UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

THE CENTER FOR BIOLOGICAL DIVERSITY, Appellant, v. BUREAU OF LAND MANAGEMENT, Respondent.	IBLA No. _____ Re: Final Environmental Impact Statement and Record of Decision for the Pine Valley Water Supply Project (NEPA Register No. DOI-BLM-UT-C010-2020-0012-EIS)

NOTICE OF APPEAL AND PETITION FOR STAY

NOTICE OF APPEAL

Pursuant to 43 C.F.R. § 4.402, the Center for Biological Diversity (the "Center" or "Appellant") file this Notice of Appeal and Petition for Stay of the Bureau of Land Management ("BLM") Cedar City District's Final Environmental Impact Statement ("FEIS") and Record of Decision ("ROD") for the Pine Valley Water Supply Project, DOI-BLM-UT-C010-2020-0012-EIS ("Project"). The FEIS and ROD are attached hereto as Exhibits A and B, respectively.

A Notice of Appeal is timely if it is filed no later than thirty (30) days "after the date of receiving notice of the decision." 43 C.F.R. § 4.403(c)(1). Appellant received notice of the Decision on March 2, 2026, the day the ROD was posted to BLM's ePlanning website. Thirty days from March 2, 2026 is April 1, 2026. Therefore, this appeal is timely filed.

FACTUAL BACKGROUND

The Project ROD grants two rights-of-way ("ROW") to the Central Iron County Water Conservancy District ("CICWCD") to construct, operate, and maintain the wells, pipelines, and

other accessory structures associated with its proposed Pine Valley Water Supply Project. *See* generally ROD at 1.4, p. 3. The proposed Project would construct and operate an approximate 70-mile-long water pipeline to deliver up to 15,000 acre-feet of groundwater annually from Pine Valley, Utah, located in Beaver County, to Cedar Valley, Utah, located 66 miles southeast in Iron County, for use by CICWCD. According to CICWCD, the proposed Project would be used to meet future water demands, diversify the regional water supply portfolio, and enhance the water supply reliability. *See* generally ROD at 1; FEIS at Executive Summary, ES-1. While the requested ROW applicable to pipeline operations would last 30 years, the water rights granted to CICWCD by the Utah State Engineer have been granted in perpetuity and CICWCD refers to the requested ROW as "permanent." *See* FEIS at Table 4, p. 20. Moreover, the BLM acknowledges that the intended lifespan of the proposed Project is longer than the duration of the requested ROW grant, likely 50 years, and that the ROW would be subject to discretionary renewal. "The term of the BLM long-term Project ROW would be 30 years. The impact analysis in Chapter 3 assumes a probable 20-year extension. After a total of 50 years, the need for additional NEPA analysis would be evaluated to consider further renewal of the long-term ROW grant." *See* FEIS at 2.2.2.1.7, p. 27.

According to CICWCD, the Pine Valley Water Supply Project constitutes only the first of three phases of the agency's much larger planned groundwater development and supply project, known as the West Desert Pipeline Project. The West Desert Pipeline Project would pump 12,000 af/yr from Wah Wah Valley, the applications for which were filed and approved simultaneously with the CICWCD's Pine Valley application for the PVWSP after a unified hearing before the Utah State Engineer. The West Desert Pipeline Project also would include the pumping of 10,000 af/yr from Hamlin Valley under state water rights Application No. A76675 (Water Right No. 19-399), which was filed simultaneously with CICWCD's Pine Valley and Wah Wah Valley

applications but which has not yet been published or acted on by the Utah State Engineer. Therefore, the Pine Valley Water Supply Project represents only 40 percent of CICWCD's total planned pumping. BLM failed to analyze any connected actions between the PVWSP and the West Desert Project, stating in the FEIS that "these future projects are excluded as reasonably foreseeable future actions because there is no existing proposal, no permit applications have been submitted to the BLM, and no commitment of resources has been made for these projects. *See* FEIS at 3.2.1, p. 47. Curiously, the FEIS also alleges consistency between the FEIS and applicable RMP's, including the Iron County RMP which "specifically supports the 'West Desert Pipeline Project,' the goal of which "is to provide water from a basin open to new appropriate to Iron County used to reduce withdrawals within the Cedar Valley basin." *See* FEIS at 1.5.1, p. 10.

By the Utah State Engineer's reckoning, and in light of over a decade of studies, reports, and groundwater modeling by the United States Geological Survey ("USGS"), the proposed Project's pumping of an additional 15,000 acre feet of groundwater per year from Pine Valley likely would exceed the basin's sustained yield. Such overdraft would cause water level drawdowns and significant negative impacts to environmental resources in the drawdown zone, which extends far beyond Pine Valley and into the State of Nevada. For example, a 2017 USGS analysis related to the project found that *"*withdrawals of 15,000 acre-ft/yr from Pine Valley and 6,500 acre-ft/yr from Wah Wah Valley could ultimately (long-term steady-state) cause water-level declines of more than 1,900 feet near the withdrawal wells and of more than 5 feet in an area of about 10,500 square miles*.*" *See* Brooks, Lynette, 2017. USGS, Groundwater Model of the Great Basin Carbonate and Alluvial Aquifer System Version 3.0: Incorporating Revisions in Southwestern Utah and East Central Nevada, SIR 2017-5072, at 61.

As explained in detail herein, CICWCD's Proposed Pine Valley Water Supply Project and the West Desert Pipeline Project (of which the PVWSP is an instrumental first step) are premised on unsustainable groundwater mining, and, as such, poses a serious threat human communities and ecosystems within the Project's drawdown area, which encompasses substantial portions of western Utah and eastern Nevada. The Project would, in essence, shift existing groundwater overdraft in Cedar County to Pine Valley in Beaver County, to surrounding valleys, and ultimately across State lines into Nevada. Among the likely harms resulting from the proposed Project is a long-term, catastrophic depletion of the aquifer that would take many millennia to remedy. By substantially drawing down the local and regional aquifer systems, the Project also threatens to dry out regional springs and wetlands that support a host of endemic species, including species listed under the Endangered Species Act and BLM listed sensitive species. In addition, the Project poses a significant risk of creating a substantial area of denuded, dried out sediment with considerable potential to generate harmful dust emissions. These are only some of the disturbing potential environmental impacts from the proposed Project, impacts that in practical terms will be permanent and very expensive to even attempt to mitigate.

The FEIS does not adequately address these and other serious problems with the Pine Valley Water Supply Project. Indeed, the FEIS is woefully inadequate under the National Environmental Policy Act ("NEPA"), and other state and federal laws. Among its most glaring deficiencies, the FEIS is based on a patently deficient description of the Project and the physical conditions and environmental resources in its vicinity, a grossly inadequate assessment of the purpose and need for the Project, and a failure to examine the Project's likely adverse environmental impacts. Rather than remedying any of these glaring deficiencies, the FEIS simply attempts to sidestep all substantive problems by proposing to defer the identification of problems,

and decisions about how to deal with those problems, to a future, yet-to-be-developed date under a clearly insufficient monitoring and management plan, the feasibility of which has not been assessed. In all these regards, the FEIS fails to comply with NEPA. Moreover, the BLM did not provide an adequate opportunity for public review and comment on the FEIS; indeed, the agency provided approximately six business hours for public review before the ROD was signed, an egregious violation of BLM's public involvement mandate under NEPA and the Federal Land Policy and Management Act ("FLPMA") For all these reasons, the Board should grant a stay of BLM's decision pending resolution of this appeal and vacate BLM's approval of the Project.

