that would trigger the need for an EIS." *Native Ecosystems Council v. USFS*, 428 F.3d 1233, 1242 (9th Cir. 2005). Because Forest Service considered the relevant factors and "provided a convincing statement of reasons" explaining why the Stateline Project's effects were expected to be insignificant, it did not violate NEPA when it decided not to issue an EIS. *In Def. of Animals v. U.S. Dep't of Interior*, 751 F.3d 1054, 1071 (9th Cir. 2014) (citation omitted).

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2025 WL 457098

Footnotes

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 Plaintiffs sued Forest Service and the U.S. Department of Agriculture, as well as Sonny Perdue in his official capacity as Secretary of the Department of Agriculture, Erick Stemmerman in his official capacity as District Ranger for the Glenwood Ranger District, and Ed Holloway Jr. in his official capacity as District Ranger for the Clifton Ranger District. Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Gary Washington, in his official capacity as Acting Secretary of the Department of Agriculture, is automatically substituted as a party in place of Perdue; Bret Ruff, in his official capacity as Acting District Ranger for the Glenwood Ranger District, is automatically substituted as a party in place of Stemmerman.

2 Plaintiffs do not dispute that the EA and FONSIs incorporate by reference documents from Forest Service's consultations with U.S. Fish and Wildlife Service about the project. *See Jones v. Nat'l Marine Fisheries Serv.*, 741 F.3d 989, 998 (9th Cir. 2013) (noting that an EA may incorporate underlying data by reference).

3 The regulations implementing NEPA were amended in 2020. *See Native Vill. of Nuiqsut v. Bureau of Land Mgmt.*, 9 F.4th 1201, 1210 (9th Cir. 2021) (citing 85 Fed. Reg. 43304 (July 16, 2020)). The parties agree that this case is analyzed under the pre-2020 regulations, which were in place at the time of the challenged

decisions. *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 879 n.5 (9th Cir. 2022) ("[W]e look to the [NEPA] regulations in place at the time of the challenged decision." (citation omitted)).

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United States District Court, S.D.
Indiana, New Albany Division.

ANDY MAHLER, LINDA LEE, SHANE MURPHY, ROBBIE HEINRICH, HEARTWOOD, PROTECT OUR WOODS, INDIANA FOREST ALLIANCE INC, Plaintiffs,

v.

UNITED STATES FOREST SERVICE, THOMAS J. VILSACK in his official capacity as Secretary of the Department of Agriculture, UNITED STATES DEPARTMENT OF AGRICULTURE, RANDY MOORE in his official capacity as Chief of the United States Forest Service, Defendants.

Case No. 4:24-cv-00174-TWP-KMB
|
02/10/2025

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

***1** This matter is before the Court on a Motion for Preliminary Injunction (Filing No. 26) filed by Plaintiffs Andy Mahler, Linda Lee, Shane Murphy, Robbie Heinrich, Heartwood, Protect Our Woods, and Indiana Forest Alliance Inc. (collectively, "Plaintiffs"). Plaintiffs filed this action against Defendants the United States Forest Service, Thomas J. Vilsack, the United States Department of Agriculture, and Randy Moore (collectively, "Defendants"), asserting claims under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–47, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–06. Plaintiffs challenge the legality of Defendants' tornado-recovery operations, known as the Paoli Tornado Response and Research Project (the "Paoli Project"), in the Hoosier National Forest. Plaintiffs allege that Defendants improperly excluded the Paoli Project from NEPA's research and reporting requirements and began implementing the Paoli Project before adequately studying its environmental effects. Plaintiff now seek to preliminarily enjoin Defendants' operations. For the reasons stated below, Plaintiffs' Motion for Preliminary Injunction is **denied**.

I. BACKGROUND

A. NEPA and the APA

The controlling statute at issue here, NEPA, "declares a broad national commitment to protecting and promoting environmental quality." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). It has been described as a 'procedural' or 'action-forcing' statute that does not 'mandate particular results' but instead requires agencies to study and describe the environmental consequences of their proposed actions. *Id.* at 348–51; *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 558 (1978). "NEPA merely prohibits uninformed—rather than unwise—agency action." *Robertson*, 490 U.S. at 351.

NEPA requires all federal agencies to prepare certain reports if their proposed actions might have a significant effect on the environment. If a proposed action *will* have a significant effect, the agency must prepare a detailed environmental impact statement ("EIS") reviewing the environmental impacts of the proposed action and alternatives to it. 42 U.S.C. § 4332(2)(C). If it is uncertain whether the proposed action will have a significant effect, then the agency must prepare an **environmental assessment** ("EA"). An EA is a shorter, rough-cut, low-budget EIS, which is designed to determine whether a "full-fledged" EIS is needed. *Ind. Forest All., Inc. v. U.S. Forest Serv.*, 325 F.3d 851, 856 (7th Cir. 2003).

Certain agency actions are categorically excluded from EA/EIS requirements because the agency has determined that those actions normally do not have a significant environmental effect. 42 U.S.C. § 4336(a); 40 C.F.R. § 1501.4(a). If a categorical exclusion applies to a proposed action, the agency must still "evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect." 40 C.F.R. § 1501.4(b). "Extraordinary circumstances" include anything that "may" have a significant effect on the environment. *Id.* § 1508.1(o). An agency should consider seven "resource conditions" to determine whether extraordinary circumstances exist. 36 C.F.R. §§ 220.6(b)(1)(i)–(vii) The two resource conditions at issue here are threatened or endangered species and archaeological sites or historic properties or areas. *Id.* § (b)(1)(i), (vii). If the agency determines that no extraordinary

circumstances exist, then the agency may apply the categorical exclusion and implement the proposed action. Otherwise, the agency must prepare an EA or EIS. 40 C.F.R. § 1501.4(b)(2).

***2** The APA provides the standard of review for Plaintiffs' challenge of Defendants' use of categorical exclusions. *See Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 952 (7th Cir. 2003). In a suit under the APA, a district court sits as a reviewing court, much like an appellate court. *Cronin v. U.S.D.A.*, 919 F.2d 439, 443-44 (7th Cir. 1990). With very rare exception, the court does not take new evidence and considers only matters within the administrative record. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743–44 (1985). Under the APA, a court may set aside an agency action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). This standard of review is narrow and requires that the court "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error in judgment." *Highway J*, 349 F.3d at 952–53. The Court may not substitute its judgment regarding the environmental consequences of an action for that of the agency. *Id.* at 953. However, the Court must ensure "that the agency has taken a 'hard look' at environmental consequences." *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

B. The Paoli Project

The Paoli Experimental Forest is 632 acres within the Hoosier National Forest dedicated to forest ecosystem research (Filing No. 13-1 ¶ 4; AR0000181, AR0000034). These areas are home to several threatened and endangered species, including several species of bat (AR0000175). Thousands of historic cultural sites have also been found in the Hoosier National Forest, some of which are eligible for protection under the National Historic Preservation Act (Filing No. 8-6). In August 2023, severe storms and a tornado ripped through southern Indiana, damaging over one third of the Paoli Experimental Forest (AR0000033, AR0000746). The storms not only damaged trees, but also deposited debris into Dry Run creek, threatening flooding and road damage, and at the mouth of a cave used by tricolored bats (AR0000034; Filing No. 13-1 ¶¶ 17–18).

In December 2023, the Forest Service issued a scoping notice for the Paoli Project (AR0000181). The scoping notice did not state that the Forest Service planned to apply any categorical exclusions. *Id.* The Paoli Project area is within the boundary of a preexisting Forest Service project, the Buffalo Springs Project. The Forest Service had already prepared an EA and started work on the Buffalo Springs Project by the time the tornado hit the Paoli Experimental Forest. For the Paoli Project, the Forest Service proposed 138 acres of salvage logging for dead and dying trees, debris removal, tree planting, and deer fencing. In January 2024, some of the Plaintiffs submitted written objections to the proposed Paoli Project (AR0000186–AR0000222). By spring 2024, Protect Our Woods and Heartwood had retained counsel and announced their readiness to sue over the Paoli Project (Filing No. 30-2 at 1, 20).

