



United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals

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IBLA 2026-0213	)	DOI-BLM-NV-S010-2026-0080-DNA
	)	
CITY OF BOULDER CITY, NEVADA	)	Rights-of-Way
	)	
IBLA 2026-0216	)	Stay Granted; Appeals Consolidated and
	)	Expedited; Briefing Schedule Ordered
CENTER FOR BIOLOGICAL DIVERSITY	)	
ET AL.	)	

ORDER

Boulder City, Nevada, the Center for Biological Diversity, and Sierra Club (Appellants) have appealed a June 26, 2026, Decision Record by the Las Vegas Field Office, Bureau of Land Management (BLM).¹ In the Decision Record, BLM approved an amended right-of-way (ROW) for Townsite Solar 2 LLC to construct a facility on BLM-managed land near Boulder City. Appellants seek to stay the Decision Record. Because Appellants present similar issues and seek identical relief both at this preliminary stage and on the merits, the appeals are hereby consolidated,² and this Order considers both stay petitions.

SUMMARY

Townsite holds an existing ROW, granted in 2023, authorizing it to build a solar photovoltaic power plant with a battery storage system on BLM-managed land. To satisfy the requirements of the National Environmental Policy Act (NEPA), BLM studied the potential environmental impacts of the power plant in an Environmental Assessment (EA), which it developed after public meetings and intergovernmental consultation.

¹ Decision Record, Townsite Data Center, DOI-BLM-NV-S010-2026-0080-DNA (June 26, 2026) (Data Center Decision Record) (attached as Ex. A to IBLA 2026-0213, Notice of Appeal and Petition for Stay (filed July 23, 2026) (Boulder City Stay Petition)). BLM has not yet filed the administrative record in this appeal; we cite the versions of documents appended to the parties' stay filings. References to "CBD" include both Center for Biological Diversity and Sierra Club, appellants in IBLA 2026-0216.

² See 43 C.F.R. § 4.409(e). Citations to Federal statutes and regulations are to the current versions unless otherwise specified.

Townsite then sought an amended ROW for the same site that would instead authorize it to build a data center including computer servers, network equipment, and a battery storage system twice the size of the proposed power plant's. BLM did not study the effects of the data center project in a new or revised EA. Instead, BLM issued a Determination of NEPA Adequacy (DNA), which establishes BLM's reliance on a prior completed NEPA analysis for a project that is "substantially the same."³ BLM determined the data center "is essentially like" the solar plant project and that it would have "similar anticipated impacts."⁴

The basic merits question in this appeal is whether BLM reasonably concluded that its EA studying the environmental impacts of a power plant was adequate to disclose and analyze the environmental impacts of a data center on the same site. Appellants are likely to prevail on that question because the two projects are not "substantially the same." As a result, BLM's analysis of the solar plant project's environmental effects was likely insufficient to support a decision about the data center project.

Appellants have also established the other requirements for a stay of BLM's action. CBD has demonstrated that permanent and irreparable harm is likely to occur to its members' aesthetic and recreational interests in the project site, and those harms outweigh the temporary financial harm to Townsite from the delay. Furthermore, the public interest in the timely development of data center infrastructure does not outweigh the benefits of a thorough and open consideration of the potential environmental effects of that development, as NEPA requires. The stay is therefore granted based on CBD's showing of all four factors, and the appeal is expedited to mitigate any adverse impacts of delay.

BACKGROUND

I. Legal Requirements for Approval of a Right-of-Way

Under the Federal Land Policy and Management Act (FLPMA), BLM has broad authority to issue ROWs for the use and occupancy of Federal lands for a variety of purposes.⁵ Those purposes include pipelines, tunnels, "systems for generation, transmission, and distribution of electric energy," communications systems, roads and

³ U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, 516 DM 1 (effective date Feb. 23, 2026) (DOI NEPA Handbook).

⁴ Determination of NEPA Adequacy Worksheet, DOI-BLM-NV-S010-2026-0080-DNA at unpaginated (unp.) 5, 13 (attached as part of Ex. B to Boulder City Stay Petition) (Data Center DNA).

⁵ See 43 U.S.C. § 1761.

“other means of transportation,” and other “systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.”⁶

Some of the claims Appellants raise in this appeal relate to specific requirements of FLPMA, but this Order focuses on their NEPA claims. The “twin aims” of NEPA are to require an agency “to consider every significant aspect of the environmental impact of a proposed action” and to “ensure[] that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.”⁷ To fulfill these aims, before BLM may approve a ROW, it must ensure that it has disclosed the environmental effects of any “major Federal actions significantly affecting the quality of the human environment” in an environmental impact statement (EIS).⁸ Not all of BLM’s actions, however, require an EIS. If a proposed action “does not have a reasonably foreseeable significant effect on the quality of the human environment, or the significance of such effect is unknown,” and if no categorical exclusion applies, BLM “shall prepare an environmental assessment” (EA).⁹ If BLM determines pursuant to an EA that an EIS is not necessary to satisfy NEPA’s requirements, it may issue a “finding of no significant impact” (FONSI) concluding that more in-depth NEPA analysis is not required.¹⁰

To guide Department agencies and officials in implementing these requirements, the Department has adopted procedural and interpretive guidance in its NEPA Handbook.¹¹ Although the Handbook does not “govern the individual rights and obligations of either regulated entities or persons,” it does establish “procedures governing bureau compliance with NEPA.”¹²

NEPA generally allows agencies to rely on an existing NEPA analysis, to the extent it is relevant, to demonstrate that subsequent proposals will not have a significant impact.¹³ Like the Department’s former NEPA regulations,¹⁴ the DOI NEPA Handbook provides for this possibility using the mechanism of a Determination of NEPA Adequacy

⁶ *Id.* § 1761(a); *see also* 43 C.F.R. §§ 2801.6(a), 2801.9(a).

⁷ *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983) (cleaned up).

⁸ 42 U.S.C. § 4332(2)(C).

⁹ *Id.* § 4336(b)(2).

¹⁰ *See id.*

¹¹ *See* DOI NEPA Handbook at 1.

¹² *Id.*; *see also, e.g., S. Nev. Water Auth. v. BLM*, 199 IBLA 66, 67 (2024) (noting that the Board will find error where an appealed decision is inconsistent with Department guidance documents).

¹³ *See, e.g., N. Alaska Env’t Ctr. v. BLM*, 983 F.3d 1077, 1090 (9th Cir. 2020) (describing the practice of “tiering”).

¹⁴ *See, e.g.,* 43 C.F.R. § 46.120(c) (2024).

(DNA). BLM may rely on an earlier EIS or EA if it “meets the standards for an adequate statement or assessment” of the environmental impacts of a new proposal.¹⁵ If BLM determines that the proposed action is “substantially the same” as an action previously analyzed in an EA, it may “republish the relied-upon” EA.¹⁶ If the two actions are not “substantially the same,” then BLM may “modify the [EA] as necessary to render the statement fit for fulfilling NEPA’s analytic requirements for evaluating the environmental effects of the proposed action and reasonable alternatives.”¹⁷ For BLM to rely on a DNA, it must determine that:

the environmental effects of a proposed action lie within the scope of and have been analyzed in one or more existing environmental assessments or environmental impact statements and there are no new circumstances, new information, or potential for unanticipated or unanalyzed environmental effects that warrant new or supplemental analysis before the proposed action can be implemented.^[18]

II. Townsite’s Proposal and BLM’s Decision

On September 26, 2023, BLM granted Townsite a ROW “to construct, operate, maintain and decommission the Townsite Solar 2 Project,” a solar power plant, on 80 acres of BLM-managed land about 5 miles southwest of downtown Boulder City.¹⁹ Solar facilities are not an uncommon land use in the area; at the time, BLM identified 12 other solar generation facilities within 5 miles of the proposed project site.²⁰

BLM studied the potential environmental impacts of the project in an EA (the Solar EA). The EA was prepared:

to analyze and disclose the environmental effects of approving a ROW for the proposed Townsite 2 Solar Project, which consists of a solar photovoltaic (PV solar) energy development facility (up to 19 megawatt alternating current [MWAc]), a possible battery energy storage system (BESS) (up to 35

¹⁵ DOI NEPA Handbook § 3.1(a).