STATEMENT OF STANDING

To maintain an appeal, the Appellant must (1) be a party to the case; and (2) be adversely affected by an appealable decision. 43 C.F.R. § 4.402(a); *National Wildlife Federation v. BLM*, 129 IBLA 124, 125 (1994). The Center meets both requirements. Appellant participated in the administrative decision-making process by submitting comment letters to BLM, and Appellant and their members are adversely affected by the March 2, 2026 decision to approve the Project. 43 C.F.R. § 4.410. An organization is "adversely affected" by the decision appealed if one or more of its members have "a legally cognizable interest in the subject matter of the appeal, coinciding with the organization's purposes, that is or may be negatively affected by the decision." *Wildlands Defense and Deep Green Resistance*, 187 IBLA 233, 236 (2016) (citing 43 C.F.R. § 4.410(d)). A legally cognizable interest can include "cultural, recreational, and aesthetic use and enjoyment of the affected public lands." *Cascadia Wildlands & Or. Wild*, 188 IBLA 7, 9-10 (2016); *see also Wyo. Outdoor Council*, 153 IBLA 379, 383 (2000) (legally cognizable interest in the land "need not be an economic or a property interest" and "[u]se of the land will suffice"); *S. Utah Wilderness Alliance*, 127 IBLA 325, 327 (1993); *Animal Prot. Inst. of Am.*, 117 IBLA 208, 210 (1990). The

Board does not require a showing that an injury has actually occurred. Rather, a colorable allegation of injury suffices. *Powder River Basin Res. Council*, 124 IBLA 83, 89 (1992).

The Center is a tax-exempt, non-profit, membership organization with more than 1.8 million members and supporters, including 14,651 members and supporters in Utah. The Center's main office is in Tucson, Arizona. The Center works through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of extinction. *See* Declaration of Kyle Roerink, ¶ 7-10. The Center has an extensive history of working to protect ecosystems, species, water, and climate on public lands, including lands administered by BLM. *Id.*

As part of its mission, the Center provides oversight of governmental activities that impact all species and their habitats, as well as on human health and wellbeing more generally. *Id.* The Center has been at the forefront of efforts to hold the government accountable for its obligations under the Endangered Species Act, and engages in protection efforts and campaigns to ensure that our nation's environmental laws—including NEPA and the Endangered Species Act—are enforced with respect to imperiled wildlife and habitat, air and water quality, and human health, especially on our public lands. *Id.*

The Center's members' diverse interests span natural history, ecology, conservation, wildlife and native plant observation, nature photography, hiking, camping, backpacking, quiet and solitude in nature, dark skies, spiritual renewal, and a love of Utah's natural landscapes. Kyle Roerink has been a member of the Center since 2018. He lives in northern Nevada and spends his time working and recreating across the Great Basin, and frequently visits western Utah. Declaration of Kyle Roerink, ¶ 3-5. His professional work takes him to Pine Valley often, where he has come to intimately know the ranchers, tribal members, and other residents of the valley. *Id.* ¶ 11. Mr. Roerink has spent a considerable amount of his professional time committed to

commissioning and engaging with studies regarding the Pine Valley Water Supply Project and its likely effects on the ecosystems and groundwater of Pine Valley. Id. ¶ 12. Beyond that, Mr. Roerink declares that "the story of Pine Valley is the story of his life." *Id.* ¶ 26. It is a place he has found spiritual refuge and solace to ponder the interconnectivity of all living things on the planet—from the Valley's prairie dogs and sage-grouse to the raptors and other migratory mammals, as well as the desert vegetation, springs, and streams that sustain these diverse creatures. *Id.* ¶ 16-19; 23. "Should the pipeline advance and the water table be dried up, the streams no longer sing, the animals no longer come, there would be a hole in my existence that could never be filed." *Id.* ¶ 26.

For all of these reasons, Appellant and their members are adversely affected by BLM's decision and have standing to appeal.

PETITION FOR STAY

Pursuant to 43 C.F.R. § 4.405(b)(4)(i)-(iii), the Center hereby petitions for a stay of BLM's Decision approving the Project. As explained in detail below, a stay is necessary to prevent irreparable harm to the environment and Appellant's members pending the Board's decision on the merits.

LEGAL STANDARD FOR OBTAINING A STAY

Appellants seeking a stay must demonstrate that (1) the balance of harms weighs in favor of a stay; (2) the Appellants are likely to succeed on the merits of their appeal; (3) the likelihood of immediate and irreparable harm to Appellants if the stay is not granted; and (4) the public interest favors granting a stay. 43 C.F.R. § 4.21(b)(1).

> In balancing the likelihood of movant's success against the potential consequences of a stay on the other parties it has been held that it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus more deliberative investigation.

Wyo. Outdoor Council Inc., 153 IBLA 379, 388 (2000) (internal quotes omitted); *see also Sierra Club et al.*, 108 IBLA 381, 384-85 (1989) (same). Maintaining the status quo during pendency of appeal "can be of considerable importance since the effectiveness of any relief may be compromised if actions objected to are allowed to go forward during the period of adjudication." *W. Wesley Wallace*, 156 IBLA 277, 278 (2002).

I. Likelihood of Irreparable Harm

A stay is warranted here because the Project threatens irreparable harm to federal public lands and Appellant's interests therein. *See generally* Roerink Decl. The Supreme Court has acknowledged that "environmental harm, by its nature, is often permanent or irreparable," and that the "balance of harms usually favors issuance of an injunction to protect the environment." *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 545 (1987); *see also Save Our Sonoran v. Flowers*, 408 F.3d 1113, 1124 (9th Cir. 2005) (finding irreparable harm because "once the desert is disturbed, it can never be restored"); *San Luis Valley Ecosystem Council v. FWS*, 657 F. Supp. 2d 1233, 1241 (D. Colo. 2009) ("complete vegetation recovery will take up to 15-20 years; such a long recovery time may constitute irreparable damage").

Federal courts also recognize that noncompliance with NEPA and other environmental laws, in itself, generally causes irreparable injury, both by threatening permanent environmental harm and by injuring the rights of affected members of the public to participate and be fully informed of the agency's decision-making process. S*ee, e.g., South Fork Band Council of Western Shoshone of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 728 (9th Cir. 2009); *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1250 (9th Cir. 1984); *California v. Block*, 690 F.2d 753 (9th Cir. 1982). Courts have repeatedly held that injunctive relief is appropriate for noncompliance with environmental laws, including NEPA violations. *See Blue Mtns. Biodiversity Project v.*

Blackwood, 161 F.3d 1207, 1208, 1211 (9th Cir. 1998); *Muckleshoot Indian Tribe v. U.S Forest Service,* 177 F.3d 800 (9th Cir. 1999); *National Parks Conservation Assoc. v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001); *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291 (9th Cir. 2003); *Sierra Club v. Bosworth*, 510 F.3d 1016, 1033-34 (9th Cir. 2007).

