

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

THE CENTER FOR BIOLOGICAL
DIVERSITY; SIERRA CLUB,

Appellant,

v.

BUREAU OF LAND MANAGEMENT,

Respondent.

IBLA No. _____

Re: Decision Record and Determination of
NEPA Adequacy for Townsite Data Center
Project (NEPA Register No. DOI-BLM-NV-
S010-2026-0080-DNA)

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”) and the Sierra Club (“SC” or jointly “Appellants”) files this Notice of Appeal and Petition for Stay of the Bureau of Land Management (“BLM”) Southern Nevada District’s Determination of NEPA Adequacy (“DNA”) and Decision Record (“DR”) for the Townsite Data Center Project, DOI-BLM-NV-S010-2026-0080-DNA (“Project”). The DNA and DR 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). When computing a time period for filing and service under IBLA rules, the day of the event that triggers the time period is excluded, and if the last day of the time period falls on “a Saturday, Sunday, Federal holiday, or other nonbusiness day, the period continues to run until the end of the next day that is not a Saturday, Sunday, Federal holiday or other nonbusiness day.” 43 C.F.R. § 4.22(c)(1-3). Appellants received notice of the

Decision on June 26, 2026, the day the DNA and DR were posted to BLM's ePlanning website. Thirty days from June 26, 2026, is July 26, 2026, which is a Sunday. Therefore, pursuant to 43 C.F.R. § 4.22(c)(3), this appeal is timely filed on or before July 27, 2026.

FACTUAL BACKGROUND

This appeal before the Board challenges the approval of the first data center on BLM-managed land to be approved in the United States. To understand fully the claims brought and discussed below, it is necessary to discuss the origins of this Project, which began and was analyzed and approved as a solar project in 2022 called Townsite Solar 2 ("Solar" or "Solar Project"). Applicant Skylar Energy Resources, LLC proposed to construct, own, operate, and decommission the project on 76 acres of public land in Eldorado Valley, Nevada, an arid valley in the Mojave Desert situated just outside of Las Vegas, Nevada and within the city limits of Boulder City, Nevada. The Project consisted of an up to 19-megawatt alternating current solar photovoltaic power generating facility, a potential battery energy storage system up to 35 megawatts, a site road, and ancillary facilities, all operating on a 30-year ROW. *See* Townsite Solar 2, Plan of Development ("PoD") at p. 1.

A public meeting was held for this project virtually on August 3, 2023. Notably, an Environmental Assessment ("EA") was issued for the solar project on October 3, 2023, and identified five Endangered Species Act ("ESA") listed and candidate species in the area: the southwestern willow flycatcher, the endangered Ridgeway's rail, the threatened yellow-billed cuckoo, the threatened Mojave Desert tortoise, and the candidate monarch butterfly. *See* Townsite Solar 2 EA at 3.12.1, p. 47. The entirety of the Project is within desert Tortoise habitat, with the majority of the project encompassing Priority 1 tortoise connectivity habitat. *Id.* at 3.12.1, p. 48. The EA additionally stated that an estimated 25 acre-feet of water would be required for dust

control during construction related activities, with an estimate of 2 to 3 acre-feet per year required during operation. *Id.* at 2.2.4, p. 9. The water for the project was to be obtained from the City of Boulder City Wastewater Treatment Plant through an existing pipeline for dust suppression activities and stored on site in above ground tanks. *See* Solar PoD at 1.2, p. 11. If, for reasons unknown, the water was unable to be obtained from Boulder City or was not sufficient for the amount needed, the water would be obtained from “commercial sources” within 50-miles of the project site. *Id.*

On September 29, 2023, a few days prior to the EA’s October 2023 release, a Finding of No Significant Impact (“FONSI”) was released stating that the effects on the quality of the natural and human environment are not likely to be highly controversial. A Decision Record was released that same day. No action was taken on the project for approximately two years subsequent to its approval.

In November of 2025, the applicant quietly submitted an updated plan of development and an amended SF 299 to BLM to modify the previously approved ROW. What was once billed and approved as a solar project then became a data center, sited on the same area and using the same acreage, as the solar project already approved. The DR and DNA were released on June 26, 2026, circumventing any public input and NEPA analysis by illegally and incorrectly relying on the 2023 EA and FONSI for the previously approved solar project. *See* generally DR and DNA. They submitted the proposal under the name Townsite Solar 2 Data Center, and that is now the Project at issue in this appeal.