¹⁶ *Id.* § 3.1(b)(1).

¹⁷ *Id.* § 3.1(b)(2).

¹⁸ *Id.* § 6.1(j).

¹⁹ Decision Record, Townsite Solar 2 Project, DOI-BLM-NV-S010-2023-0016-EA at 2 (Sep. 26, 2023) (attached as Ex. 1 to IBLA 2026-0216, Notice of Appeal and Petition for Stay (filed July 27, 2026) (CBD Stay Petition)).

²⁰ Environmental Assessment, Townsite Solar 2 Project, DOI-BLM-NV-S010-2023-0016-EA at 63 (Sep. 2023) (Solar EA) (attached as part of Ex. B to Boulder City Stay Petition).

MW), a linear facilities segment with ancillary project components, and a short-term ROW for a temporary laydown area.^[21]

The EA described the “proposed action” in similar terms.²² According to the EA, the purpose of BLM’s decision was to respond to Townsite’s application “to construct, own, operate, and decommission a solar generation power plant and ancillary facilities.”²³ BLM held a public comment period on the Solar EA and made minor changes to the EA based on the comments it received.²⁴ It did not receive any comments from Boulder City or CBD,²⁵ and it did not contact Boulder City for consultation.²⁶

In November 2025, Townsite requested an amendment to the ROW that BLM had granted for the solar power plant, and it submitted a new Plan of Development to BLM in May 2026. Under the new proposal, Townsite proposed “to construct, own, operate, maintain and eventually decommission a data center on 81 acres of the existing 85-acre ROW area,” including “computer servers, storage, and network equipment to store, manage, process, and disseminate large amounts of data and digital information, and administrative facilities.”²⁷ The proposal also included “surface parking, a 70 MW battery energy storage system (BESS), an electrical substation, and emergency backup generators fueled by biodiesel.”²⁸

BLM prepared the Data Center DNA in which it concluded that “NEPA environmental analysis of the new proposed action is covered by” the Solar EA.²⁹ In considering whether the data center project was “a feature of, or substantially the same as” the solar power plant project, BLM answered:

Yes, the new proposed action (data center) is essentially like the original 2023 proposed action Both proposals will use the exact same location, same acreage, and same perimeter. Both are proposals for industrial uses that will operationalize cutting-edge technologies that are predominantly electrical and solid-state in nature. Both proposals are connected to external electrical infrastructure via the same proposed utility corridor. Both

²¹ *Id.* at 1.

²² *See id.* at 4.

²³ *Id.* at 2.

²⁴ *See id.* at 72.

²⁵ *See id.* App. I (Public Review Comments and Responses).

²⁶ *See id.* at 73.

²⁷ Data Center DNA at unp. 1.

²⁸ *Id.*

²⁹ *Id.* at unp. 5.

proposals will use the same access roads and construction laydown footprints. Both involve improvements/facilities that are visually geometric and less than 30 feet in height. Both propose grading the project site in order to accommodate development. Both proposals would require fencing of the site perimeter to ensure site security. Both proposals involve construction timeframes of 12-18 months using similar equipment and vehicles.^[30]

BLM also concluded that the range of alternatives studied in the Solar EA remained appropriate for the new proposal and that there was no “new information or circumstances relevant to the proposed action.”³¹ After reviewing specific possible environmental impacts, BLM concluded that the Solar EA “fully covers the proposed action and constitutes BLM’s compliance with the requirements of NEPA.”³²

Based in part on the Data Center DNA, BLM decided to approve the amended ROW for the data center project in the Decision Record before us in this appeal. BLM reiterated in the Decision Record that the data center project “is substantially the same” as the solar plant project and that the environmental effects of the two projects would be “similar (both qualitatively and quantitatively).”³³ Boulder City has appealed and sought a stay of the Decision Record in IBLA 2026-0213, while CBD has appealed and sought a stay of the Decision Record in IBLA 2026-0216.

ANALYSIS

To obtain a stay of BLM’s action pending appeal to this Board, Appellants must satisfy each of the four factors established in regulations governing Board practice. A stay is warranted based on: (1) the likelihood of immediate and irreparable harm if the stay is not granted; (2) whether the harm to the appellant absent a stay exceeds the harm to the United States and other parties if the stay is granted; (3) Appellants’ likelihood of success on the merits; and (4) whether the public interest favors granting the stay.³⁴ Appellants have the burden to show that all four of these factors are met.³⁵ Despite some recent changes to the Department’s articulated standards for a stay, the substance of those regulations has not changed, and our past stay decisions and analogous Federal court decisions remain relevant to a stay analysis.³⁶

³⁰ *Id.*

³¹ *Id.* at unp. 6.

³² *Id.* at unp. 14.

³³ Decision Record at 2.

³⁴ Practices Before the Department of the Interior, 91 Fed. Reg. 29,911, 29,919 (May 21, 2026) (revising 43 C.F.R. § 4.405(b)(3)).

³⁵ *Id.* (revising 43 C.F.R. § 4.405(b)(4)).

³⁶ See *Las Vegas Paiute Tribe*, 200 IBLA 172, 179-80 (2025).

I. Appellants Have Demonstrated a Likelihood of Success on the Merits

To obtain a stay, Appellants must show that they are likely to succeed on the merits of their appeal. The parties cite various formulations of the “likelihood of success” standard from the Board’s precedential decisions. Boulder City notes that success “need not be free from doubt.”³⁷ CBD and BLM each quote the Board’s holdings that “it will ordinarily be enough that the plaintiff has raised questions so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus more deliberative investigation.”³⁸ Townsite relies on the Board’s most recent precedential decision involving stay petitions, *Las Vegas Paiute Tribe*, which required appellants to make a “‘persuasive showing’ that their claims of legal or factual error have merit.”³⁹ This standard ensures the required “likelihood” of success under our regulations, “while also allowing the Board to maintain the status quo while it engages in ‘careful and deliberate consideration.’”⁴⁰

Las Vegas Paiute Tribe provides a reliable guide to assessing the merits component of our stay analysis that is consistent with the language of the Department’s regulations and Supreme Court precedent.⁴¹ This Order therefore considers whether Appellants have made a “persuasive showing” that they would demonstrate error in BLM’s Decision Record at the merits stage of the appeal. That standard, moreover, is at least as stringent as other statements of the standard quoted in the parties’ filings.

Appellants raise merits claims under both NEPA and FLPMA. This Order focuses on the NEPA claims because Appellants are likely to succeed on the merits of at least some of those claims, and it is therefore unnecessary to analyze the other claims at this stage.

³⁷ Boulder City Stay Petition at 18 (quoting *Wroncy*, 124 IBLA 150, 152 (1992)).

³⁸ CBD Stay Petition at 13 (quoting *Wyo. Outdoor Council*, 153 IBLA 379, 388 (2000)); IBLA 2026-0213, BLM Opposition to Petition for Stay at 10 (filed Aug. 6, 2026) (BLM Opp. to Boulder City) (quoting *Tenn. Gas Pipeline Co.*, 189 IBLA 108, 115 (2016)).

³⁹ IBLA 2026-0213, Townsite Solar 2 LLC’s Opposition to Petition for Stay at 2 (filed Aug. 6, 2026) (Townsite Opp. to Boulder City) (quoting *Las Vegas Paiute Tribe*, 200 IBLA at 181 (quoting *Or. Nat. Desert Council Action*, 148 IBLA 186, 189 (1999))).

⁴⁰ *Las Vegas Paiute Tribe*, 200 IBLA at 182.