As established by the declaration of Mr. Roerink, the Center and its members will suffer immediate, imminent, and irreparable harm to their interests, absent a stay. For example, the Project would remove hundreds of acres of desert vegetation, disturb the soil, and increase degradation of an already fragile desert environment. *See* Dec. of Kyle Roerink at ¶ 23. Additionally, as Mr. Roerink explains, the Project will deplete the water table in Pine Valley and beyond, and while the valley will inevitably face the impacts of the climate crisis regardless, the Project's sustained withdrawal of only available water to sustain life in the area will undoubtedly accelerate ecosystem collapse in the area. *Id*. at ¶ 16.

Furthermore, BLM's blatant violations of FLPMA and NEPA, discussed below, are themselves the source of considerable irreparable harm. Mr. Roerink stated that he has never encountered a situation where his ability to participate in the EIS review process has been as impeded as it was here. *Id*. at ¶ 24. Further, it has become apparent since publication of the FIES that several of the key issues raised by the Center and other members of the public have not been addressed. *Id*.

In addition to the blatant violation of the environmental review process, this Project violates NEPA and FLPMA in an untold number of substantive ways, including but not limited to unlawfully segmenting the Project from the planned West Desert Pipeline Project, failing to consider a reasonable range of alternatives that would include a no action alternative, thereby removing the risk of significant drawdown within the Project basin, and failing to properly

consider groundwater needs for the sustainability of plant and wildlife within the basin. There are many ranchers and residents of Pine Valley who are already experiencing the loss of water or the repercussions of changes in runoff patterns, recharge rates, evaporation intensity, and soil moisture content. *See* Dec. of Kyle Roerink at ¶ 16. The risk of drawdown that comes with this Project is not one that can be afforded.

This appeal represents Appellant's final opportunity to challenge—and hopefully avert—a large, long-term water pipeline and groundwater pumping Project, the environmental consequences of which will be severe and adverse. Should the Board deny a stay, the deficient plan will go forward as currently mapped, destroying at least 273 acres of land (and important sections of habitat for the Greater sage-grouse and Utah prairie dog) directly through construction, as well as all but assuring a water deficit for not only Pine Valley but likely several connected basins beyond. The FEIS establishes that, if there is one thing BLM and CICWICD know for certain, it is that they know nothing: there is no certainty regarding the amount of recharge estimated in the basin; there is no estimate of a safe level of pumping; and no effort has been made to even explore the interconnectedness of the surrounding, affected basins. Accordingly, a stay is warranted to prevent imminent, irreparable, and potentially severe environmental harm. *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 545 (1987); *Or. Nat. Res. Council v. Goodman*, 505 F.3d 884, 897-99 (9th Cir. 2007).

II. Relative Harm to the Parties

The balance of harms favors staying the implementation of BLM's Decision. In situations involving the preservation of the natural environment, the balance of harms usually favors granting an injunction. *See Wilderness Soc'y v. Tyrrel*, 701 F. Supp. 1473, 1479 (E.D. Cal. 1988) (noting that "when environmental injury is 'sufficiently likely . . . the balance of harms will usually favor

the issuance of an injunction to protect the environment'") (citing *Village of Gambell*, 480 U.S. at 545). In addition, the balance of equities tips in favor of an appellant when the agency faces only delay. *See Alliance for the Wild Rockies v. Marten*, 200 F. Supp. 3d 1110, 1112 (D. Montana 2016) (*citing League of Wilderness Defenders v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014)).

Here, while BLM here faces only a delay if a stay is granted, the harm to Appellant would be severe and effectively permanent. Appellant's interests in utilizing and enjoying federal public lands will irreparably be harmed, as described above. The real environmental harm caused by the proposed construction in a fragile desert environment, and the long-term pumping of massive amounts of groundwater, weighs heavily against the harm to BLM from a minor delay in implementation, and the balance of harms therefore tips in favor of a stay.

III. Public Interest

Allowing a project to proceed in violation of NEPA and other environmental laws is not in the public interest. *See, e.g., Sierra Club v. Bosworth*, 510 F.3d 1016, 1033-34 (9th Cir. 2007). "Suspending a project until [environmental analysis] has occurred . . . comports with the public interest," because "the public interest requires careful consideration of environmental impacts before major federal projects may go forward." *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dept. of Interior*, 588 F.3d 718, 728 (9th Cir. 2009). *See also Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011); *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1177 (9th Cir. 2006); *Or. Natural Resources Council Fund v. Goodman*, 505 F.3d 884, 897-99 (9th Cir. 2007).

Because Appellant seeks to compel the BLM to follow federal laws designed to ensure that the agency makes fully informed, if not environmentally sound, decisions, and because the issuance of a stay would in fact maintain properly functioning groundwater-dependent wildlife

habitats, the granting of this stay would serve the public interest. *See State of Alaska v. Andrus*, 580 F.2d 465, 485 (D.C. Cir. 1978) ("[I]n most cases, . . . it is possible and reasonable for the courts to insist on strict compliance with NEPA, and actions can, consistently with the public interest, be enjoined until such compliance is forthcoming." (citation omitted)); *Greater Yellowstone Coal. v. Bosworth*, 209 F. Supp.2d 156, 163 (D.D.C. 2002) ("Courts have not hesitated to enjoin an agency action that was taken in violation of NEPA."); *David G. and Jacelyn Holmgren v. BLM*, 175 IBLA 321, 333 n.17 (2008).

IV. Likelihood of Success on the Merits.

Appellant is likely to succeed on the merits of their claims because BLM violated NEPA, FLPMA and other federal laws by approving the Project.

A. The Final EIS Violates NEPA

The National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331 *et seq.*, "is our basic national charter for protection of the environment." *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1226 (10th Cir. 2017). NEPA recognizes "the profound impact of man's activity on the interrelations of all components of the natural environment" and declares a continuing federal policy "to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a). NEPA requires federal agencies to evaluate the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity" as well as "any irreversible and irretrievable commitments of resources." 42 U.S.C. §§ 4332(2)(C)(iv), (v).

"Section 101 of NEPA declares a broad national commitment to protecting and promoting environmental quality." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989)

(citing 83 Stat. 852, 42 U.S.C. § 4331). "The sweeping policy goals announced in § 101 of NEPA are . . . realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Id.* at 350 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

NEPA serves a dual purpose: to inform decision making, and to disclose information to the public about how a federal action will affect the environment and public health. *See, e.g.*, *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989) ("NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."). Thus, NEPA requires that the BLM take a "hard look" at the direct, indirect, and cumulative impacts of a proposed action, which entails a "thoughtful and probing reflection of the possible impacts associated with the proposed project." *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th Cir. 2006) (quoting *Comm. to Preserve Boomer Lake Park v. Dep't of Transp.*, 4 F.3d 1543, 1553 (10th Cir. 1993)). NEPA "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349; *see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 553 (1978) ("NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action"). "These procedural provisions of NEPA 'are designed to see that all federal agencies do in fact exercise the substantive discretion given them. These provisions are not highly flexible. Indeed, they establish a strict standard of compliance.'" *Sierra Club v. Watkins*, 808 F. Supp. 852, 859 (D.D.C. 1991) (quoting *Calvert Cliffs' Coordinating Comm., Inc. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1112 (D.C. Cir. 1971)).