Before approving the Paoli Project, the Forest Service complied and prepared several documents related to the potential environmental effects of its proposed action. With respect to wildlife, the Forest Service prepared a Biological Evaluation that concluded that the Paoli Project was "not likely to adversely affect Indiana bat, northern long-eared bat, tri-colored bat, and little brown bat." (AR0000287). The Forest Service then issued an Amended Biological Evaluation, noting that tornado debris was blocking a hibernaculum for tricolored bats, restricting the bats' ingress/egress and airflow, and the Paoli Project salvaging would remove that blockage (AR0000750–AR0000751). Around the same time, the United States Fish and Wildlife Service issued an amendment to an earlier Biological Opinion for the Buffalo Springs Project, concluding that the Forest Service's proposed salvage and debris removal work would have a "neutral overall effect" on resident bat species (AR0000347). Hoosier National Forest Wildlife Biologist Steve Harriss ("Mr. Harriss") also prepared a supplemental Specialist Response to the Paoli Project Preliminary Project Proposal, which identified the blocked hibernaculum and stated that removing the blockage would be beneficial to the tricolored bat (AR0000159–AR0000160).

***3** As for historic sites, in June 2024, the Forest Service, Tribal Nations, and the Indiana State Historic Preservation Officer entered into a Programmatic Agreement for the area of the Buffalo Springs Project (AR0000001). The Programmatic Agreement is intended to ensure that any historic cultural resources will be avoided during the project, and it allows the Forest Service to survey for historic sites in phases before implementing the project. Pursuant to the Programmatic

Agreement, Forest Service Heritage Program Manager, Forest Archaeologist, and Tribal Liaison Teresa Villalobos ("Ms. Villalobos") conducted a survey of archaeological sites in the Paoli Project salvage/debris removal area, the results of which are described in a written report (AR0000500). Ms. Villalobos identified thirteen historic sites, only two of which are eligible for federal protections (Filing No. 13-3 ¶ 4). Ms. Villalobos was unable to survey approximately forty-five acres due to hazardous conditions, but she concluded there was a "low probability for cultural resources" in that area due to its steep slope (AR0000522).

In August 2024, the Forest Service issued a Decision Memorandum (the "Decision") authorizing the Paoli Project (AR0000033). The Forest Service determined that three categorical exclusions applied. 36 C.F.R. §§ 220.6(e)(5) (regeneration of area to native tree species), (13) (salvage of dead/dying trees), and (19) (removal of debris). The Decision discussed the seven resource conditions under 36 C.F.R. § 220.6(b)(1), including threatened or endangered species and archaeological sites or historic properties or areas, and it concluded that no extraordinary circumstances existed that would preclude application of the categorical exclusions.

C. This Lawsuit

In October 2024, Plaintiffs began corresponding with the Forest Service regarding potential litigation over the Paoli Project. *Id.* The Forest Service sent Plaintiffs' updates on the progress of the Paoli Project but did not indicate any willingness to pause or stop work. The Forest Service solicited bids for the salvage logging sale in November 2024 and had awarded and executed a contract by December 9, 2024. The timber sale began December 11, 2024, though logging operations did not begin until late December (Filing No. 30-1 ¶ 2).

On December 16, 2024, Plaintiffs initiated this action by filing a Complaint (Filing No. 1), followed by a Motion for TRO (Filing No. 8) and original Motion for Preliminary Injunction (Filing No. 9). On December 23, 2024, the Court denied the Motion for TRO, finding that Plaintiffs had not clearly shown that they would suffer imminent irreparable harm before Defendants could be heard in opposition (Filing No. 16). The parties then met with the Magistrate Judge, conferred about expedited discovery, and proposed a briefing and hearing schedule. Plaintiffs filed the instant Motion for Preliminary Injunction on January 15, 2025 (Filing No. 26). Upon Plaintiffs' request, the Court set the Motion for oral argument (Filing No. 24 at 1; Filing No. 28).

The week before oral argument, Defendants manually filed a copy of the Administrative Record, as supplemented by agreement of the parties (Filing No. 29; Filing No. 30). The parties also filed witness and exhibit lists (Filing No. 35 at 5; Filing No. 36; Filing No. 37). Plaintiffs listed three Forest Service employees as witnesses—District Ranger Christopher Thornton ("Ranger Thornton"), Mr. Harriss, and Ms. Villalobos—and served subpoenas on those witnesses. Defendants moved to quash the subpoenas and objected to Plaintiffs offering any evidence outside the scope of the Administrative Record (Filing No. 34; Filing No. 35). Defendants argued that because this is an APA case, any evidence outside the Administrative Record is irrelevant and invites error. The Court denied the motion to quash and overruled Defendants' objection (Filing No. 39). However, the Court allotted thirty-minutes at the start of oral argument to discuss the admissibility of extra-record evidence. *Id.* at 7.

At the February 3, 2025 oral argument, both parties explained their positions as to the admissibility of Plaintiffs' anticipated testimony and evidence. The Court conditionally allowed Plaintiffs' counsel to present their anticipated testimony and evidence over Defendants' standing objection, pending a written ruling on Plaintiffs' Motion for Preliminary Injunction. Plaintiffs called five witnesses: Ranger Thornton; Mr. Harriss; Ms. Villalobos; Plaintiff Robbie Heinrich ("Mr. Heinrich"); and Steven Stewart ("Mr. Stewart"), a member of Heartwood and Protect Our Woods. Defendants' counsel did not cross examine any of the witnesses but later asked Ms. Villalobos two omitted questions. Both parties also presented argument on the merits of Plaintiffs' Motion for Preliminary Injunction, which the Court took under advisement.

II. LEGAL STANDARD

***4** "A preliminary injunction is an extraordinary remedy never awarded as of right. In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20

(2008). To obtain a preliminary injunction, the party seeking relief must show:

> (1) it has some likelihood of success on the merits of its claim; (2) it has no adequate remedy at law; (3) without relief it will suffer irreparable harm. If the plaintiff fails to meet any of these threshold requirements, the court must deny the injunction. However, if the plaintiff passes that threshold, the court must weigh the harm that the plaintiff will suffer absent an injunction against the harm to the defendant from an injunction and consider whether an injunction is in the public interest.

GEFT Outdoors, LLC v. City of Westfield, 922 F.3d 357, 364 (7th Cir. 2019) (citations and quotation marks omitted). "The court weighs the balance of potential harms on a 'sliding scale' against the movant's likelihood of success: the more likely he is to win, the less the balance of harms must weigh in his favor; the less likely he is to win, the more it must weigh in his favor." *Turnell v. CentiMark Corp.*, 796 F.3d 656, 662 (7th Cir. 2015).

III. DISCUSSION

The Court will first discuss the admissibility of the evidence offered by Plaintiffs at oral argument and then turn to the merits of Plaintiffs' request for injunctive relief.

A. Admissibility of Evidence Offered at Oral Argument

Defendants argue that the evidence offered at oral argument falls outside the scope of the Administrative Record and is therefore inadmissible in this APA case. For the reasons discussed below, the issue of irreparable harm is dispositive of Plaintiffs' Motion for Preliminary Injunction, so the Court **overrules in part** Defendants' objection, and will consider evidence relevant to irreparable harm, which the Court discusses in this Order. Because the Court does not reach Plaintiffs' likelihood of success on the merits of their claims, it **otherwise sustains** Defendants' objection.

B. Plaintiffs' Motion for Preliminary Injunction

As previously stated, to obtain a preliminary injunction, Plaintiffs must establish: (1) they have some likelihood of success on the merits of their claims; (2) they have no adequate remedy at law; and (3) absent relief, they will suffer irreparable harm. *GEFT*, 922 F.3d at 364. If Plaintiffs fail to show any of these three requirements, the Court must deny their request for a preliminary injunction. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008), *abrogated on other grounds by Nken v. Holder*, 556 U.S. 418, 434 (2009). The Court will begin by discussing the third requirement, irreparable harm, which is dispositive.

The United States Supreme Court has clearly held that "plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis in original). A mere "possibility" is not enough. *Id.* "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.*; *see Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 397 (7th Cir. 2022) ("*Winter*'s...'likelihood of success' and 'likelihood of irreparable harm' requirements have teeth."). *Contra Heartwood, Inc. v. U.S. Forest Serv.*, 73 F. Supp. 2d 962, 979 (S.D. Ill. 1999) (awarding injunction in pre-*Winter* case based on the "potential" for "possibly irreparable" harm to the environment); *Monroe Cnty. Bd. of Comm'rs v. U.S. Forest Serv.*, No. 23-cv-12, 2023 WL 2683125, at *7 (S.D. Ind. Mar. 29, 2023) (granting preliminary injunction where plaintiffs "submitted three detailed declarations identifying with specificity" the irreparable harms likely to result from prescribed burns).