⁴¹ See *id.* at 180. After we issued our stay decision in *Las Vegas Paiute Tribe*, the Deputy Secretary assumed jurisdiction and affirmed BLM’s decision. See Office of the Secretary, *Las Vegas Paiute Tribe v. BLM*, Decision on Appeal at 1 (Aug. 17, 2026). Because the Deputy Secretary did not vacate the Board’s precedential decision in *Las Vegas Paiute Tribe* or address its analysis of the requirements for a stay, that analysis remains binding on the Board.

To prevail on a NEPA claim, an appellant must show that BLM's NEPA analysis has "failed to consider a substantial environmental question of material significance to the proposed action."⁴² BLM shows its consideration of environmental questions through an "environmental document," i.e., an EIS or an EA and a finding of no significant impact.⁴³ Unless a categorical exclusion is available (which no party here claims), BLM "will prepare an environmental assessment or environmental impact statement before issuing any decision to authorize the proposed action."⁴⁴ Within that environmental document, BLM must take a "hard look" at the proposed action's potential impacts.⁴⁵ If the environmental document relies on a previous environmental document (for example, when an EA tiers to a prior EIS), "BLM must consider whether those prior analyses adequately addressed all substantial environmental questions of material significance to the proposed action or whether there is significant new information or circumstances that requires more analysis under NEPA."⁴⁶

It is undisputed in this appeal that BLM has not prepared an "environmental document" in which the data center project was considered as the proposed action. Other than the Decision Record, the only document before the Board that directly considers a data center project as the proposed action is the Data Center DNA. A DNA is not itself an environmental document; "rather it confirms the existence of environmental documentation adequate to fulfill NEPA compliance requirements."⁴⁷ When BLM relies upon an EA to support a DNA, "the EA must show that BLM has taken a 'hard look' at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or will be reduced to insignificance by the adoption of appropriate mitigation measures."⁴⁸

Here, BLM determined in the Data Center DNA that the existing Solar EA met the criteria established in the DOI NEPA Handbook to serve as the environmental document for the data center project. BLM made this determination based on its conclusion that the data center project was "essentially like" the solar plant project.⁴⁹ This determination opens two related avenues for Appellants to pursue their NEPA claims. They may prevail on the merits by showing that Decision Record relied on a DNA that was arbitrary,

⁴² *E.g.*, *Kane*, 195 IBLA 17, 20 (2019); *see Great Basin Res. Watch*, 192 IBLA 55, 61 (2012) (quoting *Legal & Safety Emp. Rsch. Inc.*, 154 IBLA 167, 174 (2001)).

⁴³ DOI NEPA Handbook § 6.1(l).

⁴⁴ *Id.* § 1.2(a)(4).

⁴⁵ *See, e.g.*, *Powder River Basin Res. Council*, 200 IBLA 195, 205 (2025).

⁴⁶ *Id.* at 206.

⁴⁷ DOI NEPA Handbook § 6.1(j).

⁴⁸ *Hamilton*, 179 IBLA 132, 142 (2010).

⁴⁹ *See Data Center DNA* at unp. 14.

capricious, or contrary to applicable law (including the DOI NEPA Handbook).⁵⁰ They may also prevail by showing that the Decision Record relied on a NEPA document, the Solar EA, that failed to consider a substantial environmental question of material significance to the data center project.

A. Appellants Are Likely to Show that the Data Center DNA is Arbitrary or Capricious Because the Two Projects Are Not “Substantially the Same”

CBD’s first merits argument is that “BLM’s reliance on the 2023 [Solar] EA violates NEPA because the previous analysis evaluated a fundamentally different proposed action.”⁵¹ It argues that “[d]ata centers and solar farms are entirely different projects, with different purposes, infrastructure, operations, footprint, scale, and impacts.”⁵² Just as the Data Center DNA includes a litany of similarities between the solar plant project and the data center project (quoted at length above), CBD’s stay petition includes a litany of differences:

Data centers require massive warehouses that are several stories high. In contrast, solar farms are comprised of many individual panels placed low to the ground. Data centers cover up the land with their massive footprints. Solar fields—with their panels tilted toward the sun—leave the land exposed. Data centers require electronic servers and other computing equipment that must be housed and constantly cooled indoors. Solar fields gather solar rays outdoors. Data centers consume massive amounts of electricity. Solar farms generate electricity. Data centers run 24/7, while solar farms operate during daylight hours. Data centers have highly complex construction needs, requiring different equipment and more time to build than solar farms.^[53]

CBD also states that the data center project will produce different noise than the solar plant project, that it will use more water, and that its battery system has twice the capacity.⁵⁴ These “core, essential differences,” CBD argues, are more important than the

⁵⁰ See *W. Watersheds Project*, 188 IBLA 277, 281 (2016) (holding that BLM’s discretionary decision to grant an ROW may be overturned if BLM “acted in an arbitrary and capricious manner or contrary to law.”).

⁵¹ CBD Stay Petition at 25.

⁵² *Id.*

⁵³ *Id.* at 25-26 (internal footnotes omitted).

⁵⁴ See *id.* at 31-32.

“common features” that BLM identified in the Data Center DNA.⁵⁵ CBD contends that “[s]hared project characteristics do not establish shared environmental consequences.”⁵⁶

Likewise, Boulder City argues that “the installation of solar panels and modular battery storage units” is “vastly different from a high security data center complex consisting of four data center buildings totaling 300,000 square feet.”⁵⁷ Boulder City characterizes the data center project, which “will pull massive amounts of energy from the grid,” as “essentially the antithesis” of the solar plant project, which “would have put clean energy on the grid.”⁵⁸

In response, BLM and Townsite do not generally deny that these differences exist. As noted above, BLM identifies the similarities in the projects’ characteristics, arguing that they will have the same location, acreage and perimeter, that both are industrial uses, that both will connect to the same road and electrical grid networks, and that the two projects would use similar construction techniques.⁵⁹ Townsite refers to the same characteristics to defend the proposition that the two projects are “substantially the same.”⁶⁰ BLM’s main emphasis, however, is on its determination that the two projects should be considered similar because they will have similar impacts. Specifically, BLM “reasonably determined that the *impacts* to lands from [the data center project] activities are sufficiently similar to those evaluated and disclosed in the EA.”⁶¹ Townsite likewise acknowledges CBD’s argument that the projects have “a different purpose,” but it contends that the more important point is “the adequacy of the DNA’s explanation as to why *impacts* of the [data center project] are expected to be the same or substantially similar to those evaluated in the EA.”⁶² To prevail on the merits, BLM claims, appellants “must show that the data center will cause more or substantially different impacts from the approved solar project.”⁶³

⁵⁵ *Id.* at 27.

⁵⁶ *Id.* at 28.

⁵⁷ Boulder City Stay Petition at 12.

⁵⁸ *Id.* at 7.

⁵⁹ See IBLA 2026-0216, BLM Opposition to Petition for Stay at 5-6 (filed Aug. 10, 2026) (BLM Opp. to CBD) (quoting Data Center DNA at unp. 5); see also *id.* at 13 (noting that “the land itself will still be graded in the same manner and the impacts to the landscape will be similar”).

⁶⁰ IBLA 2026-0216, Townsite Solar 2 LLC’s Opposition to Petition for Stay at 6-7 (filed Aug. 10, 2026) (Townsite Opp. to CBD) (citing Data Center DNA at unp. 5).

⁶¹ BLM Opp. to CBD at 13 (emphasis added); *id.* at 17 (“[A]s the BLM explained in its DNA, the environmental impacts of the solar project and those from the data center are similar.”).

⁶² Townsite Opp. to CBD at 7 (emphasis added).

⁶³ BLM Opp. to CBD at 10.

The parties thus present two fundamentally different conceptions of the similarity between a prior project and a subsequent project that is sufficient to justify using a DNA. Must BLM find that the projects are intrinsically similar, or is it enough for BLM to find that the projects are likely to have similar environmental effects? The relevant authorities support Appellants, establishing that BLM must find *both* that the projects are intrinsically similar and are likely to have similar environmental effects.