NEPA's main "action-forcing" procedure comes in the form an environmental impact statement ("EIS"), a detailed statement on environmental impacts that must be prepared before an agency undertakes any "major Federal action[] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). An EIS must include, among other things, a detailed description of the purpose and need for the proposed action, alternatives to the proposed action, the affected environment, and the environmental impacts of the proposed action, including any unavoidable adverse environmental effects. *See id*.

For the reasons set forth below, the Final EIS fails to comply with NEPA, is arbitrary and capricious, and should be vacated.

i. BLM Used Unlawful Procedures to Approve the Project that Failed to Inform and Involve the Public.

In a stunningly egregious move, the BLM violated NEPA's public input mandate by releasing the FEIS on a Friday afternoon, only to release the signed ROD the subsequent Monday morning, totaling approximately six business hours for the public to review and comment. As noted, NEPA's twin aims are to ensure that agencies take a hard look at the environmental consequences of their actions and to inform and involve the public in that decision-making process. Here, however, the public was given no notice that it would be denied the opportunity to comment on the FEIS, nor any clarity as to what procedures BLM would actually be following. By abandoning established practices without explanation, BLM has deprived the public of meaningful participation in the NEPA process, undermining both transparency and due process.

Until recently, the Department of Interior's regulations implementing NEPA required a 30 day "waiting period" between the publishing of the FEIS and the ROD, making the FEIS available to the public for review prior to a final decision and serving as a final opportunity for the public to address any grievances. These regulations reflected the interpretation of NEPA—adopted by the

CEQ, implementing agencies, and the judiciary alike—that had prevailed for half a century: that public participation is a foundational statutory requirement. Although DOI recently rescinded and amended its NEPA regulations, that decision was arbitrary and unlawful. Besides, the DOI's recission of its implementing regulations cannot abrogate what has been held to be a fundamental component of the statutory scheme. A complete failure to involve the public in the FEIS review process thus violates NEPA on its face.

ii. The FEIS's Purpose and Need Statement is Unlawfully Narrow.

The purpose and need is described in the Final EIS and ROD with reference to a need to respond to CICWCD's ROW applications. This artificially narrow presentation of the Project's purpose and need results in a constrained evaluation of the Project and potential alternatives. The purpose and need discussion in the FEIS must be defined with reference to the Project proponent's purpose, but not artificially limited to the consideration of the right-of-way application. The BLM's narrow approach to the definition of purpose and need effectively renders meaningless the requirement that the BLM, and not the applicant, define the purpose and need of the project.

iii. The FEIS Does Not Consider a Reasonable Range of Alternatives.

By failing to include, and consider impacts of, reasonable alternatives to CICWCD's planned PVWSP, and by analyzing, in effect, only one alternative, the BLM has deprived itself and the public of the ability to evaluate whether or not the first phase of the massive West Desert Pipeline Project should move forward. BLM should have considered reasonable, more cost effective and less environmentally damaging alternatives incorporating conservation, additional groundwater rights purchase, metering secondary water use, aquifer recharge and reuse programs, growth management, or a combination of these approaches, reduced pumping, staged

development, and connection to the Lake Powell Pipeline, some of which CICWCD has confirmed also would meet its need and would effectively offset projected shortages.

iv. The BLM Failed to Adequately Describe the Environmental Baseline.

A critical part of the "hard look" required under NEPA involves "[e]stablishing appropriate baseline conditions[.]" *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016). "Without establishing the baseline conditions . . . before a project begins, there is simply no way to determine what effect the project will have on the environment and, consequently, no way to comply with NEPA." *Id.* (quoting *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)); *see also Or. Natural Desert Ass'n v. Jewell*, 840 F.3d 562, 568 (9th Cir. 2016).

The FEIS is deeply deficient in disclosing baseline data for wildlife, including locations of habitat, population levels and trends, and other factors which may accurately describe the baseline conditions for the affected environment. For example, the recharge estimate for the basin in Pine Valley Hydrographic Area is just that—an estimate. The FEIS states that "uncertainty remains regarding the amount of recharge in the Pine Valley HA." *See* FEIS at 1.5.2, p. 10-11. In addition to that, the FEIS details a list of "incomplete" information, including an understanding of the geology underlying the project area and the potential for subsurface flow impediments that have not yet been recognized and their potential effect on drawdown; the nature and extent of connectivity between mountain spring aquifers and the regional carbonate aquifer; the nature and extent of the connectivity between Pine Valley and surrounding basins; the nature and extent of connectivity between Wah Wah Springs and the regional aquifer; and the temporal groundwater level response to pumping, to name a few. *See* FEIS at 3.2.2, pp. 47-48. At a minimum, baseline data on water rights and claims (unrecorded vested, recorded vested, permitted, certificated, and

applications), historic and current water uses, locations of all springs and seeps (on both private and public land), locations of all wet meadows and wetlands, locations of water-dependent flora and fauna, aquifer recharge rates, and information on the connectivity between the alluvial groundwater and carbonate system throughout the affected region is needed in order to properly analyze the impacts (direct, indirect, and cumulative) of the proposed action. The FEIS fails to adequately establish a baseline throughout an appropriately defined area of impact, and on its face leaves establishment of such a baseline to a future, post-decisional, time as part of the incomplete monitoring and mitigation plan. This failure renders the FEIS inadequate under NEPA.

v. The BLM Failed to Take the Required "Hard Look" at the Project's Environmental Impacts.

The BLM failed to analyze and take a hard look at impacts on various resources throughout the area of predicted drawdown, which the USGS predicts ultimately would cover 10,500 square miles and could drop a portion of Snake Valley's water table by 50 feet after only 62 years. *See* Brooks, Lynette, 2017. USGS, Groundwater Model of the Great Basin Carbonate and Alluvial Aquifer System Version 3.0: Incorporating Revisions in Southwestern Utah and East Central Nevada, SIR 2017-5072, at 61. A failure to include or consider these overlooked impacts throughout the predicted drawdown area is arbitrary and capricious and a violation of NEPA, and because BLM has excluded the vast majority of impacts that will occur from its analysis, it has effectively deprived the agency and the public of the information necessary to make an informed decision about the Project.

In addition, throughout Chapter Three of the Final EIS, the BLM relies primarily on conclusory statements to describe impacts in a cursory and uninformative manner. Such a failure to engage in a meaningful analysis falls far short of the BLM's obligation under NEPA to take a hard look at the predicted impacts associated with the PVWSP and West Desert Pipeline Project,

of which the PVWSP is only the first phase. BLM must engage in a site-specific impacts analysis grounded in data and fact in order to reach a reasoned decision and take the required hard look at impacts resulting from the proposed Project. Examples of the BLM's failure to engage in such an analysis are too numerous to list as this is a pervasive problem throughout the FEIS.