***5** Plaintiffs allege that four types of irreparable harm may occur absent preliminary relief:
(a) harm to tricolored bats; (b) damage to historic sites; (b) removal of healthy old growth trees; and (d) "informational harm." The Court will discuss each alleged harm in turn and then address Plaintiffs' request that the Court draw adverse inferences.

1. Tricolored Bats

Plaintiffs first identify a risk of irreparable harm to tricolored bats that are hibernating in a cave (*i.e.*, their "hibernaculum") in the Paoli Project salvage area. At oral argument, Mr. Harriss testified that a fungal disease called white-nose syndrome has decimated many Indiana bat populations, including the tricolored bat. In 2022, the United States Fish and Wildlife Service proposed listing the tricolored bat as endangered, although there is no indication as to when, or whether, the tricolored bat will be listed as endangered.

In their opening brief, Plaintiffs assert that "if the [Forest Service] is allowed to proceed with its logging plans for the Paoli Project near the [tricolored bat] hibernacula, including the use of heavy equipment to clear the entrance, irreparable environmental harm will occur to the [tricolored bat]," though they cite no evidence supporting this claim (Filing No. 26-1 at 29). In their reply brief, Plaintiffs assert that Defendants failed to publicly disclose their plan to clear the hibernaculum entrance and failed to adequately consider the effects of the blockage removal on the hibernating bats, and they cite several sources stating that timber operations "have the potential" to affect the bats (Filing No. 32 at 3–4). This evidence, however, does not show that the blockage removal is "*likely*" to irreparably harm tricolored bats. *Winter*, 555 U.S. at 22 (emphasis in original). Although the "potential" for significant harm might be enough to preclude the use of a categorical exclusion, it is not enough to show that a preliminary injunction is warranted.

At oral argument, Plaintiffs' counsel proffered that disturbing bats during hibernation may cause those bats to leave their hibernaculum and seek out a new hibernaculum, which may be infected with white-nose syndrome. But Plaintiffs' counsel acknowledged that this risk of harm is wholly speculative, stating "you would have to be somewhat psychic to know what the bats are going to do when disturbed and whether it's going to lead to more desolation of their population." At oral argument, Plaintiffs' counsel questioned Mr. Harriss about the potential effects of the blockage removal, but Mr. Harriss testified that only "repeat disturbances" will affect hibernating bats, and "one-time disturbances" are "acceptable" to them. *Earth Island Inst. v. Carlton*, No. CIV. S-09-2020, 2009 WL 9084754, at *27 (E.D. Cal. Aug. 20, 2009) ("Defendants' experts' testimony seriously undermines the soundness of plaintiff's claims of likely irreparable harm such that the court cannot find that plaintiff has made the requisite showing under *Winter*.").

Plaintiffs have therefore failed to show likely irreparable harm to tricolored bats. *See Earth Island Inst. v. Carlton*, 626 F.3d 462, 474 (9th Cir. 2010) (affirming district court's finding that plaintiffs failed to show likely irreparable harm to woodpeckers resulting from Forest Service's logging activities).

2. Historic Sites

***6** Plaintiffs next argue that without an injunction, historic sites in the Paoli Project area may be irreparably harmed. Plaintiffs acknowledge that the Forest Service applies a buffer zone protocol to ensure that logging activities do not come within a certain distance of marked historic sites (Filing No. 32 at 5–6). But they argue that because of tornado damage, dense vegetation, and/or snow cover, loggers may be unable to detect the presence of historic sites. *Id.* at 7. Plaintiffs also emphasize that Ms. Villalobos was unable to survey portions of the Paoli Project area and argue that yet-to-be discovered historic sites in that area might be overlooked and inadvertently damaged during the salvage and debris removal work.

Plaintiffs' argument about historic sites, like their argument about tricolored bats, is based on speculation. Plaintiffs offer no evidence supporting the contention that the Forest Service's marked buffer zones will not be noticed or respected by the logging contractor. The mere possibility that loggers might unintentionally intrude into a marked buffer zone is not enough to warrant a preliminary injunction. *See Colo. River Indian Tribes v. Dep't of Interior*, No. ED CV14-02504, 2015 WL 12661945, at *27 (C.D. Cal. June 11, 2015) (finding plaintiffs failed to demonstrate likely irreparable harm to historic sites in light of mitigation procedures established in programmatic agreement); *Quechan Tribe of the Ft. Yuma Indian Rsrv. v. U.S. Dep't of Interior*, No. 12cv1167, 2012 WL 1857853, at *7 (S.D. Cal. May 22, 2012) (same).

Plaintiffs' arguments about the previously un-surveyed area are also unavailing. Plaintiffs note that thousands of historic sites have been found in the Hoosier National Forest, and two were found within the Paoli Project area. But the existence of other sites does not make it likely that other sites exist in the

un-surveyed area, or that those sites will be damaged. *Colo. River Indian Tribes*, 2015 WL 12661945, at *27 ("Plaintiffs make no showing that what was discovered during [earlier] construction shows what is likely to be discovered if there is further construction...."). Ms. Villalobos' survey report and live testimony show there is little risk of harm to historic sites in the un-surveyed area. Ms. Villalobos explained that because the area is on a steep slope, there is a very low probability of finding historic sites there (AR0000522 ("This area ranges from 20% to 40% slope and has low probably [*sic*] for cultural resources.")). Ms. Villalobos further testified that the inadvertent discovery of a historic site is "very unlikely," and in her twenty-year career with Hoosier National Forest, she has never been involved in an inadvertent discovery case. More importantly, Ms. Villalobos testified that all the salvage and debris removal work in the previously un-surveyed area was completed prior to oral argument, and that she surveyed the area afterwards and found no historic sites. Plaintiffs have therefore failed to demonstrate a likelihood of irreparable harm to historic sites.

3. Healthy Old Growth Trees

Third, Plaintiffs argue irreparable harm may occur from the loss of healthy old growth trees, but this argument was entirely undeveloped in Plaintiffs' written briefs. Plaintiffs' briefs state, "[i]f old growth trees are cut, historic sites disturbed, or endangered species harmed here, no after-the-fact legal action will provide a remedy." (Filing No. 26-1 at 28; Filing No. 32 at 8). Aside from this one sentence, Plaintiffs make no mention of old growth trees. Plaintiffs focus only on the risk of harm to tricolored bats and historic sites (Filing No. 26-1 at 29 (describing only irreparable harm to tricolored bats and historic sites)). The Seventh Circuit has repeatedly stated that perfunctory and undeveloped arguments are waived. *See M.G. Skinner & Assocs. Ins. Agency, Inc. v. Norman-Spencer Agency, Inc.*, 845 F.3d 313, 321 (7th Cir. 2017) ("Perfunctory and undeveloped arguments are waived, as are arguments unsupported by legal authority."); *Boomer v. AT&T Corp.*, 309 F.3d 404, 422 n.10 (7th Cir. 2002) (stating that where party fails to support position with any legal analysis or citation, the argument is waived). Although Plaintiffs' counsel developed this claim at oral argument, the Seventh Circuit has held that new arguments may not be raised for the first time at oral argument. *See Quality Oil, Inc. v Kelley Partners, Inc.*, 657 F.3d 609, 614–15 (7th Cir. 2011); *Szczesny v. Ashcroft*, 358 F.3d 464, 465 (7th Cir. 2004).

***7** Even if Plaintiffs had timely raised this argument, they have shown only the mere possibility that healthy old growth trees will be removed absent injunctive relief. Plaintiffs offer the testimony of three individuals related to old growth trees: Plaintiff's Andy Mahler ("Mr. Mahler"); Mr. Stewart; and Mr. Heinrich. In Mr. Mahler's Declaration (Filing No. 8-2), he states that the Paoli Experimental Forest contains "mature and old growth forest," including a particularly striking white oak tree, and he expresses his general "concern[ ]" that some of that old growth will be cut down during the Paoli Project (Filing No. 8-2 ¶¶ 47–48). During oral argument, Mr. Stewart testified that he visited the Paoli Project area before and after work began, that he observed several old growth trees, and that the striking white oak sadly had been removed. Mr. Heinrich testified that his family has occupied land near the Paoli Experimental Forest for generations [1] and that he visited the Paoli Project area before and after the tornado, and before and after the Paoli Project work began. After the tornado, Mr. Heinrich saw both downed and live trees and found the scenery "fascinating." Mr. Heinrich, his children, and his friends enjoyed exploring the area and viewing the large oak and hickory trees there. Mr. Heinrich also stated that after the Paoli Project work began, he could hear and see chainsaws, heavy machinery, and new logging roads.