The most important authority in addressing this question is the DOI NEPA Handbook, which currently provides the legal basis for BLM to use DNAs. That resource refers both to similarity of projects and similarity of effects. It requires that, for BLM to republish and rely on its prior EA without modification (as it did here), the projects at issue must be “substantially the same.”⁶⁴ If the projects are “not substantially the same,” BLM may “render the [prior EA] fit for fulfilling NEPA’s analytic requirements for evaluating the environmental effects of the proposed action and reasonable alternatives” by publishing a modified version of that EA.⁶⁵ A valid DNA must also evaluate “whether the environmental effects of a proposed action lie within the scope of and have been analyzed in one or more existing” environmental documents.⁶⁶ So, as an example, the Handbook states that a DNA may be appropriate when a bureau “receives an application for a special recreation permit from an entity that held a similar permit in the same or similar area in previous years.”⁶⁷ Implementation guidance for the Handbook states that bureaus may use a DNA “if the effects of a proposed action are already adequately analyzed in an existing bureau environmental document,” but it also requires the bureau to consider whether “the new proposed action is a feature of, or substantially the same as” a previously analyzed alternative.⁶⁸ Reviewing whether “environmental effects” are “similar (both quantitatively and qualitatively)” is only one of multiple questions that BLM must answer to determine that a DNA is appropriate.⁶⁹ According to the NEPA Handbook, “[i]f the Responsible Official answers ‘no’ to any of [these] questions, the bureau must prepare additional NEPA analysis.”⁷⁰

⁶⁴ DOI NEPA Handbook § 3.1(b)(1).

⁶⁵ *Id.* § 3.1(b)(2).

⁶⁶ *Id.* § 6.1(j).

⁶⁷ *Id.*, Appendix 1 at 33; *but see Triumvirate, LLC v. Bernhardt*, 367 F. Supp. 3d 1011, 1027 (D. Alaska 2019) (holding that BLM could not use a DNA to approve a special recreation permit based on the EA for a prior, similar special recreation permit because increased use of the area constituted a changed circumstance that BLM was required to consider).

⁶⁸ DOI NEPA Handbook, Appendix 1 at 33-34.

⁶⁹ *Id.* at 34.

⁷⁰ *Id.*; *see also Triumvirate*, 367 F. Supp. 3d at 1025 (stating that a similar list of questions in a prior version of the NEPA Handbook “must all be answered in the affirmative for no additional analysis to be necessary.”).

In relevant decisions discussing whether use of a DNA was appropriate, the project under consideration has generally related either to the same project, or to a similar type of project, that BLM had studied in a previous NEPA analysis. For example, the Ninth Circuit held that BLM did not violate NEPA in using a DNA to examine a one-half-mile shift in the route of a pipeline project.⁷¹ A California district court approved BLM's use of a DNA to allow construction on a solar project to resume because the final EIS for the same solar project had adequately analyzed its effects on the desert tortoise.⁷² A Colorado district court upheld the use of a DNA to approve a group of oil and gas lease sales, holding that they had been adequately analyzed in an EA for a different group of lease sales in the same area.⁷³ In Oregon, a district court upheld BLM's use of a DNA to determine that the effects of site-specific timber harvests had been adequately studied in an earlier EA that addressed landscape-level forest management planning.⁷⁴ Another Oregon district court upheld the use of a DNA to approve a horse gather based on an earlier EA that had considered the effects of a different horse gather that was "essentially the same."⁷⁵ But in a similar case in Nevada, a district court held that BLM likely could not use a DNA to approve the gather of 332 horses based on a previous EA that had analyzed the removal only of 199 horses, because the new proposed action "exceeds the intensity and scope" of the prior action.⁷⁶

The Board's own decisions address similar situations. We have, for example, upheld the use of DNAs to support drilling permits for oil and gas wells based on a prior EA in which BLM had studied the effects of the same type of well in a similar location.⁷⁷ "Once the effects of an APD approval at one site are studied in detail," we reasoned, "BLM's analysis of those effects may be relevant, and even sufficient, for BLM to understand the effects of approving other, similar APDs at other sites in the same area."⁷⁸ We have held that where BLM studied the effects of a 10-year desert tortoise

⁷¹ See *Summit Lake Paiute Tribe v. BLM*, 496 Fed. App'x 712, 715-16 (9th Cir. 2012).

⁷² See *W. Watersheds Project v. Salazar*, 993 F. Supp. 2d 1126, 1141-42 (C.D. Cal. 2012).

⁷³ See *Rocky Mt. Wild v. Haaland*, 2021 U.S. Dist. LEXIS 185188, *3-4, 25 (D. Colo. Sep. 28, 2021); but see *Bd. of Cnty. Comm'rs of San Miguel v. BLM*, 706 F. Supp. 3d 1180, 1203-06 (D. Colo. 2022) (holding that BLM may not use a DNA to approve oil and gas lease sales based on a prior, programmatic EIS with no site-specific analysis).

⁷⁴ See *Cascadia Wildlands v. Adcock*, 2025 U.S. Dist. LEXIS 60942, *26-29 (D. Or. Mar. 31, 2025).

⁷⁵ *Friends of Animals v. BLM*, 2018 U.S. Dist. LEXIS 56104, *13, 34-35 (D. Or. Apr. 2, 2018) (citing *Friends of Animals v. Haugrud*, 236 F. Supp. 3d 131, 133 (D.D.C. 2017), for the view that BLM may use a DNA when it "determines that a proposed gather is similar to a previous gather").

⁷⁶ *Friends of Animals v. BLM*, 2015 U.S. Dist. LEXIS 17575, *9 (D. Nev. Feb. 11, 2015).

⁷⁷ See *Mandan, Hidatsa & Arikara Nation*, 199 IBLA 247, 270 (2025).

⁷⁸ *Id.*

translocation program in an EA, its analysis was adequate to support a DNA for a particular instance of tortoise translocation under that program.⁷⁹ We found that a DNA was appropriate for BLM to consider an adjustment to a trail alignment in a recreation management plan where the trail had been the subject of an EA.⁸⁰ In contrast, we held that an EA related to allotment management was not sufficient to support a DNA to approve subsequent grazing permits because the record revealed changed circumstances that BLM was required to consider.⁸¹ We have also rejected BLM's use of a DNA to approve a fuel breaks project based on an EA that had analyzed fuel breaks "in relative close proximity . . . and in similar fuel types" on the grounds that BLM had not established that the geographic and resource conditions were sufficiently similar.⁸²

In one notable appeal, *Wyoming Outdoor Council*, we considered BLM's decision to offer three parcels intended for coal bed methane development in an oil and gas lease sale.⁸³ BLM determined in a DNA that its prior EIS for the applicable resource management plan was sufficient to support the lease sale.⁸⁴ That resource management plan had "addressed general oil and gas leasing" and "analyzed the impacts of conventional oil and gas exploration, production, and development."⁸⁵ We held that it was insufficient to support the proposed leasing of the three parcels (and that BLM's DNA was thus invalid) because BLM had not taken "the requisite hard look at the impacts associated with [coal bed methane] extraction and development, which clearly are relevant matters of environmental concern."⁸⁶ The Tenth Circuit upheld our analysis, finding that substantial evidence in the record of our decision supported the conclusion that "the proposed action raised significant new environmental concerns that had not been addressed by existing NEPA documents."⁸⁷

The foregoing examples are presented not because each of them is closely analogous to the present appeal, but because they illustrate the kinds of relationships between previously studied projects and new proposals that BLM has commonly considered appropriate to support a DNA. They show what kind of project might count as "a feature of, or substantially the same as," a previously studied project.⁸⁸ Under those decisions, BLM might use a DNA to find that NEPA has already been satisfied for an

⁷⁹ *W. Watersheds Project*, 188 IBLA 250, 262 (2016).