As noted, the extensive drawdown from the larger West Desert Pipeline Project will eventually dry up over 10,500 acres of the Great Basin, including shrublands, springs, and wetlands, and will adversely impact numerous springs and perennial streams. As a result of the loss of native vegetation and aquatic flows, hundreds of native species of plants and animals will be faced with extirpation or even in some cases extinction. Multiple species of springsnails, rare desert fish, amphibians, the greater sage grouse, southwestern willow flycatcher, pronghorn antelope, mule deer and elk, plus many other species are threatened by the ecological changes that result from the Project's groundwater mining. Some of these species are protected by the Endangered Species Act ("ESA"); other species have been found to be warranted for protections under the ESA; other species have been found warranted for a 12-month review under the ESA; others, such as sage-grouse, are BLM-designated "sensitive" species. Still others such as new or undescribed species of cave fauna or dozens of other aquatic or terrestrial species, depend on the presently existing conditions of the Great Basin ecosystem and its ties to the groundwater aquifer, but have not received extensive inventory or scientific study.

vi. The FEIS's Socioeconomic and Cost Analysis is Biased and Incomplete.

The socioeconomics analysis contained in the FEIS is heavily skewed toward economic benefits of the Project in Iron County while conspicuously ignoring negative impacts to Beaver County where the water will be extracted as well as Millard, Juab and White Pine Counties. This section fails to fully evaluate the socioeconomic impacts of the Project, including negative impacts

in Beaver County and in additional Utah and Nevada counties impacted by the Project's predicted drawdown, and therefore violates NEPA.

vii. The BLM Failed to Consider Tribal Concerns and Values.

The Final EIS's dismissal of potential impacts to tribal resources on the overly simplistic ground that tribal lands are relatively far from the Project's well field. Additionally, the FEIS's narrow focus on the ROW footprint ignores the far vaster area that will be affected by the drawdown caused by the Project's groundwater pumping and the spiritual and cultural connections indigenous communities have with the affected land and water resources. As such the FEIS's summary dismissal of such potential impacts does not constitute meaningful analysis under NEPA. Moreover, "several federal Tribes assert federal reserve water rights in the Project area." *See* FEIS at 3.2.2, p. 48. As stated in the FEIS that "there is insufficient information concerning some of these water rights . . . to allow the ability to analyze specific potential impacts to these water rights." *Id.* BLM must evaluate the potential impact to potential tribal water rights claims both in Pine Valley and in surrounding potentially impacted valleys.

viii. BLM Failed to Identify and Analyze Cumulative Impacts.

The FEIS does not properly analyze the cumulative impacts of the proposed Project because it does not: (1) identify the significant cumulative impacts associated with the proposed action; (2) establish the proper geographic scope for the analysis; (3) establish an appropriate time frame for the analysis; or (4) identify other actions affecting the resources, ecosystems, and human communities of concern. NEPA requires that BLM include cumulative impacts analyses for all analyzed resource values. Courts have found in NEPA's statutory text the requirement to consider cumulative impacts and "focus concern on the 'big picture' relative to environmental problems." *Swain v. Brinegar*, 517 F.2d 766, 775 (7th Cir. 1975). In *Swain*, the Seventh Circuit observed that

NEPA "expressly requires recognition of 'the worldwide and long-range character of environmental problems," 42 U.S.C. § 4332(2)(E) (1975) (now codified at 42 U.S.C. § 4332(2)(I)), and one of its specific elements to be studied in the EIS is 'the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.'" *Swain*, 517 F.2d at 775 (*quoting* 42 U.S.C. § 4332(2)(C)). Thus, NEPA recognizes that "each 'limited' federal project is part of a large mosaic of thousands of similar projects and that cumulative effects can and must be considered on an ongoing basis." *Id*.; *see also Kleppe v. Sierra Club*, 427 U.S. 390, 409-410 (1976) ("comprehensive impact statement may be necessary" for agency to meet its duties under NEPA; "[w]hen several proposals … will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together").

To that end, courts have also recognized that a cumulative impacts analysis is necessary to put a proposed action's effects into meaningful context and fulfill NEPA's informed decision-making purpose. In other words, a cumulative impacts analysis is integral to ensuring that an agency has taken a "hard look" at the environmental consequences of a proposed action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

Accordingly, for decades courts have held that NEPA reviews "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. FAA*, 290 F.3d 339, 342 (D.C. Cir. 2002); *see also Healthy Gulf v. FERC*, 107 F.4th 1033, 1043 (D.C. Cir. 2024) ("NEPA's mandate to consider the cumulative effects of a project makes sense: A project's incremental emissions do not exist in a vacuum, and requiring consideration of the overall state of the surrounding environment helps ensure that agencies do not overlook the full impact of those emissions."). In the Tenth Circuit,

> A meaningful cumulative impact analysis must identify five things: (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

San Juan Citizens All. v. Stiles, 654 F.3d 1038, 1056 (10th Cir. 2011) (citations omitted).

The FEIS fails to identify, let alone analyze the cumulative impacts of various other federal, State, and private projects taking place throughout the vast area impacted by the Project. The FEIS is therefore deficient in all regards concerning cumulative effects.

ix. The BLM Failed to Evaluate the Effectiveness of Proposed Monitoring and Mitigation Measures.

To satisfy the hard look requirement an EIS must discuss a mitigation plan and proposed mitigation measures thoroughly enough to ensure that the environmental effects of a project have been meaningfully analyzed. *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000); *Neighbors of Cuddy Mt. v. U.S. Forest Serv.,* 137 F.3d 1372, 1380 (9th Cir. 1998); *Western Land Exchange Project v. BIA*, 315 F. Sup. 2d 1068, 1095-96 (D. Nev. 2004); *Oregon Natural Desert Ass'n v. Singleton*, 47 F. Supp. 2d 1182, 1193 (D. Or. 1998 (citing *Idaho Sporting Congress v. Thomas,* 137 F.3d 1146, 1151 (9th Cir.1998)). Merely listing potential mitigation measures without analyzing or evaluating their effectiveness, as the BLM did here, is not sufficient to fulfill the requirements of NEPA. *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1173 (10th Cir. 1999); *South Fork Band Council of Western Shoshone v. U.S. Dept. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (requiring "an assessment of whether the proposed mitigation measures can be effective"); *Okanogan Highlands*, 236 F.3d at 473; *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1151 (9th Cir. 1998).

The potential mitigation measures listed in the FEIS all suffer from the same fundamental flaws: (1) the BLM failed to engage in the necessary baseline data collection on which mitigation triggers and thresholds could be based. In other words, without an adequate understanding or characterization of the resources that the BLM is charged with managing, it is not possible to know whether a monitoring and mitigation program would be effective at protecting them; (2) the BLM failed to include definitive triggers and thresholds, depriving the agency and the public of the information necessary to determine what level of protection the monitoring and mitigation program sets out to provide; (3) the BLM failed to establish goals and objectives (including the timing for achieving those goals and objectives) for the mitigation measures; and (4) the BLM failed to evaluate the effectiveness of the mitigation measures included in its plan for a plan, all of which deprives the public and the BLM of the information necessary to engage in an evaluation of environmental impacts of the Project. These fundamental flaws render the proposed monitoring and mitigation program woefully inadequate under NEPA and provide no basis in the record on which to support BLM's decision to grant the ROW.

x. BLM Failed to Consider Impacts to Wilderness Characteristics.