This testimony, even when taken together, does not demonstrate a likelihood of irreparable harm. At most, this testimony shows that old growth trees exist in the Paoli Project area, that one such tree was removed, and that the removal of other old growth trees is possible. Plaintiffs have not offered evidence showing that removal is likely, and Defendants have offered evidence to the contrary. At oral argument, Defendants reiterated that pursuant to 36 C.F.R. § 220.6(e)(13), the Forest Service will conduct only "incidental removal" of live trees for landings, skid trails, and road clearing, which limits the number of live trees that may be removed and reduces the chance that any live old growth trees will be removed. Ranger Thornton also testified that as of February 3, 2025, approximately ninety percent of the salvage work for the Paoli Project had been completed. Plaintiffs have identified only one old growth tree, the white oak, that was removed over the course of that work. Plaintiffs offer no evidence that other live, old growth trees will likely be removed in the last ten percent of the salvage work. *See Conservation Cong. v. U.S. Forest Serv.*, No. 13-cv-1922,

2016 WL 6524860, at *4 (E.D. Cal. Nov. 3, 2016) (finding plaintiffs only showed that old growth trees might possibly be felled and removed and failed to show that felling and removal was likely).

Plaintiffs' irreparable harm argument relies entirely on the possibility that healthy old growth trees might be removed. Even despite Plaintiffs' waiver of this argument, Plaintiffs have failed to demonstrate likely irreparable harm resulting from the removal of healthy old growth trees. *Winter*, 555 U.S. at 22.

4. Informational Harm

Plaintiffs lastly identify an "informational harm," which Plaintiffs describe as a harm resulting from Defendants "undercutting" statutory schemes and proceeding with the Paoli Project without adequate environmental information. Like their old-growth-tree argument, Plaintiffs failed to address this harm in their written briefs and therefore waived it. *See M.G. Skinner*, 845 F.3d at 321; *Szczesny*, 358 F.3d at 465.

***8** Moreover, Plaintiffs have not shown a likelihood of irreparable "informational" harm. An agency's failure to comply with NEPA and fully evaluate the impact of its actions is not, by itself, an irreparable injury. *Conservation Cong.*, 2016 WL 6524860, at *5 (stating that the presumption of irreparable harm flowing from NEPA violations was "effectively overruled by the Supreme Court" in *Winter* and *Monsanto Co. v. Geertson Seed Farms*; "A NEPA violation, without more, does not establish the requisite likelihood of irreparable harm."); *Colo. River Indian Tribes*, 2015 WL 12661945, at *30 ("*Winter*...suggests that there is no showing of a likelihood of irreparable harm based on a freestanding procedural violation."). Plaintiffs' complaints that Defendants are implementing the Paoli Project without adequate information instead speaks to the merits of Plaintiffs' NEPA/APA claims and the balance of equities, not the likelihood of irreparable harm. The irreparable harms that could result from Defendants' allegedly uninformed actions are harm to tricolored bats, damage to historic sites, and removal of live old growth trees. But for the reasons explained above, Plaintiffs have not shown that such irreparable harms are likely to occur. *See Colo. River Indian Tribes*, 2015 WL 12661945, at *30 (" '[P]aired with some showing of harm to the sites, [an alleged] procedural injury could provide some support for a claim of irreparable harm,' but none was presented." (second alteration in original) (quoting *La Cuna de Aztlan Sacred Sites Protection Circle Advisory Comm.*, No. LA CV11-04466 (C.D. Cal. Aug. 11, 2011))).

5. Adverse Inference

At oral argument, Plaintiffs' counsel explained that Plaintiffs face a "difficult challenge" in proving irreparable harm because the Forest Service "controls all of the evidence," has not performed certain environmental studies, and refuses to disclose certain materials. He therefore asked the Court to draw adverse inferences against Defendants. Plaintiffs do not specify what inferences they are asking the Court to draw; other than to infer generally that irreparable harm is likely to occur.

The Court understands that at the preliminary injunction stage, there may be a disparity in information between the parties. However, a preliminary injunction is an "extraordinary and drastic" remedy, so the movant must make a "clear showing" that he is entitled to one. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Unequal access to records does not excuse Plaintiffs from meeting this high burden. Typically, parties remedy this disparity through expedited discovery, not adverse inferences. *Capital Mach. Co. v. Miller Veneers, Inc.*, No. 09-cv-702, 2010 WL 3000769, at *1 (S.D. Ind. July 28, 2010) ("Although they say that they needed to conduct discovery before they could be sure they had sufficient evidence to request a preliminary injunction, they didn't request expedited discovery—unlike many other litigants who are concerned about truly immediate and irreparable injury.").

Further, the Court draws adverse inferences only in limited circumstances, and only when other evidence supports the requested inferences. *See United States v. Pryor*, 32 F.3d 1192, 1194– 95 (7th Cir. 1994) ("At all events, adverse-inference instruction is appropriate only if there is other evidence."); *Bracey v. Grondin*, 712 F.3d 1012, 1018–19 (7th Cir. 2013) (allowing adverse inferences when a party "intentionally destroys evidence in bad faith"); *Rummery v. Ill. Bell Tel. Co.*, 250 F.3d 553, 558 (7th Cir. 2001) (refusing to give adverse inference instruction because plaintiff offered only speculation that defendants destroyed missing documents in bad faith); *Evans v. City of Chicago*, 513 F.3d 735, 740 (7th Cir. 2008) (allowing adverse inferences in

civil cases when witness refuses to answer question on Fifth Amendment grounds). The Seventh Circuit has specifically discouraged courts from allowing the type of inference that Plaintiffs request here— the inference that "evidence not produced would have been adverse to the party who could have, but did not, produce it." *Pryor*, 32 F.3d 1194–95.

Plaintiffs did not raise the issue of adverse inferences in their written briefs, *M.G. Skinner*, 845 F.3d at 321; *Szczesny*, 358 F.3d at 465, but even at oral argument, Plaintiffs offered no evidence supporting the use of adverse inferences. Plaintiffs merely argued that if Defendants had been "more forthcoming," they would have produced unfavorable evidence. *Pryor*, 32 F.3d 1194–95. However, nothing in the record indicates that Defendants withheld evidence relevant to irreparable harm. Plaintiffs had ample opportunity to conduct discovery on the risk of irreparable harm, but they chose not to. Before Plaintiffs filed the instant Motion for Preliminary Injunction, the parties conferred about expedited discovery. Plaintiffs initially requested discovery related to the administrative record and the Forest Service's decisionmaking process, (Filing No. 20 at 5–8), but they did not seek discovery related to irreparable harm and later decided not to move for any other discovery (Filing No. 24 at 2). The Forest Service was not obligated to provide discovery relevant to irreparable harm absent a request by Plaintiffs or an order compelling production. *See Jungiewicz v. Allstate Ins. Co.*, No. 13 C 3793, 2014 WL 1292121, at *1 (N.D. Ill. Mar. 31, 2014) (refusing to draw adverse inference due to alleged failure to produce evidence because plaintiff did not show bad faith and failed to pursue a motion to compel).

***9** Plaintiffs have known about the specific work planned for the Paoli Project since December 21, 2024, at the latest (Filing No. 26-1 at 17–18). Between then and the February 3, 2025 oral argument, Plaintiffs could have prepared additional affidavits about the Paoli Project's effects on the environment, but they attached none to their preliminary injunction briefing. Plaintiffs also could have consulted with (or possibly retained) third party witnesses, like biologists or environmental experts, who could opine on the potential effects of this planned work, but they did not. Oral argument provided Plaintiffs yet another opportunity to elicit testimony about the risk of irreparable harm. Although this Court does not typically permit the presentation of new evidence at oral argument, S.D. Ind. L.R. 7-5(b), the Court denied Defendants' Motion to Quash in part because the subpoenaed Forest Service employees could "offer testimony relevant to the risk of irreparable harm." (Filing No. 39 at 5). Plaintiffs called five witnesses, all of whom did offer or could have offered testimony relevant to Plaintiffs' claims of irreparable harm. The Forest Service employee witnesses answered all of Plaintiffs' counsels' questions, other than two questions to which Defendants raised hearsay objections. Considering the many opportunities Plaintiffs had to conduct discovery before and during oral argument, Plaintiffs have not shown that Defendants prevented them from meeting their burden, and the Court will not draw any adverse inferences.