⁸⁰ *Hamilton*, 179 IBLA at 144.

⁸¹ *WildEarth Guardians v. BLM*, 196 IBLA 227, 241-44 (2020).

⁸² *WildLands Defense*, 189 IBLA 19, 27-29 (2016).

⁸³ 156 IBLA 347 (2002).

⁸⁴ *See id.* at 348-49.

⁸⁵ *Id.* at 357.

⁸⁶ *Id.* at 358.

⁸⁷ *Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1157 (10th Cir. 2004).

⁸⁸ DOI NEPA Handbook Appendix 1 at 34.

implementation-level decision that has already been studied at a programmatic level, or to authorize essentially the same project in a different location. But none of these decisions, nor any others cited by the parties, have upheld BLM's use of a DNA where the two projects were as different as a data center and a solar plant. Conversely, courts and the Board have in some cases rejected the use of a DNA where the two projects shared more similarities than a data center and a solar plant.

BLM has not studied the Townsite data center project, or indeed any other data center project, in any environmental document. (Appellants state, and BLM does not dispute, that this is the first ROW for a data center that BLM has approved.⁸⁹) The Data Center DNA therefore does not establish that BLM had effectively already analyzed the data center project and developed a clear understanding of its environmental effects. Appellants' undisputed descriptions of the differences in the physical characteristics and functions of the two projects constitute a persuasive showing that the projects are not "substantially the same" within the meaning of the DOI NEPA Handbook.

BLM's argument that it may focus on the environmental effects of a new action, and may consider whether those effects are similar to a previously studied action, is incorrect for an additional and related reason. Analyzing first whether two projects have similar environmental impacts, and concluding from that analysis that the projects are "substantially the same," gets the analysis backwards. The Data Center DNA here shows why: To determine that the projects would have similar effects, BLM had to study the effects of the data center project for the first time. For example, BLM discussed fugitive emissions from the data center's air-cooling system not because the solar plant project included a similar system or would have similar emissions, but to show that the emissions would be *de minimis* under Clean Air Act standards.⁹⁰ BLM also acknowledged that the data center structures would be visually different from the solar plant structures, but it applied a Visual Resource Management analysis to conclude that the "degree of visual impact felt from the new proposed action . . . would remain weak" and that the new project would "remain in conformance" with BLM's objectives.⁹¹ With respect to fish and wildlife species, BLM stated that "some specific types of potential impacts within the project area itself could be replaced by other impacts," but it speculated that "these differences in effects *could be* minor considering the surrounding lands and resources are already heavily disturbed."⁹²

BLM concluded in the Data Center DNA that "the analysis provided in the existing 2023 [Solar EA] remains valid with regards to the new proposed action" and that the

⁸⁹ See CBD Stay Petition at 2.

⁹⁰ See Data Center DNA at unp. 7.

⁹¹ See *id.* at unp. 10-11.

⁹² *Id.* at unp. 8 (emphasis added).

Solar EA “remains relevant to the new proposed action with regards to alternatives, affected environment, effects analysis, and mitigation measures.”⁹³ That is difficult to square with much of the Data Center DNA itself, which engaged in new analysis of effects that are specific to the data center and concluded that those effects would not be (or might not be) significant. As CBD persuasively shows,⁹⁴ this kind of effects analysis belongs in an environmental document, such as an EA, in which BLM would be required to consider potentially contrary information and develop the record adequate for a “hard look.” The Board has repeatedly emphasized that a DNA is “not a NEPA document” and “may not be used to supplement an existing environmental analysis or to address site-specific environmental effects not previously considered.”⁹⁵ An agency cannot use a supplemental non-NEPA document “to present information that it was required, . . . [but] failed to include in its original NEPA documents.”⁹⁶ The difference between an EA and a DNA is not a difference “in name only:” NEPA and the Department’s implementing regulations and guidance establish processes that agencies must use to consider the environmental effects of proposed actions.⁹⁷ BLM may not bypass those processes by considering environmental effects for the first time in a DNA.

B. Appellants Are Likely to Show that the Solar EA Did Not Analyze All Relevant Environmental Impacts of the Data Center Project

The foregoing analysis has addressed whether BLM’s conclusions in the Data Center DNA were arbitrary or capricious. A separate but related question is whether the Solar EA adequately studied the relevant environmental effects of the data center project to determine whether they would be significant. When reviewing a DNA, the Board may look beyond the DNA itself to assess whether the underlying NEPA document is adequate to analyze the newly proposed project. The Board has held that a DNA may “properly refer to an *adequate* EA fully considering all environmental effects of the proposed action addressed by that DNA.”⁹⁸ The adequacy of a DNA “is measured by the adequacy of the preexisting environmental analysis, and the appellant’s burden of proof is the same as it would be if an EA or an EIS were prepared for the proposed action.”⁹⁹ An appellant may

⁹³ *Id.* at unp. 6.

⁹⁴ See CBD Stay Petition at 30 (“[T]he place to evaluate the degree and significance of [data center] impacts was in an EA or EIS. A DNA is not a NEPA document . . .”).

⁹⁵ *E.g.*, *WildLands Def.*, 188 IBLA 68, 70 (2016); *Hamilton*, 179 IBLA at 132; *S. Utah Wilderness All.*, 177 IBLA 29, 33 (2009); see also DOI NEPA Handbook § 6.1(j).

⁹⁶ *Idaho Sporting Cong. v. Alexander*, 222 F.3d 562, 567 (9th Cir. 2000) (discussing a Supplemental Information Report, a non-NEPA document used by the Forest Service to evaluate potential new information).

⁹⁷ *S. Utah Wilderness All.*, 166 IBLA 270, 283 (2005).

⁹⁸ *Id.* at 284 (emphasis added).

⁹⁹ *Forest Guardians*, 170 IBLA 253, 266 (2006).

prevail on the merits by showing that the EA “does not support the decision being appealed” because, among other reasons, it “fails to consider a substantial environmental question of significance to the proposed action.”¹⁰⁰ The Board will consider whether an appellant challenging a DNA has “identified any new impacts” from the new proposal “that were not adequately considered in the EA.”¹⁰¹ “If the EA does not adequately address a relevant environmental concern, or if significant new circumstances or information have arisen to require that the EA be supplemented, BLM cannot rely on a DNA.”¹⁰²

CBD argues that the data center project will have effects that were not analyzed in the Solar EA, including a longer duration of construction effects, different noise effects, increased water usage, different emissions from the air-cooling system, different fire risks, and different visual impacts.¹⁰³ Boulder City raises similar arguments, noting in particular the change from a solar plant project that generates electricity to a data center project that uses electricity and an increased potential demand on local government resources.¹⁰⁴

BLM responds by focusing on similarities between the projects’ effects, noting that “the land itself will still be graded in the same manner and the impacts to the landscape will be similar.”¹⁰⁵ It argues that effects on air quality will be similar because “construction duration, construction equipment, and vehicle types and quantities are similar to the original 2023 proposed action” and because neither project generates large volumes of air pollutant emissions.¹⁰⁶ Townsite argues that, although the data center will not generate electricity, it will purchase electricity from the wholesale market and that such purchases are beyond the scope of BLM’s NEPA analysis.¹⁰⁷ It also claims that where “effects were discussed” in its Plan of Development, BLM may rely on its discussion of those effects in the Data Center DNA, and it cites facts from the Plan of Development to support its arguments that the data center project will not have significantly different environmental effects from the solar plant project.¹⁰⁸

¹⁰⁰ *Hamilton*, 179 IBLA at 142 (citing, e.g., *Wilderness Watch*, 176 IBLA 75, 87 (2008)).

¹⁰¹ *Id.*

¹⁰² *Id.* at 141; *see also Mont. Trout Unlimited*, 178 IBLA 159, 170-71 (2009) (holding that BLM erred by relying on a DNA without stating “whether the new information discussed matters of environmental significance and, if so, why it does not result in significantly different environmental effects from those previously analyzed”).