The FEIS fails to consider how construction and operation of the Project could affect lands included in the Utah Wilderness Coalition's (UWC's) wilderness proposal—America's Red Rock Wilderness Act (ARRWA), Wilderness Study Areas (WSAs), and lands with wilderness characteristics (LWC).

Many of the LWC units identified in the EIS overlap ARRWA units, with ARRWA expanding upon the identified LWC units that may be impacted by this project, including but not limited to: the Central Wah Wah Mountains, South Wah Wah Mountains, Steamboat Mountain, North Peak, Hamlin, Crook Creek, Paradise Mountain, Mahogany Peak, Needle Mountains, White

Rock, Mountain Home South, and Jackson Wash. (EIS, Figure 11, Lands with Wilderness Characteristics). These LWC units are essential to wildlife habitat and migration, and mitigating climate change and its impacts. The groundwater pumping and associated drawdowns and disruption to recharge caused by the Pine Valley Water Supply Project (discussed throughout these comments) are directly counter to what is needed to provide livable conditions for wildlife and mitigate climate change and its impacts. Drawdown may significantly impact the wilderness character and carbon sequestering capabilities of a number of LWC and ARRWA units by decreasing the available supply of surface water.

BLM is required, as part of the NEPA process, to analyze the direct, indirect, and cumulative impacts of the Pine Valley Project on all LWC units. "It is undisputed that the BLM is obligated to specifically consider the impacts that its land use decisions might have on areas identified as having wilderness characteristics. See e.g. *Rocky Mtn. Wild v. Haaland*, Civil Action 18-cv-02468-MSK, pp. 11-12 (D. Colo. Sep. 28, 2021) (*citing Vermonters For A Clean Environment v. Madrid*, 73 F.Supp.3d 417, 431 (D. Vt. 2014). BLM failed to do so here and therefore violated NEPA.

B. BLM Violated FLPMA

FLPMA is BLM's "organic act" and governs its management of public lands and resources. FLPMA declares that it is the policy of the United States to manage the public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values" and that, "where appropriate, will preserve and protect certain public lands in their natural condition." 43 U.S.C. §1701(a)(8).

As part of that mandate, FLPMA requires that: "[i]n managing the public lands [BLM] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue

degradation [UUD] of the lands." 43 U.S.C. §1732(b). The duty to "prevent UUD" is "the heart of FLPMA," *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 33 (D.D.C. 2003), and "supplements requirements imposed by other federal laws and state law." *Center for Biological Diversity v. U.S. Department of the Interior*, 623 F.3d 633, 644 (9th Cir. 2010). Written in the disjunctive, BLM must prevent degradation that is "unnecessary" and degradation that is "undue." *Mineral Policy Ctr.*, 292 F.Supp.2d at 41-43.

Failure to conduct a proper NEPA analysis violates not only NEPA, but FLPMA's mandate to prevent UUD, which is a fundamental requirement of BLM's review of proposed projects on public lands. As the Board has held:

> Like NEPA, the [UUD] definition requires BLM to consider the nature and extent of surface disturbances resulting from a proposed operation and environmental impacts on resources and lands outside the area of operations. *Kendall's Concerned Area Residents*, 129 IBLA 130, 140-41 (1994); *Nez Perce Tribal Executive Committee*, 120 IBLA 34, 36 (1991); *see Sierra Club v. Hodel*, 848 F.2d 1068, 1078, 1091 (10th Cir.1988) (nondegradation duty is mandatory). . . . [M]ost disturbed land at the mine sites is public land and other public land is adjacent to them. **To the extent BLM failed to meet its obligations under NEPA, it also failed to protect public lands from unnecessary or undue degradation**.

Island Mountain Protectors, 144 IBLA 168, 202, 1998 WL 344223, * 28 (Interior Board of Land Appeals, IBLA) (internal citations omitted, emphasis added).

FLPMA also directs BLM to "develop, maintain, and, when appropriate, revise land use plans" which govern use of the public lands. 43 U.S.C. § 1712(a). The plans that BLM develops under this provision are called Resource Management Plans (RMPs). *See Or. Nat. Desert Ass'n v. BLM*, 625 F.3d 1092, 1096 (9th Cir. 2010). Once an RMP is in place, BLM must ensure that all site-specific actions conform to the RMP. 43 U.S.C. § 1732(a).

Finally, FLPMA Section 309(e) provides that the public must be allowed meaningful participation in public lands management decisions. 43 U.S.C. § 1739(e). It requires that: "In

exercising his authorities under this Act, the Secretary [of the Interior] shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands." *Id.* (emphasis added). FLPMA Section 103(d) defines "public involvement" as "the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance." 43 U.S.C. § 1702(d).

The FLPMA mandate to involve the public in all public lands management decisions applies not just to the development of plans and programs, but also to the "actual management of public lands." *Donald K. Majors*, 123 IBLA 142, 147 (1992). "There are strong indications that Congress intended some form of public input for all decisions that may have significant impact on federal lands." *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 322 (1987) (citing H.R. Rep. No. 1163, 94th Cong., 2d Sess. 7 (1976), U.S. Code Cong. & Ad. News 1976, p. 6181), *rev'd on other grounds*, 497 U.S. 871 (1990); *see also W. Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302, 1316 (D. Idaho 2008) ("Congress, in FLPMA, did not give the BLM any discretion to cut the public out of these management and execution issues. Yet the BLM seeks to grant itself that forbidden discretion in its regulatory revisions. Accordingly . . . WWP has met its 'heavy' burden of proving that those revisions limiting public input constitute a facial violation of FLPMA.").

i. BLM Violated FLPMA's Public Involvement Mandate.

As discussed above, the Federal Land Policy and Management Act (FLPMA) is a principal federal land law governing 250 million acres of U.S. Bureau of Land Management (BLM) land, and it includes multiple provisions that specifically require public participation in decisions

concerning the management of public lands. FLPMA defines public involvement as "the opportunity for *participation* by affected citizens in rule making, decision making, and planning with respect to the public lands, *including public meetings or hearings* held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide *public comment* in a particular instance." 43 U.S.C. § 1702(d) (emphasis added). Sections 202 and 309 of FLPMA, respectively, state that not only must the Secretary of the Interior ensure that the public receive adequate notice and the opportunity to comment on long-term planning decisions, but that opportunities to participate in the preparation and execution of plans for management of public lands are mandatory. 43 U.S.C. §§ 1712(a), (c)(9), (f); *see also* 43 C.F.R. §§ 1610.2(a), (b), (c), (e), (f), (k). "The public *shall* be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments, and related guidance and be given early notice of planning activities." 43 C.F.R. § 1610.2(a) (emphasis added); *see also* 43 U.S.C. § 1739(e) (mandating that the government "establish procedures" to provide the public with opportunities "to participate in, the preparation and execution of plans and programs for, and the management of, the public lands."); *National Wildlife Federation v. Burford*, 835 F.2d 305, 322, 266 U.S. App. D.C. 241 (D.C. Cir. 1987) (holding that FLPMA requires public comment on implementation decisions as well as planning decisions); *Mont. Wildlife Fedn v. Haaland*, 127 F.4th 1, 41 (9th Cir. 2025) (holding that BLM violated FLPMA when it issued an instruction memorandum limiting public comment opportunities for oil and gas lease sales).