The Project DR grants a single right-of-way (“ROW”) to the applicant Townsite Solar 2 LLC (“Applicant”) to construct, own, operate, maintain and decommission a data center on 81-acres of a requested 85-acre ROW, with an additional 4 acres to be used for an 80x20, 2,000-foot

linear facilities segment. *See generally* DNA at p. 1. The Project would construct and operate a facility “housing computer servers, storage, and network equipment to store, manage, process, and disseminate large amounts of data and digital information” as well as administrative facilities. *Id.*; *See generally* Data Center PoD at 1.1, p. 4; at 2.3, p. 29-30. The exact number of buildings is unknown, as well as the exact size of the buildings. Additionally, the Project would construct a surface parking lot, a 70-megawatt battery energy storage system, an electrical substation, and emergency backup generators fueled by biodiesel or natural gas. *Id.* at Data Center PoD, p. 4. The Linear Facilities portion of the Project will contain access roads during construction and operation, installation of a permanent 12 to 13-kV distribution power line, and for an underground 34.5-kV to 230 kV power collection system. *Id.* The Project is estimated to take up to 12 months to construct and will use 500,000 gallons (about 1.5 acre-feet) of water *per day* during construction, totaling more than 560 acre-feet of water consumption—a dramatic increase from the solar project’s estimated 25 acre-feet of water for the entirety of construction. *Id.* at 1.2.7, p.21. Despite the fact that the life of the ROW is only 27.5 years, the Data Center PoD estimates that the data center will be in operation for a minimum of 50 years, with a possibility for additional operation at the end of the initial lifespan. *Id.* at 1.1.1, p. 9; *See* Right-of-Way Grant, p. 1.

In addition to the increase in water usage for dust suppression construction usage, the new Project PoD estimates that its daily water usage while in operation will be approximately 2,000 gallons per day, which, according to the DNA, “is consistent with the water usage estimate in the existing Environmental Assessment of 2-3 acre-feet per year.” *See generally* DNA at Notes on Water Use. None of these numbers, however, include the Project’s proposed “closed-loop air-cooling system,” estimated to use up to 400,000 gallons (1.23 acre-feet) of a water/propylene glycol mixture for a one-time fill of the system. *Id.*; *See* Data Center PoD at 6.4.1, p. 41. Applicant

states that the mixture will be purchased from a vendor but does not identify such a vendor. *Id.* The DNA attempts to paint this water usage as “well within the existing 2023 Environmental Assessment’s water usage estimate of 2 to 3 acre-feet per year”; however, that number was an estimate for water usage during operation, and not for usage pertaining to cooling systems. Combined with the uptick in usage for construction, it is not an accurate representation of water usage for the lifetime of the Project.

Further, it is unclear where the water for dust suppression and operational usage will come from. The Data Center PoD and DNA both state that water will be obtained from the City of Boulder City Wastewater Treatment Plant through an existing pipeline for dust suppression activities, later stored in above ground tanks. *See* PoD at p. 15. If this water is unavailable, however, the Project would obtain water from “commercial sources from existing water rights or availability within a 50-mile radius of the Project Area.” *Id.* It is unclear what commercial sources are being referenced, how the impacts to the environment would change with the transport of such water into the site, or if the Project obtaining water from the City of Boulder City is predicated on an existing agreement or a pending one relevant to the water available for use. In other words, it is not known where this dramatically increased amount of water will be sourced from.

The area in which the Project will be sited, Eldorado Valley, is a magnificent example of the vast and wild desert landscape found throughout the Mojave Desert and southern Nevada. The biodiversity of the Mojave Desert cannot be understated—the 54,000 square miles that comprise the Mojave are home to an abundance of wildlife and hearty desert plants, including the endemic Joshua tree (*Yucca brevifolia*), burrowing owls (*Athene cunicularia*), desert bighorn sheep (*Ovis canadensis nelsoni*), and the federally listed Mojave desert tortoise (*Gopherus agassizii*). Additionally, desert wildflowers such as the creosote, desert globemallow, desert marigold, and

brittlebrush function as an important link in the ecological chain, inviting pollinator populations and providing food for all manners of fauna. This valley has undergone industrial development over the last decade, noticeably shrinking wildlife habitat in the area. The loss of this Project's acreage would be another disruption to sustaining viable habitat for all species in the area, but particularly to the desert tortoise, whose connectivity habitat makes up the entirety of the Project area. *See* DNA at 48.

The Project will begin with geotechnical investigations, inclusive of soil borings, soil resistivity testing, and pile load tests in the area. *See* Data Center PoD at 2.1, p. 28. The construction phase involves temporary fencing around the laydown area, perimeter fencing, preparation and execution of permanent vegetation removal and treatment, grading, surveying, and installation of drainage detention control basins and foundations, concrete pouring, trenching, all leading up to actual construction of a multi-facility compound continuously consuming power and emitting several sources of light pollution, noise pollution, and air pollution. *Id.* Land disturbances such as this contribute to the alteration, fragmentation, or, in some cases such as this, total removal of habitat suitable for wildlife.¹ These impacts on the land do not cease at the end of the life of the project—instead, the legacy of altered soil, vegetation, and hydrology continues for decades to centuries.²

According to the applicant, the data center is needed to “support advancements in technologies like artificial intelligence” because the United States has a “greater need for artificial intelligence than any other industrialized nation.” *See* Data Center PoD at 1.1.2, p. 9. The applicant's purpose and need also cites that this project would be “paving the way for expansion

¹ Abella, S.R., Berry, K.H., Enhancing and Restoring Habitat for the Desert Tortoise *Gopherus agassizii*. Journal of Fish and Wildlife Management. 2016, *et. seq.*

² *Id.*

of other similar projects in the area,” demonstrating that it can be reasonably assumed that BLM plans to continue to circumvent federal policies in similar matters. *Id.* at 1.1.3, p. 10.