¹⁰³ *See generally* CBD Stay Petition at 25, 30-32.

¹⁰⁴ *See* Boulder City Stay Petition at 8-11.

¹⁰⁵ BLM Opp. to Boulder City at 11.

¹⁰⁶ *Id.* (quoting Data Center DNA at unp. 7).

¹⁰⁷ *See* Townsite Opp. to Boulder City at 4.

¹⁰⁸ *Id.* at 9.

Among their various arguments, Appellants identify at least two potential effects of the data center project that are significant to that proposed action but were not studied in the Solar EA. Most troubling at this stage is BLM's consideration of construction-related impacts. Many of the environmental impacts of the solar plant project discussed in the EA related to the noise, dust, emissions, and traffic required for construction and decommissioning.¹⁰⁹ BLM estimated in the EA that, for the solar plant project, construction impacts would last "approximately 12 months."¹¹⁰ In the Data Center DNA, BLM determined that construction for the data center project would "take up to 18 months," but that this was "substantially the same" as the solar plant project because "both proposals involve construction timeframes of 12-18 months using similar equipment and vehicles."¹¹¹ Nothing in the EA, however, suggested a 12-18 month range. By framing the 12-month estimate for a solar plant project and the 18-month estimate for a data center project as both within a range of "12-18 months," the Data Center DNA masks the potential for a 50% increase in the duration of construction impacts.

Noise from data center operations is another potential impact for which no analysis is evident in the Solar EA. The EA discusses noise mainly in the context of construction, noting that the "closest communities to the Proposed Action are likely to feel the impacts of increased noise" from that construction.¹¹² To support its argument that the data center project will have additional noise effects, CBD has submitted news articles to support the view that ongoing noise from data center operations also affects the environment for humans and animals, and it has submitted studies documenting the effects of other sources of noise on wildlife.¹¹³ Addressing this issue in the Data Center DNA, BLM acknowledged that "new noise effects may occur" from the data center project, but stated that those effects "could be minor" given the other industrialized uses

¹⁰⁹ See Solar EA at 15-16 (air quality), 25-26 (impacts on wildlife), 44-45 (impacts on soil and hydrologic conditions), 49 (impacts on the desert tortoise), 61 (generation of waste), 64 (noting that overlapping construction schedules in the area could have cumulative effects on air quality).

¹¹⁰ *Id.* at 4; see *id.* at 7 ("construction is expected to take up to 12 months"); *id.* at 9 (same); *id.* Appendix F, Air Quality and Greenhouse Gas Support Data and Calculations at F-7 (assuming a 12-month construction period for air quality calculations); see also U.S. Fish & Wildlife Serv., Biological Opinion on the Townsite Solar 2 Project, Clark County, Nevada at 6 (Oct. 18, 2022) (Solar EA Appendix E) (assuming that construction would "continue for 9-12 months").

¹¹¹ Data Center DNA at unp. 4, 5.

¹¹² Solar EA at 21; see *id.* at 26 (noting that noise impacts would occur "mostly during construction and decommissioning activities"); see also *id.* at 39 (noting some potential long-term noise impacts on avian species from "the presence of humans and associated noise and activity").

¹¹³ See CBD Stay Petition at 30-31 & nn.22-23.

in the area.¹¹⁴ BLM also argues that, according to Townsite’s Plan of Development, the data center project “will have no audible impact on local residents.”¹¹⁵ Townsite further argues that noise from the data center will comply with best practices for residential noise mitigation published by a chapter of Appellant Sierra Club.¹¹⁶ BLM’s and Townsite’s arguments in this appeal do not address non-residential impacts from data center noise, despite the DNA’s statement that such impacts may occur. Nor do they demonstrate that the likely noise effects of the data center project were adequately studied in the EA.

These ways in which the data center project differs from the solar plant project may or may not amount to significant impacts that require study in an EIS, and this Order does not address that issue. The question before the Board is whether the data center project raises relevant environmental questions that were not adequately analyzed in the Solar EA. On that question, Appellants have made a persuasive showing that they are likely to prevail on the merits.

Finally, all of the foregoing merits analysis perhaps belabors a simple point. Applying NEPA requires “common sense.”¹¹⁷ A 300,000-square foot data center is a different project from a 19-MW solar power generating facility. When BLM has prepared an EA to study a solar plant, changing the proposed action to a data center presents “new information or circumstances relevant to the proposed action.”¹¹⁸ The two projects are fundamentally dissimilar in ways that affect the environment and require meaningful analysis under NEPA, yet BLM concluded that they are essentially alike. For these reasons, Appellants are likely to show error in BLM’s Decision Record.

II. CBD Has Demonstrated Immediate and Irreparable Harm in the Absence of a Stay

The next element of the stay standard is whether appellants will be immediately and irreparably harmed if a stay is not granted.¹¹⁹ This element is “substantively identical to the one used by Federal courts in deciding whether to issue a preliminary injunction.”¹²⁰ It requires a showing that harm is “likely, as opposed to merely

¹¹⁴ Data Center DNA at unp. 8.

¹¹⁵ BLM Opp. to CBD at 10 (quoting the Plan of Development).

¹¹⁶ Townsite Opp. to CBD at 3 (citing Decl. of Gerald Balboa ¶ 19 (Aug. 10, 2026)).

¹¹⁷ *Seven County Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 184 (2025); *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 551 (1978).

¹¹⁸ See Data Center DNA at unp. 6.

¹¹⁹ 43 C.F.R. § 4.405(b)(3)(i).

¹²⁰ *W. Watersheds Project*, 195 IBLA 115, 130 (2020).

possible.”¹²¹ The Board is bound to respect and follow the Supreme Court’s statement, also approved by the Ninth Circuit (among other courts), that environmental injury is often by its nature permanent and irreparable.¹²² Short-term or temporary harm, however, does not rise to that standard.¹²³ Furthermore, “allegations of a NEPA violation, standing alone, do not constitute immediate and irreparable harm.”¹²⁴

BLM and Townsite raise a threshold issue about the showing that is required here, arguing that Appellants cannot show irreparable harm if a stay is not granted because Appellants will suffer these same harms even if a stay is granted. Because Townsite already has a ROW to construct a solar project, BLM argues, Appellants “need to show that [the data center] project is going to cause more or different harm than the already approved solar project.”¹²⁵ That is because “[i]f a stay of the ROW amendment were granted, the previously approved solar project could be developed instead.”¹²⁶ In BLM’s view, therefore, “[t]he analysis to determine whether the data center will cause immediate and irreparable harm is not based on comparing this activity to no activity, and instead it is based on the difference between this project and the already approved one.”¹²⁷ BLM and Townsite offer no authority to support this argument.

This logic suffers from two flaws. First, when assessing whether immediate or irreparable harm is likely to occur if a stay is not granted, the appropriate comparison is not what alternative actions the parties “could” take if the stay is granted.¹²⁸ It is instead the status quo, which a stay is intended to preserve while the Board addresses the merits.¹²⁹ Here, the record does not suggest, and neither BLM nor Townsite represents,

¹²¹ *Id.* at 131; see *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 818 (9th Cir. 2018) (noting that a “possibility” of irreparable harm “cannot support an injunction”).

¹²² See *W. Watersheds Project*, 195 IBLA at 131-32 (discussing *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987); and citing *Nat’l Parks Cons. Ass’n v. Babbitt*, 241 F.3d 722, 737 (9th Cir. 2001); and *Davis v. Mineta*, 302 F.3d 1104, 1115 (10th Cir. 2002)).

¹²³ See *id.* (discussing *Heal Utah*, 191 IBLA 103, 107 n.28 (2017)).

¹²⁴ *Manuz*, 192 IBLA 192, 194 (2018); see *W. Watersheds Proj.*, 195 IBLA at 131.