The degree to which the minimal amount of public notice and time allotted for public review of the FEIS stymied public participation in the planning process for this project cannot be understated. The FEIS for the Project—which, with appendices, runs well over 1,000 pages in length—was released on Friday, February 27, 2026, and the ROD then released the morning of

Monday, March 2, 2026, providing no reasonable amount of time for the public or agencies to carefully consider information about significant environmental impacts to this Project. This decision on part of the BLM to issue a Record of Decision without sufficient time for the public to meaningfully participate violates FLPMA.

ii. BLM Failed to Prevent UUD.

The FEIS contains minimal discussion of avoidance of unnecessary and undue degradation or compliance with FLPMA. In fact, the few mentions of UUD in the FEIS do nothing more than to state the it has been concluded that the proposal will not cause UUD in response to comments from the DEIS four years ago. *See* FEIS at Table G-10, pp. G-80. BLM provides no further information as to how it reached this conclusion, nor any site-specific discussions throughout the Project area. As noted below, the mitigation measures, generally outlined in the "monitoring and mitigation" discussion, are not site-specific and contain no triggers that would require mitigation. Because modeling confirms that impacts would be environmentally devastating over a broad region of western Utah and eastern Nevada, and because BLM did not require the development of a robust monitoring and mitigation plan with actual quantified goals and triggers, BLM has not and cannot demonstrate that the Project will not cause unnecessary and undue degradation under FLPMA, nor has it even attempted to engage in such an evaluation.

iii. BLM Failed to Show Compliance With Applicable RMPs.

The FEIS only addresses compliance with the Cedar/Beaver/ Garfield/Antimony Resource Area Management Plan (BLM 1986), as amended, and the Pinyon Management Framework Plan (BLM 1983), as amended. The BLM failed to address compliance with the Ely District Resource Management Plan (BLM 2008), House Range Resource Area Resource Management Plan (BLM 1987), and Warm Springs Resource Area Resource Management Plan (BLM 1987), even though

modeling confirms that impacts will occur in the areas covered by those plans. BLM's conclusory assertions in the FEIS that the Project complies with all applicable RMPs does nothing to show compliance with the specific, substantive provisions of the plans currently in force throughout the projected drawdown area.

iv. BLM Failed to Ensure Compliance With the 2015 Utah ARMPA.

The Decision and FEIS violate several aspects of the applicable sage-grouse plan, the 2015 ARMPA. Within the Project area, the northern third of the pipeline and wellfield directly traverse an area of important GRSG habitat called Priority Habitat Management Area (PHMA). PHMA represents the "best of the best" when it comes to sage-grouse habitat, "having been identified as having the highest value to maintaining sustainable greater sage-grouse populations." Transcom, 2021a. Greater Sage-Grouse Net Conservation Gain Analysis for the Pine Valley Water Supply Project Draft Environmental Impact Statement. April 2021. P. 5. ARMPA objective SSS-1 requires BLM to "[p]rotect PHMA from anthropogenic disturbances that will reduce distribution or abundance of GRSG." Even though the pipeline, wellfield, and associated energy infrastructure will be located within PHMA, and even though the best available science shows that these developments negatively impact sage-grouse abundance, the Final EIS does not address Objective SSS-1 or show that the Project is consistent with this provision.

Several ARMPA components, including Objective SSS-2 and Management Action SSS-3, require BLM to manage the public lands for a "net conservation gain" to sage-grouse. As a means of achieving this, CICWCD proposes putting taps on the pipeline and piping the water to exclosures to create artificial mesic habitats. *See* FEIS at 2.2.2.1.1, p. 22; 2.2.2.1.12, p. 35. This is a novel experiment that is functionally uncontrolled. This technique has never been used before as mitigation to provide net conservation gain, and BLM has not evaluated the effectiveness of this

method; rather, the Final EIS states that BLM will develop a "separate Mitigation Monitoring and Benefits Analysis Plan" after the Project is approved to evaluate mitigation effectiveness. *See* FEIS at 40; 64; Table F-2. Further, the siting of the proposed mesic meadow restoration projects is self-defeating—the FEIS states that most of these "restored" habitats would be located within 0.25 to 0.5 mile of the buried pipeline and overhead transmission line. *See* generally FEIS at 81-85. As discussed in Appellant's comments on the DEIS, tall structures have been shown through numerous studies to have adverse impacts on sage-grouse abundance, regardless of whether they are equipped with "perch deterrents" or other anti-predation measures. For all of these reasons, BLM has failed to show that the Project will achieve a "net conservation gain" as required under the ARMPA.

In addition, the ARMPA contains specific habitat objectives, and encourages BLM to meet these objectives through a variety of means, including through vegetation treatments. The Final EIS does not consider how the Project will impact its ability to meet the ARMPA habitat objectives, and therefore ignores an "important aspect of the problem." Further, the Final EIS and ROD ignore the ARMPA's clear direction to maintain and enhance sage-grouse habitat through vegetation treatments. *See, e.g.*, Management Action SSS-4 ("Vegetation treatments will be applied to meet GRSG habitat objectives and provide additional GRSG habitat."); Management Action VEG-1 ("In PHMA, where necessary to meet GRSG habitat objectives, treat areas to maintain and expand healthy GRSG habitat."); Management Action VEG-2 ("Remove conifers encroaching into sagebrush habitats, in a manner that considers tribal cultural values."); Management Action VEG-4 ("Make meeting the GRSG objectives for the restoration/treatment project one of the primary priorities for the project and subsequent land uses"); Management Action VEG-6 ("In PHMA, design post restoration management to ensure long term persistence

. . .”). The pipeline, wellfield, and transmission line would overlap with an existing lop-and-scatter pinyon-juniper removal treatment, which was designed to enhance sage-grouse habitat conditions. *See* Ecocene 2026 at 12, Fig. 4. Yet the Final EIS and ROD fail to consider how this would impact sage-grouse habitat objectives within the treatment area, or how it would affect the “long term persistence” of the treated habitat. Consequently, the Project violates multiple ARMPA provisions related to the restoration of sage-grouse habitat through vegetation treatments.