Because Plaintiffs have not shown that they are likely to suffer any irreparable harm absent preliminary injunctive relief, the Court must **deny** their Motion for Preliminary Injunction. The Court need not, and therefore does not, address the remaining threshold requirements, the balance of equities, or the public interest. *Girl Scouts of Manitou Council, Inc.*, 549 F.3d at 1086.

IV. CONCLUSION

The Court agrees with Plaintiffs that damage to the environment is a type of damage that is typically irreparable, however here, the Plaintiffs have not shown imminent, irreparable harm from the remaining Project activities. For the reasons stated above, the Court **SUSTAINS in part** and **OVERRULES in part** Defendants' standing objection to the evidence offered by Plaintiffs' at oral argument and **DENIES** Plaintiffs' Motion for Preliminary Injunction (Filing No. 26).

SO ORDERED.

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Editor's Note: Tabular or graphical material not displayable at this time.

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Footnotes

1 Mr. Heinrich testified that his ancestors were deeded the land by the fourth president of the United States, James Madison. Before and during Madison's presidency, then-Territorial Governor William Henry Harrison used a variety of methods to negotiate "low-cost" treaties on behalf of the President to acquire Native American lands, including modern-day southern Indiana. Juan F. Perea, *Denying the Violence: The Missing Constitutional Law of Conquest*, 24 Univ. Pa. J. Const. L. 1205, 1263–65 (2022); Christian Webber, *Aiding Employment and the Environment on Tribal Lands: An Analysis of Hiring Preferences and Their Use in the Mining Industry*, 12 Ariz. J. 298, 301 (2022). The United States then sold those lands for a "substantial" profit. Scott A. Taylor, *The Unending Onslaught of Tribal Sovereignty: State Income Taxation of Non-Member Indians*, 91 Marquette L.R. 917, 945–46 (2008).

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United States District Court, D. Utah, Central Division.

SOUTHERN UTAH WILDERNESS ALLIANCE, Plaintiff,
v.
UNITED STATES DEPARTMENT OF THE INTERIOR, United States Bureau of Land Management, and Christina Price, in her official capacity as Deputy State Director, Division of Land and Minerals, Defendants.

Case No. 2:23-CV-00804-TC-DBP
|
Signed February 4, 2025

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ORDER AND MEMORANDUM DECISION GRANTING MOTION TO DISMISS

TENA CAMPBELL, United States District Court Judge

***1** Before the court are motions to dismiss filed by Intervenor Defendants Anschutz Exploration Corporation (AEC) and the State of Utah. (ECF Nos. 42, 45.)[1] For the reasons stated below, the court grants those motions, dismissing the case without prejudice.

BACKGROUND

I. Statutory and Regulatory Background

This case involves a public land dispute between an environmental group, Plaintiff Southern Utah Wilderness Alliance (SUWA), the federal government, the State of Utah, and private industry about how much and what type of environmental analysis the government is required to engage in before it can permit private industry to drill for oil and gas on federally owned land.

The National Environmental Policy Act (NEPA) requires federal government agencies, including Defendant the Bureau of Land Management (BLM),[2] to evaluate the direct, indirect, and cumulative impacts of oil and gas drilling on federal lands before taking official action or committing irretrievable resources to a project. Accordingly, the BLM must issue detailed environmental impact statements (EIS) that explore impacts and discuss ways to mitigate adverse impacts. See 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14; Forest Guardians v. U.S. Fish & Wildlife Serv., 611 F.3d 692, 711 (10th Cir. 2010) ("[NEPA] requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives."). "If, after an EIS has been prepared, 'there are substantial changes to the proposal or significant new circumstances or information relevant to environmental concerns,' then a supplemental EIS must be prepared." Los Alamos Study Group v. U.S. Dep't of Energy, 692 F.3d 1057, 1061 (10th Cir. 2012) (citing 10 C.F.R. § 1021.314(a)). The government agency can alternatively prepare an **environmental assessment** (EA), which must "provide sufficient evidence" that the proposed action will have no significant impact on the environment. 40 C.F.R. § 1508.9(a)(1).

Similarly, the Endangered Species Act (ESA), 16 U.S.C. §§ 1531–44, requires that the BLM consult with the United States Fish and Wildlife Service (FWS) to "insure that any action authorized, funded, or carried out by [the] agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [the habitat] for such species." Id. § 1536(a)(2). Section 7(d) of the

ESA prohibits the BLM from making any "irreversible or irretrievable commitment of resources" prior to the conclusion of consultation which would have "the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures." Id. § 1536(d).

***2** At the BLM's request, the FWS will examine whether any listed or proposed species may be present in the proposed action area. 16 U.S.C. § 536(c)(1); 50 C.F.R. § 402.12(c). If there is a possibility that listed or proposed species are present or that their habitat will be threatened, the BLM must prepare a biological assessment to determine what the effects will be. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). If the action is likely to adversely affect one or more of these species, the agency must engage in "formal consultation" with FWS, 50 C.F.R. § 402.14(b)(1), after which the FWS will issue a "biological opinion." 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(g)(8) & (h). If the FWS concludes that the BLM's proposed action "will jeopardize the continued existence" of a listed species, the FWS will outline "reasonable and prudent alternatives." 16 U.S.C. § 1536(b)(3)(A).

The BLM manages onshore oil and gas development on federal lands through a three-stage process: 1) land use planning, 2) leasing, and 3) approval of drilling proposals. (Am. Compl. ¶ 49, ECF No. 16.) First, the BLM develops a land use plan, known as Resource Management Plan (RMP), specifying which lands will be open and which will be closed to oil and gas leasing, and stipulations and conditions that may be placed on any such development. 43 U.S.C. § 1712(a). Second, the BLM may, at its discretion, offer surface occupancy leases for the development and drilling of tracts of public land. 43 C.F.R. §§ 1610.5-3, 3120–3120.7-3, 3101.1. Third, the BLM will process lessees' applications for permits to drill on the leased land. 43 C.F.R. § 3162.3-1(c).

II. Factual Background [3]

This lawsuit challenges four leasing decisions made by the BLM from 2018 through 2019: the December 2018 Moab leases, the December 2018 Vernal leases, the March 2019 Vernal leases, and the September 2019 Moab leases. (Am. Compl. ¶ 53.) Across these four BLM leasing decisions, the BLM issued 145 oil and gas leases on public lands throughout eastern Utah's Book Cliffs and Uinta Basins regions, 54 of which were sold to Intervenor Defendant AEC. (Id. ¶¶ 1, 7, 53.)

SUWA alleges that before leasing these areas to AEC and others, the BLM failed to 1) issue an EIS or an EA on the environmental impacts of oil drilling, 2) adhere to the congressionally-required notice and comment procedure, 3) explore middle-ground alternatives to selling total surface development rights for the land, or 4) consult with the FWS on the threat to endangered or threatened species and their habitats. (Id. ¶ 53.)

Specifically, for its December 2018 Moab leasing decision, the BLM prepared a Determination of NEPA Adequacy without conducting a full NEPA analysis. The BLM also failed to provide the public an opportunity for notice and comment under the congressionally prescribed process, instead requiring the public to object to the leasing decision within just ten days. (Am. Compl. ¶ 54.) SUWA provided its objections to the December 2018 Moab leasing decision through the BLM's informal process.

For its December 2018 Vernal leasing decision, the BLM prepared an EA but again did not provide the public with an opportunity for formal notice and comment, giving the public just ten days to object. (Id. ¶ 55.) SUWA protested the BLM's December 2018 Vernal leases by submitting "scoping comments" on the BLM's Determination of NEPA Adequacy and EA. (Id. ¶ 56.)

For the March 2019 Vernal leasing decision and the September 2019 Moab leasing decision, the BLM prepared EAs and provided the public the ability for formal notice and comment on the proposed actions. (Id. ¶¶ 57–58.) SUWA submitted objections to both leasing decisions. (Id. ¶¶ 57–59.)

***3** On September 12, 2019, SUWA challenged BLM's decision to issue a number of oil and gas leases, including the 2018 Moab and Vernal leasing decisions, in a separate Utah District Court case. See Complaint for Declaratory and Injunctive Relief, Living Rivers v. Hoffman, No. 4:19-cv-74-DN (D. Utah), ECF No. 2. After the lawsuit was filed, the BLM suspended the 2018 leases while it prepared a supplemental Greenhouse Gas Environmental Analysis (GHG EA). (Am. Compl. ¶ 74 (citing Unopposed Motion to Stay Case, Living Rivers, No. 4:19-cv-74-DN, ECF No. 15.) Based on the BLM's decision to suspend those leases and to prepare a supplemental GHG EA, SUWA voluntarily dismissed the Living Rivers lawsuit. (Id. ¶ 75.)