¹²⁵ BLM Opp. to Boulder City at 9.

¹²⁶ *Id.* at 11.

¹²⁷ *Id.* at 9; see also BLM Opp. to CBD at 10; Townsite Opp. to CBD at 2-3 (arguing that Appellants cannot approach the question of harm “as if, should they prevail in this appeal, the Project site would remain undeveloped”).

¹²⁸ BLM Opp. to Boulder City at 11.

¹²⁹ See *Holmgren v. BLM*, 175 IBLA 321, 333 n.17 (2008) (“Ordinarily, stays are granted to maintain the status quo pending resolution of an appeal, not to change it.”); see also,

that Townsite will construct the solar plant project if a stay of the Decision Record is granted. Rather than beginning construction in 2023 when it obtained the solar plant ROW, Townsite “shifted to the plan of developing data centers in part because the market for solar projects has deteriorated.”¹³⁰ If a stay is granted, the site is likely to remain in its present state while Townsite continues to seek a data center ROW from the Department. Preserving that status quo would prevent the harms Appellants claim from the data center project.

Second, even assuming that Townsite would construct the solar plant project if a stay is granted, and that it would result in some of the same harm to Appellant, that makes no difference to the stay analysis. In that event, harm would result from an action that Appellants either cannot or choose not to appeal. That hypothetical harm does not cancel out real harm that would occur from a different action that may violate NEPA and that Appellants do choose to appeal. Appellants did not waive their right to seek a stay of the data center project by declining to challenge the solar plant project. Indeed, if Townsite did choose to construct the solar project in response to a stay of the Decision Record amending its ROW, then Appellants will have achieved their goals in this appeal.

Turning to Appellants’ specific allegations of harm, CBD alleges that the Decision Record authorizes vegetation removal, soil disturbance, loss of wildlife habitat, and construction activities that increase ambient dust in the air.¹³¹ It also alleges that the data center will irreparably harm its members due to the loss of areas of the desert environment that they use for spiritual, educational, and aesthetic purposes.¹³² Identifying specific members who will be harmed in specific ways if a stay is not granted, CBD cites a scientific study to support its allegation that particulate matter pollution from construction will increase the risk of cardiopulmonary conditions such as asthma and lung cancer.¹³³ Boulder City adds that it will be harmed by the federal preemption of its zoning regulations and the risk that the data center will “threaten Boulder City resources” such as “public infrastructure, police, fire, electrical and water resources.”¹³⁴

BLM and Townsite do not dispute that Appellants’ alleged harms from disturbance of the natural environment or construction impacts are likely to occur. They argue that the area’s water supply will not be affected by data center construction because water for the cooling system will be purchased from a vendor, and that the data center project’s

e.g., *W. Watersheds Project*, 195 IBLA at 132-33 (in a challenge to new grazing permit, assessing whether irreparable harm would occur from “status-quo grazing”).

¹³⁰ Townsite Opp. to Boulder City at 19.

¹³¹ See CBD Stay Petition at 14, 16-17.

¹³² See *id.* at 14.

¹³³ See *id.* at 16-17.

¹³⁴ Boulder City Stay Petition at 19.

electricity demand is only a small fraction of the capacity of the relevant electrical substation.¹³⁵ BLM therefore asserts that Boulder City has not provided “objective evidence” to support its concerns.¹³⁶ It also argues that residential noise will not be an issue given the distance between the data center project and the nearest residence and that lighting design will comply with local regulations.¹³⁷ Townsite, moreover, argues that the data center “meets or exceeds every criterion” for noise, water use, and cooling methods that are recommended by the Sierra Club Toiyabe Chapter as best practices for data centers and that its light pollution plan accords with Dark Sky standards.¹³⁸

The aesthetic and recreational harms that CBD alleges—such as the loss of its members’ ability to use the site for hiking, education, and stargazing—are the kinds of harm that may support a stay petition. Harm to one’s ability to “view, experience, and utilize” natural areas in their “undisturbed state” constitutes “actual and irreparable injury.”¹³⁹ Declarations submitted by CBD members confirm that their concerns are specific to the site of the data center project.¹⁴⁰ CBD alleges that exposure to noise and air pollutants have a variety of negative health outcomes and that the “all hours” light from data center project operations will interfere with stargazing and “the quiet beauty of a desert night.”¹⁴¹ CBD has thus shown “specific ways” in which, absent a stay, “its members’ interests in conserving natural resources for their aesthetic, recreational, and environmental use and enjoyment will be irreparably injured.”¹⁴² Townsite’s argument that it will follow Sierra Club’s proposed best practices is not persuasive; best practices may serve to mitigate harm in typical cases, but they do not establish the absence of harm in every case.

Given the conclusion that CBD’s environmental, aesthetic, and recreational injuries are sufficient to support a stay, there is no need for this Order to address Appellants’ other alleged injuries.

¹³⁵ See BLM Opp. to Boulder City at 9-10; Townsite Opp. to Boulder City at 15-16; Townsite Opp. to CBD at 4.

¹³⁶ BLM Opp. to Boulder City at 10; *see also* Townsite Opp. to Boulder City at 15 (arguing that Boulder City provides no “real evidence” that its “electric and water resources and governmental interests will be harmed absent a stay”).

¹³⁷ See BLM Opp. to CBD at 10.

¹³⁸ Townsite Opp. to CBD at 3, 4.

¹³⁹ *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also* *Davis*, 302 F.3d at 1115-16 (identifying aesthetic and noise-related harms related to the “natural setting and feeling of the park” as “irreparable” (cleaned up)).

¹⁴⁰ See Decl. of Gabriella Laub ¶ 15 (July 27, 2026); Decl. of Bryan deLorimier ¶ 11 (July 27, 2026); Decl. of Janelle Sorenson ¶ 9 (July 27, 2026).

¹⁴¹ CBD Stay Petition at 15.

¹⁴² *Nat’l Wildlife Fed’n v. Burford*, 835 F.2d 305, 324 (D.C. Cir. 1987).

III. Appellants Have Demonstrated that the Balance of Harms and the Public Interest Favor a Stay

The final elements required for a stay pending appeal are for Appellants to show (1) that the harm to them absent a stay exceeds the harm to the United States and other parties if the stay is granted, and (2) that the public interest favors granting the stay.¹⁴³ In promulgating these criteria, the Department recognized they generally “merge” and are considered together.¹⁴⁴ “Both the economic and environmental interests are relevant factors, and both carry weight in this analysis.”¹⁴⁵ However, permanent environmental harms can outweigh economic harms from a “temporary delay” that may “be mitigated in part once the [merits] are resolved.”¹⁴⁶

Boulder City argues that the harm to BLM from a stay is “temporary and minimal.”¹⁴⁷ CBD likewise contends that “BLM and the developer face only a delay if a stay is granted,” while its members’ “interests in utilizing and enjoying federal public lands, as well as their quality of life, will be irreparably harmed” if it is not.¹⁴⁸ Addressing the public interest, both Appellants cite the value of ensuring compliance with NEPA to promote both its aims of informed agency decisionmaking and meaningful public disclosure and participation.¹⁴⁹

¹⁴³ 43 C.F.R. § 4.405(b)(3).

¹⁴⁴ 91 Fed. Reg. at 29,914 (citing *Nken v. Holder*, 556 U.S. 418, 425 (2009) and *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). In a 2025 Interim Final Rule, the Department combined these two criteria into one “[b]alance of harms” criterion requiring appellants to show that the “irreparable harm to the appellant absent a stay exceeds the harm to the United States and other parties from a stay being granted.” See Practices Before the Department of the Interior, 90 Fed. Reg. 2332, 2424 (Jan. 10, 2025) (promulgating a revised 43 C.F.R. § 4.405(b)(4)(ii)). This revision was intended to “better express what harms are being considered and balanced,” but not to change the substance of the criteria. See *id.* at 2366; *Las Vegas Paiute Tribe*, 200 IBLA at 179. Similarly, the Department’s return to the traditional four-factor test in 2026 was intended to “avoid confusion and eliminate any unnecessary concern,” without changing the substance of the test or the interests to be considered. See 91 Fed. Reg. at 29,915.