ARMPA Management Action SSS-3 includes numerous restrictions on anthropogenic development in PHMA, many of which the Project violates or ignores. For instance, BLM is required to “limit noise from discrete anthropogenic disturbances, whether during construction, operation, or maintenance” to 10 decibels above “ambient sound levels.” Based on a review of the FEIS and the “net conservation gain” appendix, it appears BLM has failed to determine ambient noise levels at the project site. As a consequence, there is no way to ensure compliance with the ARMPA’s noise restrictions. However, the “net conservation gain” document reveals that noise generated by the solar field would be around 43.5 decibels at a distance of 30 feet, and the well house pumps would generate about 66 decibels of noise. Noise levels from construction and maintenance are not disclosed. In any case, it is apparent that the Project will generate a significant amount of additional noise in the wellfield area, as there is currently minimal development in Pine Valley.

The Final EIS and ROD also fail to explain how the Project would comply with Management Action SSS-3’s instruction to “limit placement of permanent tall structures within GRSG breeding and nesting habitats.” The Project would involve the installation of 11.7 miles of power lines within PHMA, and in close proximity to the proposed mesic meadow mitigation projects. As noted, these structures will impact sage-grouse habitat quality and abundance whether

or not they are fitted with "perch deterrents." Relatedly, the Project violates the ARMPA's "lek buffers" for tall structures, low structures, and surface disturbance.

The Final EIS and ROD also fail to show consistency with the ARMPA provisions specifically applicable to rights-of-way, including Objective LR-1 and Management Action LR-2. PHMA is designated as an "avoidance" area for major ROW under the ARMPA, and although some limited exemptions are available, they emphasize the importance of avoiding and minimizing any impacts. The FEIS and ROD fail to offer a reasoned explanation as to why development in PHMA is unavoidable here, and instead offer only conclusory assertions. Further, it has not been adequately demonstrated that the Project avoids and minimizes impacts to sage-grouse and sage-grouse habitat. As discussed herein, the Project appears to violate and/or disregard multiple other ARMPA provisions designed to protect and enhance sage-grouse habitat. Further, the Final EIS and its supporting materials do not utilize the "best available science," as required by ARMPA Objective LR-1.

Finally, the Final EIS and ROD fail to demonstrate compliance with the ARMPA's adaptive management protocol. According to the "net conservation gain" document, "[t]he Hamlin Valley Priority Habitat Management Area hit two hard population triggers in 2022," indicating a significant population decline. Among other things, the ARMPA provides that, upon hitting a soft trigger, management direction will change to "exclude . . . major pipelines" from PHMA. ARMPA Appx I, Table 1.1. The Final EIS and ROD fail to demonstrate consistency with this provision and fail to ensure compliance with the UT Sage-Grouse Plan throughout the entire drawdown area, even though drawdown from the Project will likely impact sage-grouse habitat.

v. BLM Violated the Endangered Species Act (ESA).

Under Section 7 of the Endangered Species Act, federal agencies must ensure that they do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. 16 U.S.C. § 1536(a)(2); *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 518 (9th Cir. 2010). If a federal agency's actions may affect a listed terrestrial species, it is required to consult with the U.S. Fish and Wildlife Service, and obtain its opinion whether the activity is likely to jeopardize the species or adversely modify its critical habitat. *Id.* If it may, the U.S. Fish and Wildlife Service then writes a Biological Opinion that, among other things, suggests a "Reasonable and Prudent Alternative" to the agency's actions. 50 C.F.R. § 1536(b)(3).

BLM violated its obligations under Section 7 by arbitrarily narrowing the geographic scope of its consultation. Despite acknowledging that "[t]he action area is defined as the area that could be affected directly or indirectly by the federal action and not merely the immediate area involved in the action (50 CFR 402.02)," Biological Assessment at 4, the Biological Assessment limited consideration of impacts and surveys of endangered species to an area encompassing only the Project ROW and related species specific buffers around that ROW. BLM thus unlawfully excludes from consideration impacts to listed species that would occur outside of this narrow geographic scope, including species that would be affected, and potentially jeopardized, by the extensive drawdown from the Project. BLM has therefore violated the ESA by failing to "insure" that its actions do not jeopardize the continued existence of any threatened or endangered species.

C. BLM Unlawfully Subdelegated its Authority to DWRi.

Federal agencies may not subdelegate their authority to states without affirmative evidence of authority to do so. *See U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004). When a statute delegates authority to a federal officer or agency, that authority can only transfer to a subordinate, presumptively to ensure that responsibility and accountability remain with the

agency. *Id*. "Delegation to outside entities increases the risk that these parties will not share the agency's 'national vision and perspective,' and thus may pursue goals inconsistent with those of the agency and the underlying statutory scheme." *Id*. In addition, "subdelegation to outside entities aggravates the risk of policy drift inherent in any principal-agent relationship." *Id*.

In this case, Congress has not authorized the Secretary of Interior or BLM to subdelegate their authority over federal public lands or resources to the States, or other non-subordinate "outside parties." While the DWRi does serve as the water-regulating authority for the state of Utah, it does not share the authority, obligations, and policy priorities that Congress has specifically conferred on the Interior Department and BLM under applicable federal statutory schemes, such as NEPA and FLPMA. In particular, Congress has charged the Secretary of the Interior and his federal subordinates with analyzing and disclosing a proposed federal action's environmental impacts, deciding whether or not to approve the Project based on statutory and regulatory criteria, imposing mitigation requirements, and ensuring compliance with federal permits and other authorizations. Further, BLM cannot authorize a public land use that would result in UUD, regardless of whether the use is consistent with State policies. *See* MS-1794, Mitigation, BLM Manual, P. 6-2. There is no evidence that that Congress has authorized the Interior Department or BLM to delegate these statutory responsibilities to outside parties.

However, the Project ROD here subdelegates responsibility for formulation and enforcement of adaptive management practices and mitigation requirements to DWRi, a State agency. *See* FEIS at 3.2.3, p. 49. Subdelegation to States is permissible in some narrow circumstances, namely: (1) when establishing a reasonable condition for granting federal approval; (2) fact gathering; and (3) advice giving. *U.S. Telecom*, 360 U.S. App. D.C. at 214, 359 F.3d at 566. But the scheme established in the FEIS and ROD fits none of these models. Rather, BLM has

wholly delegated the development and enforcement of the Project's adaptive management plan to DWRi. *See* FEIS, Table C-2. There does not appear to be a mechanism in the adaptive management scheme whereby BLM may exercise control or supervision over BLM's actions. Thus, pursuant to *U.S. Telecom*, BLM has unlawfully subdelegated its management authority to DWRi, because under the proposed monitoring and mitigation plan, DWRi, and not BLM, will make decisions about whether, and how, to mitigate the Project's impacts on federal lands.

V. Conclusion

In light of the foregoing, the Center respectfully requests that the IBLA grant a stay of the BLM's March 2, 2026 Decision Record and FEIS for the Pine Valley Water Supply Project.

Respectfully submitted this 1st day of April, 2026.

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CERTIFICATE OF SERVICE

In accordance with 43 C.F.R. §§ 4.407(b), and the Office of Hearings and Appeals' Standing Order on Electronic Transmission, I hereby certify that on April 1, 2026, I served a true and correct copy of the foregoing **NOTICE OF APPEAL AND PETITION FOR STAY** upon the following:

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