In January 2020, the BLM published its supplemental GHG EA summarizing the 2018 oil and gas leases' impact on climate change. (Am. Compl. ¶ 76.) The supplemental GHG EA explained that the BLM would, after allowing public notice and comment, decide whether to "1) lift the suspension on a particular lease, 2) modify a lease and lift the suspension, or 3) cancel a lease." (Id. ¶ 78.) SUWA issued comments objecting to the BLM's supplemental GHG leasing analysis, arguing that the BLM had failed to analyze and disclose the social costs of the GHG emissions. (Id. ¶¶ 79–80.) Following its publication of the Supplemental GHG EA, and despite SUWA's objections, the BLM temporarily lifted its suspensions on the 2018 leases. (Id. ¶¶ 59, 82.)

The BLM's lease suspensions were reinstated after changes in the regulatory landscape and lawsuits filed by several environmental organizations, meaning that no development is currently in progress. For example, in January 2021, the Biden Administration revoked and rescinded all energy agency dominance agenda orders and directives that had been issued under the Trump Administration. (Id. ¶ 83 (citing Exec. Order No. 13990, 86 Fed. Reg. 7037, 7041 (Jan. 20, 2021) (revoking Executive Order No. 13783); Sec'y of the Interior, Order No. 3398 § 4 (Apr. 16, 2021) (revoking Secretarial Order No. 3354)).) The Interior Department also instituted a new policy in 2021 requiring the BLM to identify the social costs and benefits of oil and gas leases to taxpayers and outline alternative scenarios to lessen these costs. See U.S. Dep't of the Interior, Report on the Federal Oil and Gas Leasing Program, Prepared in Response to Executive Order 14008 at 3 (Nov. 2021) (concluding that the federal government's oil and gas leasing program had "fail[ed] to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs that must be borne by taxpayers").

The BLM also agreed to suspend its oil and gas leases as a condition of settlement of similar lawsuits brought by WildEarth Guardians and others in the United States District Court for the District of Columbia (Nos. 1:16-cv-1724-RC, 1:20-cv-56-RC, and 1:21-cv-175-RC, the WEG Cases). In the WEG Cases, WEG alleged that the BLM had violated NEPA by not considering GHG emissions when issuing leases. WildEarth Guardians v. Haaland, 2022 WL 1773474, at *2–3 (D.D.C. June 1, 2022). Consistent with the WEG settlement, the BLM is conducting ongoing supplemental NEPA analyses of its leasing decisions. See Stipulated Settlement Agreement at 3, WildEarth Guardians, No. 1:21-cv-175 (D.D.C.), ECF No. 71-1 (agreeing that "BLM will conduct additional NEPA analysis for the ... leasing decisions challenged," and that "[u]pon completion of the additional NEPA analysis and related documentation, BLM will issue one or more decisions"). [4]

***4** The BLM's supplemental GHG EA has been posted for public notice and comment, but the BLM has not yet issued a decision about whether it will go ahead with, modify, or cancel the four leasing decisions at issue here. (ECF No. 42 at 3–4 ns. 1–2.) In the meantime, AEC has submitted fourteen Applications for Permits to Drill (APDs) on land included in its suspended leases. All fourteen of AEC's ADPs remain pending. (ECF No. 64-3.)

While the BLM's GHG Supplemental EA was pending, SUWA filed this action to challenge and enjoin all four of the BLM's leasing decisions, contending that the BLM violated NEPA and the ESA when it approved the lease sales without 1) fully analyzing the environmental, social, and direct, indirect, and cumulative impacts of the lessees' planned drilling on emissions, water resources, and animal species, 2) identifying a reasonable range of alternatives, and 3) consulting with FWS. (Am. Compl. ¶¶ 9–10.) SUWA contends that the challenged leases, if reinstated, will cause recreational and aesthetic harm to its members, who use the federal public lands for a variety of purposes, including solitude, viewing native flora and fauna, rafting and canoeing, cultural appreciation, and hiking and backcountry recreation. (Id. ¶¶ 9–10, 14.)

In May 2024, AEC, an independent oil-and-gas exploration and development company, intervened in the case, seeking to defend its leases. (Order Granting Motion to Intervene dated May 10, 2024, ECF No. 41.) AEC moved to dismiss SUWA's claim for lack of subject matter jurisdiction. (ECF No. 42.) AEC was joined in its motion by the State of Utah. (ECF No. 45.)

AEC and the State of Utah argue in their motions to dismiss that 1) SUWA's claims were not ripe when the group brought the action because the BLM was and is still conducting further environmental reviews pursuant to NEPA and has not yet made a final and therefore reviewable decision about whether it will reinstate the already issued leases and 2) SUWA lacks

standing because it has not shown that its members will suffer concrete and particularized injuries from oil and gas development on the challenged leases. (ECF Nos. 42, 45.) The court held a hearing on the Defendants' motions on January 16, 2025. (ECF No. 69.)

On January 17, 2025, AEC filed a Notice of Supplemental Authority to inform the court that the BLM had just published a Notice of "Intent to Prepare an Environmental Impact Statement for the Oil and Gas Leasing Decisions in Seven States From February 2015 to December 2020." (ECF No. 70 (citing 90 Fed. Reg. 4779 (Jan. 16, 2025)) (EIS Notice).) AEC contends that "[t]he EIS Notice encompasses the leases that [SUWA] challenge[s] in this lawsuit" and will "provide a comprehensive analysis of the potential environmental impacts from these leases ... including the impacts of [GHG] emissions." (Id. at 2). "Further, the EIS Notice initiates a 'public scoping process,' in which SUWA can participate." (Id. at 3.) The EIS Notice confirms that the BLM may affirm, modify, or cancel its leases at the conclusion of its administrative process. (Id. at 3 (citing EIS Notice at 4780).) In response to AEC's Notice of Supplemental Authority, SUWA reiterated its argument, as discussed below, that BLM's supplemental leasing analyses do not alter its standing or the ripeness of the organization's claim. (Pl.'s Resp. Defs.' Suppl. Auth., ECF No. 71.)

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a complaint "must plead facts sufficient to state a claim to relief that is plausible on its face." Slater v. A.G. Edwards & Sons, Inc., 719 F.3d 1190, 1196 (10th Cir. 2013) (internal punctuation omitted) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). A claim is facially plausible when the complaint contains factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. See Burnett v. Mortg. Elec. Registration Sys., Inc., 706 F.3d 1231, 1235 (10th Cir. 2013).

***5** "Standing is determined as of the time the action is brought." Nova Health Sys. v. Gandy, 416 F.3d 1149, 1154 (10th Cir. 2005). When evaluating at the motion to dismiss stage whether plaintiffs have standing, the court must accept all well-pled allegations in the complaint as true and construe them in the light most favorable to the plaintiff. See, e.g., Albers, 771 F.3d at 700; Warth v. Seldin, 422 U.S. 490, 501 (1975). Courts must also "construe the statements made in the affidavits in the light most favorable to the petitioner." Initiative & Referendum Inst. v. Walker, 450 F.3d 1082, 1089 (10th Cir. 2006) (internal quotation marks omitted). The court's function is "not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." Sutton v. Utah Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999) (quoting Miller v. Glanz, 948 F.2d 1562, 1565 (10th Cir. 1991)).

ANALYSIS

Both "standing and ripeness present the threshold jurisdictional question of whether a court may consider the merits of a dispute." SUWA v. Palma, 707 F.3d 1143, 1152 (10th Cir. 2013) (citing Morgan v. McCotter, 365 F.3d 882, 887 (10th Cir. 2004) ("[J]usticiability focus[es] on the twin questions of whether Plaintiff has standing to maintain this action and whether the case is ripe for judicial review.")). The court addresses each threshold issue in turn, finding, for the reasons discussed below, that this case must be dismissed because SUWA's claims are not yet ripe pending the BLM's final decision on its suspended oil and gas leases.

III. Article III Standing

The Defendants argue that this action cannot yet be litigated because SUWA, as an association, lacks standing to bring its case by failing to demonstrate an imminent, concrete, and particularized injury. Standing "is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (citing Allen v. Wright, 468 U.S. 737, 751 (1984)). Without constitutional standing, federal courts lack jurisdiction. Summers v. Earth Island Inst., 555 U.S. 488, 492–93 (2009).