¹⁴⁵ *League of Wilderness Defenders v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014).

¹⁴⁶ *Id.* (citing *Amoco*, 480 U.S. at 545 (holding that if irreparable injury is sufficiently likely, “the balance of harms will usually favor the issuance of an injunction to protect the environment”)).

¹⁴⁷ Boulder City Stay Petition at 20.

¹⁴⁸ CBD Stay Petition at 19.

¹⁴⁹ See Boulder City Stay Petition at 20-21; CBD Stay Petition at 19-20.

BLM argues that a stay would delay a lawful decision and frustrate BLM's "regulatory responsibilities" in the administration of Federal lands pursuant to FLPMA.¹⁵⁰ More generally, BLM argues that "as artificial intelligence and other technologies become more integrated into average American's way of life, the public is served by the BLM's authorization of infrastructure that supports those technologies."¹⁵¹ This echoes BLM's statement in the DNA that data centers "are a key component of modern-day cloud-computing infrastructure that are essential to the well-organized management and rapid access of information/data used by the whole of American society."¹⁵² Townsite points out that an Executive Order establishes the development of data center infrastructure as a national priority and directs the Department to "offer appropriate authorizations for sites" for data center construction.¹⁵³

Townsite also alleges more concrete potential harms to its own business if a stay is granted, arguing that a stay would put at risk its financial investment in the data center project and would increase its carrying costs.¹⁵⁴ Supported by an employee declaration, it claims that a stay would "materially damage the perception of this project in the market" and would "put pressure on [Townsite] to abandon the project."¹⁵⁵ Townsite also argues that its decision on whether to develop an additional solar project on another nearby parcel depends in part on whether the electricity from that project can be sold to the data center.¹⁵⁶ A stay would also delay the economic and revenue benefits of the data center project and, according to Townsite, would discourage developers from "addressing the most common concerns about the ongoing data center buildout . . . before entering the regulatory process."¹⁵⁷

Weighing these effects against the harms alleged by Appellants, the balance tips in favor of granting a stay. Townsite's risk of loss of a significant financial investment is relevant to the analysis.¹⁵⁸ So are the potential losses to the local area in the form of economic activity and tax revenue to Boulder City and to Nevada.¹⁵⁹ These factors are

¹⁵⁰ See BLM Opp. to Boulder City at 10.

¹⁵¹ *Id.* at 14; see also Townsite Opp. to CBD at 19 ("Data centers are the backbone of the internet and our digital economy.").

¹⁵² Data Center DNA at unp. 4.

¹⁵³ See Townsite Opp. to CBD at 19-20 (citing Exec. Order No. 14,318, §§ 1, 9, 90 Fed. Reg. 35,385 (July 23, 2025)).

¹⁵⁴ See Townsite Opp. to Boulder City at 18.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.* at 18-19.

¹⁵⁷ See Townsite Opp. to CBD at 20.

¹⁵⁸ *League of Wilderness Defenders*, 752 F.3d at 767.

¹⁵⁹ See, e.g., *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010); *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008) (en banc).

offset by the fact that Boulder City itself opposes the project and the speculative nature of Townsite's argument that delaying the data center could dissuade potential customers and investors. It does not appear likely from the record that Townsite faces a complete financial loss if a stay is granted but it ultimately prevails on the merits. The strong economic demand that both BLM and Townsite note for data center infrastructure suggests that a stay would only cause a "temporary delay" of the economic benefits of the project.¹⁶⁰ The Board can also mitigate this harm by expediting the appeal.¹⁶¹ In contrast, if a stay is not granted, construction of the data center project while the appeal is pending will permanently alter the environment at the site in a way that could not be easily reversed if Appellants were ultimately to succeed on the merits. This asymmetry between the possibility of temporary and permanent harm suggests that "the balance of equities tips toward" Appellants.¹⁶²

There is little doubt that developing data center infrastructure is a matter of significant practical and economic importance to the United States. But neither BLM nor Townsite attempts to characterize the relative importance of this particular data center project, and there is reason in the record to conclude that a stay will not constitute a major setback in that national effort.¹⁶³ There is also no reason to weigh the public interest in data centers differently from other BLM-approved critical infrastructure projects such as oil and gas production facilities, pipelines, electrical transmission lines, and communications towers. The public has an interest both in reaping the benefits of the expeditious and orderly development of such projects and in enjoying the protections that Congress and the Department have established in FLPMA, NEPA, and their implementing regulations and guidance. The latter consideration is especially salient here, where BLM has approved a ROW for "the first data center on BLM-managed land,"¹⁶⁴ and where it has admittedly done so without relying on any environmental document under NEPA that studies a data center as the proposed action. A stay serves the public interest by creating an opportunity for the Board to engage in "careful and deliberate consideration" of the issues Appellants raise.¹⁶⁵

¹⁶⁰ See *League of Wilderness Defenders*, 752 F.3d at 767.

¹⁶¹ See Conclusion, *infra* p. 25.

¹⁶² *League of Wilderness Defenders*, 752 F.3d at 765.

¹⁶³ See Townsite Opp. to CBD at 20 ("The Board should note the difference in scale between this [167 MW] project and the gigawatt-class facilities that have generated most of the public controversy over data center siting.").

¹⁶⁴ CBD Stay Petition at 2.

¹⁶⁵ *Las Vegas Paiute Tribe*, 200 IBLA at 182 (quoting *Tenn. Gas Pipeline Co.*, 189 IBLA at 115).

CONCLUSION

In summary, the nature, type, and design of a project, and not only its environmental effects, are relevant to determining whether that project is “substantially the same” as a project that BLM has previously studied in an environmental document under NEPA. Two projects may both be “industrial uses that will operationalize cutting-edge technologies that are predominantly electrical and solid-state in nature,”¹⁶⁶ and yet have very different environmental effects. Appellants have made a persuasive showing that BLM violated NEPA and acted arbitrarily or capriciously when it determined that the data center project is “substantially the same” as the solar plant project for purposes of its NEPA analysis.

Because CBD has demonstrated that each of the four criteria for a stay is met here, the stay is granted. That stay also provides Boulder City with the relief that it seeks pending appeal, so it is not necessary for the Board to consider whether Boulder City’s arguments demonstrate that it is entitled to a stay for other reasons. Boulder City’s stay motion is therefore denied as moot, without prejudice to a renewed motion if CBD were no longer a party to the appeal that could support a stay.¹⁶⁷

Given the importance of the underlying question, and to mitigate any harm to Townsite from delay, the consolidated appeals are hereby expedited and will be given priority for decision over non-expedited appeals. By **September 21, 2026**, BLM is directed to file and serve the administrative record.¹⁶⁸ Also by **September 21, 2026**, the parties are directed to confer and submit to the Board a schedule for briefing the merits of these consolidated appeals on an expedited basis. Boulder City and CBD may each submit a separate Statement of Reasons, BLM and Townsite may each submit a separate Answer, and Boulder City and CBD may each submit a separate Reply.¹⁶⁹ If the parties are unable to agree on a briefing schedule, they may submit separate motions in support of their proposed schedule. All other deadlines in the consolidated appeals are vacated until the Board issues a briefing order pursuant to the parties’ submission(s).

David Gunter
Administrative Judge

¹⁶⁶ Data Center DNA at unp. 5.

¹⁶⁷ See 91 Fed. Reg. at 29,915 (declining to adopt a rule that petitions for stay must be filed at the same time as a notice of appeal).

¹⁶⁸ See 43 C.F.R. § 4.406(a).

¹⁶⁹ See *id.* § 4.410(b)-(e).