To satisfy Article III's standing requirements, a plaintiff must show:

> (1) it has suffered an "injury in fact" that is (a) concrete and particularized

> and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth v. Laidlaw Env. Servs. Inc., 528 U.S. 167, 180–81 (2000) (citing Defenders of Wildlife, 504 U.S. at 560–61). "The purpose of the injury-in-fact requirement of Article III is to ensure only those having a 'direct stake in the outcome,' and not those having abstract concerns, may have access to the courts." Comm. to Save the Rio Hondo v. Lucero, 102 F.3d 445, 451 (10th Cir. 1996) (quoting Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 473 (1982)); see also SUWA v. Palma, 707 F.3d at 1155 (same).

A. Concrete and Particularized Injury

"The relevant showing for standing in environmental cases is not injury to the environment but injury to the plaintiff." Comm. to Save the Rio Hondo, 102 F.3d at 449. "Where, as here, 'the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish.' " SUWA v. Palma, 707 F.3d at 1155 (citing Defenders of Wildlife, 504 U.S. at 562). "An association [will have] standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Friends of the Earth, 528 U.S. at 181. "As a general rule, 'environmental [association] 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.' " SUWA v. Palma, 707 F.3d at 1155 (citing Friends of the Earth, 528 U.S. at 183; Sierra Club v. Morton, 405 U.S. 727, 735 (1972)). In simple terms, the Defendants' standing argument turns on whether SUWA's members and/or employees have adequately pled that they will experience some loss of enjoyment if industrial drilling proceeds on this land.

***6** In SUWA v. Palma, the Tenth Circuit analyzed standing in an environmental impact case involving the same plaintiff as here, SUWA, as well as the same declarant, Mr. Ray Bloxham. Id. In that case, Mr. Bloxham submitted a similar declaration specifying his work and recreational activities on the leased-out federal land. Id. at 1156. The Tenth Circuit, analyzing this declaration, determined that Mr. Bloxham's declaration was sufficient to show SUWA's standing because Mr. Bloxham had recently visited and evidently planned to visit the land that would be adversely affected by oil and gas drilling. Id. Accordingly, the Tenth Circuit set forth a general rule that an environmental organization, like SUWA, will have a concrete, particularized injury sufficient to show standing where one of its members has "repeatedly visited a particular site, has imminent plans to do so again, and [has] interests ... harmed by a defendant's conduct." Id.; see also SUWA v. Off. of Surface Mining Reclamation & Enf't, 620 F.3d 1227, 1234 (10th Cir. 2010) (finding injury in fact because "SUWA's amended complaint states that its members use the land affected by these permits for various purposes—scientific study, hunting, aesthetic appreciation, sightseeing, and solitude" and that "the proposed mining operations would impair many, if not all, of these uses").

Here, as in SUWA v. Palma, the court finds that the declaration of Mr. Bloxham, a SUWA member and employee, is sufficient to demonstrate the organization's standing to challenge the government's leases. Mr. Bloxham details his extensive travel in recent months and years throughout the areas where the proposed drilling will occur. (See ECF No. 64-1, Bloxham Decl.) Mr. Bloxham's position at SUWA undisputedly entails "spend[ing] considerable time on-the-ground visiting public lands in Utah." (Id. ¶ 1.) He, like many other SUWA members, "use[s] and enjoy[s] the public lands and natural resources on BLM-managed lands for many purposes including health, recreational, and aesthetic, and [has] used" and "intend[s] to return as often as possible but certainly within the next year." (Id. ¶¶ 16–24.) His specific recreational activities "on the public lands in and near the challenged leases" include rafting, camping, and hiking activities on and around the land. (Id.) Mr. Bloxham elaborates that "[t]he development of the leases at issue in this litigation will degrade naturalness, destroy opportunities for solitude, create dust and pollution, increase ambient

background noise levels, degrade and destroy wildlife habitat, and consume hundreds of millions of gallons of water in this arid high desert region." (Id. ¶ 25.) Accepting these factual allegations as true, the court finds Mr. Bloxham has sufficiently established his personal stake in the use of this land if the leases are reinstated—and therefore his organization's standing. E.g., SUWA v. Palma, 707 F.3d at 1155. SUWA's Amended Complaint cannot be dismissed on the basis that its member's injury is not concrete or particularized.

B. Imminence of Injury

The Defendants also argue that SUWA lacks standing because the organization's injuries are "hypothetical," rather than imminent, given that the leases have been indeterminately suspended pending the BLM's final NEPA and supplemental EIS analysis, with no drilling or development permits issued or on the horizon.[5] (ECF No. 42 at 7; Joint Reply Mot. Dismiss, ECF No. 65 at 9, 10–12.) The Tenth Circuit requires that an injury be "certainly impending ... to ensure that the alleged injury is not too speculative for Article III purposes." SUWA v. Palma, 707 F.3d at 1157 (citing Defenders of Wildlife, 504 U.S. at 564 n. 2). Similarly, as the court discusses below, to establish that a case is "ripe" for judicial review, SUWA must show that the agency has made a "final" decision not subject to change. See Los Alamos Study Group, 692 F.3d at 1065. The Tenth Circuit recognizes that "[t]he doctrines of standing and ripeness" substantially overlap where, as in SUWA v. Palma, "[t]he question ... is not whether SUWA is a proper party to challenge BLM's decision, but when it can do so." 707 F.3d at 1157 (citing Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc); Wright & Miller, § 3532.1 Sources of Doctrine, 13B Fed. Prac. & Proc. Juris. § 3532.1 (3d ed.) ("Both ripeness and mootness, moreover, could be addressed as nothing but the time dimensions of standing.")).

***7** Given the overlap between the court's standing and ripeness inquiries, and because the court has, for the reasons discussed above, determined that SUWA is a "proper party to bring this action if this is the correct time to do so," the court finds that the question of whether SUWA's injury is "hypothetical" or "imminent" is more appropriately decided under the ripeness doctrine, which has been "characterized as standing on a timeline." Id. The court therefore turns to the question of whether SUWA's claims are ripe for adjudication, finding, for the reasons discussed below, that the BLM's decision is, at this stage "non-final."

IV. Ripeness

Whether a case is "ripe" for judicial review turns on two factors: "(1) the fitness of the issue for judicial review, and (2) the hardship to the parties of withholding judicial review." United States v. Cabral, 926 F.3d 687, 693 (10th Cir. 2019) (citing Abbott Labs. v. Gardner, 387 U.S. 136, 148–49 (1967)) (internal quotation marks omitted). In examining the first issue, the fitness of the issue for judicial review, the Tenth Circuit considers four questions:

> (1) whether the issues in the case are purely legal; (2) whether the agency action involved is 'final agency action' ...; (3) whether the action has or will have a direct and immediate impact upon the plaintiff and (4) whether the resolution of the issues will promote effective enforcement and administration by the agency.

SUWA v. Palma, 707 F.3d at 1158 (quoting Coal. For Sustainable Res., Inc. v. U.S. Forest Serv., 259 F.3d 1244, 1250 (10th Cir. 2001)). Here, the Defendants contest and the court examines only the "finality" of the BLM's leasing decisions because "the absence of final agency action is [case] dispositive." Los Alamos Study Group, 692 F.3d at 1065 (citing Friends of Marolt Park v. U.S. Dep't of Transp., 382 F.3d 1088, 1093–94 (10th Cir. 2004) ("[W]hether the issues are fit for review depends on whether the plaintiff challenges a final agency action."); Park Lake Res. Ltd. Liab. Co. v. U.S. Dep't of Agric., 197 F.3d 448, 450 (10th Cir. 1999) (same, citing the APA, 5 U.S.C. § 704, which limits judicial review to final agency actions and actions made reviewable by statute)).

The Tenth Circuit explained that "[a]n agency's action is final if it satisfies two requirements: 'First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. Second, the action must be one by which rights or obligations

have been determined, or from which legal consequences will flow.' " Los Alamos Study Group, 692 F.3d at 1065 (citing Bennett v. Spear, 520 U.S. 154, 177–78 (1997); Ctr. for Native Ecosystems v. Cables, 509 F.3d 1310, 1329 (10th Cir. 2007)).

SUWA argues that the BLM's initial 2018 and 2019 leasing decisions are "final" because the agency has already issued the 2018 and 2019 leases and because BLM is now "actively working on" applications for permits to drill. (ECF No. 64 at 5–8.) The court acknowledges "that in a typical mineral leasing case, environmental plaintiffs do not have to wait until drilling permits have been issued" because "Federal courts have repeatedly considered the act of issuing a lease to be final agency action which may be challenged in court." SUWA v. Palma, 707 F.3d at 1159 (citing New Mexico ex rel. Richardson v. BLM, 565 F.3d 683, 683 (10th Cir. 2009); Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988); Sierra Club v. Peterson, 717 F.2d 1409 (D.C. Cir. 1983)). However, the facts here are notably distinct from cases SUWA relies on, such as Richardson v. BLM, where the BLM's lease issuance demonstrated a "final agency action" sufficient to show fitness for judicial review. Here, by stark contrast, the BLM leases are currently—and have been for nearly three years—suspended.

***8** On these undisputed facts, the court finds that this case is far more analogous to a nearly identical case which SUWA notably fails to distinguish,[6] SUWA v. Palma, where the Tenth Circuit found that the parties' dispute over already-issued leases was not ripe because the agency's federal land leases were suspended pending supplemental environmental analysis—meaning, like here, the already-issued leases could be reinstated, revoked, or modified. 707 F.3d at 1159. As the Tenth Circuit held in remanding SUWA v. Palma for dismissal, a suspended lease is non-final. 707 F.3d at 1159 (characterizing the suspended leases as an "interim decision"); see also Los Alamos Study Group, 692 F.3d at 1065 (finding decision-making process was ongoing, tentative, and interlocutory because the environmental analysis process was "still open to public participal and it was unclear what form [the decision] would take) (citing Ctr. for Biological Diversity v. U.S. Dep't of the Interior, 563 F.3d 466, 480 (D.C. Cir. 2009) (classifying challenge to first stage of a multistage lease program as "not ripe" when agency "would be conducting additional analyses in later stages that could scuttle the program")). Judicial action would therefore be premature because there has not been a consummation of the BLM's decision-making process sufficient to support litigation—even if, as SUWA contends, it is likely the agency wants to reinstate the leases and issue drilling permits. See, e.g., Gardner v. Salazar, No. 2:11-cv-719-BSJ, 2013 WL 1284343, at *3 (D. Utah Mar. 27, 2013) (agency decision deemed non-final where administrative appeal remained pending), aff'd sub nom. Gardner v. Jewell, 538 F. App'x 830 (10th Cir. 2013); Front Range Equine Rescue v. BLM, No. 16-cv-0969-WJM, 2017 WL 5885314, at *7 (D. Colo. Nov. 29, 2017) (noting that a concerned party cannot sustain an APA suit by arguing that "an inoperative decision record shows what an agency wants to do and therefore likely will do when the agency issues a new decision record" (emphasis omitted)). As even SUWA acknowledges, "the [BLM's] final 7-State GHG EA" could "subsequently invalidate[ ] th[e] leases," a possibility which BLM is examining in its supplemental GHG EA and forthcoming supplemental EIS. (ECF No. 69 at 9; see also ECF No. 70 at 3.) Consistent with Tenth Circuit law, the BLM's suspension and active reconsideration of its leases mean that its decision is not yet "final." See Coal. For Sustainable Res., Inc., 259 F.3d at 1251 (agency action not "final" within meaning of APA where Forest Service was actively considering the plaintiff's proposed course of action).

Instead of distinguishing SUWA v. Palma, SUWA focuses on the differences between the present case and another case that the Defendants have relied on in support of dismissal, Los Alamos Study Group, where the Tenth Circuit found an agency's decision was "non-final" and therefore not ripe for adjudication because an agency's leases had not yet been issued pending the agency's ongoing supplemental EIS analysis. (ECF No. 64 at 8–10) (citing 794 F. Supp. 2d at 1229 (D.N.M. 2011), aff'd, 692 F.3d 1057 (10th Cir. 2012)). SUWA argues that the Tenth Circuit's holding in Los Alamos Study Group means that the converse must be true—in other words, that the agency's decision must be final if any leases have been issued. (ECF No. 64 at 8–9.) But the Tenth Circuit in Los Alamos Study Group never discussed whether an agency's decision would be deemed "final" if leases had been issued but then suspended. In any event, for the reasons discussed above, the court finds that even though the BLM's leases here have already been issued, their issuance is largely immaterial to whether the BLM has made a "final decision" because they have been suspended with no imminent or certain reinstatement. Accordingly, SUWA's claim, like that

of the plaintiff in Los Alamos Study Group, will not be ripe until the conclusion of the agency's supplemental EIS.

SUWA also argues that the BLM's decision is "final" because the agency is in the process of reviewing applications for permits to drill on the land covered by the now-suspended leases. (ECF No. 64 at 5–8.) This is unpersuasive. It is undisputed that BLM has not yet issued any drilling permits. (Id. at 6 ("As of the date of this filing, there are fourteen pending APDs on leases at issue in this case, all of which were submitted by AEC.").) And SUWA concedes that drilling cannot occur until the BLM concludes its NEPA Analysis and reinstates the leases. (Id. at 8.) The court cannot reasonably conclude that "AEC will have approved APDs and potentially already drilled on the leases at issue here even if the final 7-State GHG EA subsequently invalidates those leases." (ECF No. 64 at 9.) There is simply too much uncertainty about when and what type of drilling, if any, will occur on the land covered by the now-suspended leases. E.g., Wilderness Watch v. Ferebee, 445 F. Supp. 3d 1313, 1325 (D. Colo. 2020) (explaining that even though "evidence shows that defendants have considered" a proposed action, consideration alone is insufficient to confer jurisdiction). The court concludes that SUWA has raised an "abstract disagreement" that the court cannot now adjudicate because doing so "would disrupt the administrative process" and hamper the efficiency of the BLM's environmental analysis. Farrell-Cooper Min. Co. v. U.S. Dep't of the Interior, 728 F.3d 1229, 1234 (10th Cir. 2013) (citing Abbott Labs., 387 U.S. at 148; Bell v. New Jersey, 461 U.S. 773, 779 (1983)); see also Coal. For Sustainable Res., Inc., 259 F.3d at 1253 ("[R]esolution at this time would likely impede rather than promote an effective conservation program.").

***9** Finally, SUWA has not established an alternative basis for the court to intervene and find this dispute ripe for adjudication because the court can identify no injury or hardship to SUWA if review is delayed until the leases are, if ever, reinstated. The status quo, as it has stood for the last five to six years, creates no rights or obligations regarding the public land: the lessees, including AEC, cannot presently drill, and SUWA's members are still able to enjoy the untouched natural environment.

The court finds, in dismissing the claims as not ripe, that SUWA "will have ample opportunity later to bring its legal challenge at a time when harm is more imminent and more certain"—for example, if the BLM decides to uphold some or all the leases after it has completed its NEPA Analysis and supplemental EIS. Ohio Forestry Ass'n, Inc. v. Sierra Club, 523 U.S. 726, 734 (1998).

CONCLUSION

For these reasons, the Intervenor Defendants' motions to dismiss (ECF Nos. 42, 45) are GRANTED.

All Citations

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Footnotes

1 The State of Utah joined AEC's motion to dismiss in a separate filing. (ECF No. 45.)

2 The BLM manages most publicly owned minerals in the United States (nearly 700 million acres). About half of this federal mineral estate contains oil and/or natural gas, and over 23 million acres of federally managed lands are currently leased to private companies for oil and gas drilling. (See Am. Compl. ¶ 62.)

3 The court accepts the Complaint's allegations as true for the purposes of this order. See Albers v. Bd. of Cty. Comm'rs of Jefferson Cty., 771 F.3d 697, 700 (10th Cir. 2014).

4 See BLM, Supplemental **Environmental Assessment** Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing in Seven States from Feb. 2015 to Dec. 2020, available at: https://eplanning.blm.gov/eplanning-ui/project/2022218/570 (last accessed Jan. 23, 2025).

5 As discussed below, Defendants argue that SUWA's Amended Complaint also lacks "ripeness" for the same reason. (ECF Nos. 42 at 7 & 65 at 11–12.)

6 SUWA instead relies on the Tenth Circuit's holding in SUWA v. Palma as support for its claim that the BLM has made a "final agency action" in issuing the now-suspended leases. (ECF No. 64 at 10.) But in SUWA v. Palma, the Tenth Circuit reached the opposite conclusion, finding the action should have been dismissed "[b]ecause SUWA's claims are not ripe." 707 F.3d at 1161.