As explained in detail herein, the approval of the proposed Project is premised the sufficiency of a previous analysis of a substantially dissimilar project, which was then used to approve the Project through an illegal DNA. The Project itself poses substantial threats that are remarkably different to that of the previously approved solar project. At the top of the conversation in Nevada is and always will be water, and it is no different in this case. It is almost irrelevant that the applicant alleges they will not pursue any water rights—the enormous amount of water needed for construction and daily use will have unknown impacts on municipal water demand and needs, wastewater generation and disposal thereof, and cumulative impacts on the regional water supply. Without a clear articulation of where the water will come from for the Project, it is impossible to accurately analyze the reliability of such a supply, what the competing and cumulative demands of water throughout the region are, and what the consequences may be should that water become unavailable.

Additionally, a solar facility’s function is to generate electricity, whereas a data center’s function is to continuously consume electricity. The load impacts and reliability concerns, as well as overheating issues, could lead to increased power outages or fire risks, as well as contribute to localized temperature increases and detrimental effects to the surrounding climate. The Project also threatens priority 1 connectivity habitat for the threatened desert tortoise and the habitats of three other listed species, all of which have the potential to be affected by increased human activity needed to run a data center, increased lighting, increased and continuous noise, and other issues. 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 previous EA, BA, and FONSI do not adequately address these and other serious problems with the Townsite 2 Data Center Project, meaning the reliance on a DNA tiered off of these documents is illegal. Among the most glaring deficiencies, the DNA and DR are 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 by performing the required NEPA analysis, the DR simply attempts to sidestep all substantive problems by approving the Project under the DNA, alleging that the data center Project is "essentially like the original 2023 proposed action" in that they are both operated by the same parent corporation, occur in the same location, are both "industrial uses," are both connected to external infrastructure, and use the same roads. *See* DNA at Section D, NEPA Adequacy Criteria. None of this, however, is of any substantive relevance to the substantially different types of structures, scale of the structures, and all of the accompanying, differing parts that come with them. The impacts of each project type are substantially dissimilar.

Moreover, the BLM did not provide an opportunity for public review and comment on the new plan; instead, the agency sped past the requirement in their reliance on the previous EA, which garnered exactly one public meeting three years ago, in an egregious violation of BLM's public involvement mandate under NEPA and 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 Appellants 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 and Sierra Club meet both requirements. While Appellants

were not provided the opportunity to participate in the administrative decision-making process, Appellants and their members are adversely affected by the June 26, 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 14,705 members and supporters in Nevada. 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. The Center has an extensive history of working to protect ecosystems, species, water, and climate on public lands, including lands administered by BLM.

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. 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.

The Toiyabe Chapter of the Sierra Club consists of over 6,000 Sierra Club members in Nevada and in the Eastern Sierra. Its members work to protect wildlife and wild places, ensure clean air and water for all, and fight the devastating effects of climate change.

The Center's and Sierra Club'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 Nevada's natural landscapes.

Gabriella Laub has been a member of the Center since 2026. Declaration of Gabriella Laub, ¶ 5. She lives in Boulder City, Nevada and spends her time as a local advocate for disabled and other marginalized communities in the area. *Id.* at ¶ 4. Ms. Laub grew up recreating in the Eldorado Valley area and around the Mojave Desert that surrounds Boulder City and Las Vegas. *Id.* at ¶ 6-7. She has fond memories of going to Eldorado Valley as a child to practice desert photography with her mother and enjoy the beauty of the natural landscape. *Id.* Ms. Laub suffers from several autoimmune diseases and is on a fixed income. *Id.* at ¶ 11-12. The idea of a data center being built within the general vicinity of her home, driving up costs of living in the area and becoming a source of unknown pollution, has caused her to “live in fear without knowing what health repercussions to expect.” *Id.* at ¶ 13. “Increased pollution...will have negative and likely irreparable effects on my physical and mental health.” *Id.* at ¶ 12.

Center member Janelle Sorenson has been a resident of Boulder City for six years after choosing to retire there to have more happy days with her granddaughter. Declaration of Janelle

Sorenson, ¶ 7. She spends a lot of time with her granddaughter in the Eldorado Valley promoting outdoor learning experiences, observing wildlife, desert plants, and animal scat. *Id.* at ¶ 8, 9. She believes that BLM land is supposed to be land for the public to enjoy and that a data center is not an appropriate use of such land, particularly when it comes with unknown and untold amounts of light and noise pollution. *Id.* at ¶ 10. Ms. Sorenson is also very worried about the property values and cost of living in Boulder City, where many people move to get away from the city's high prices. *Id.* at ¶ 13. Because she is a retiree on a fixed income, she will not be able to pick up and move should she discover that she needs to do so to maintain her good physical and mental health. *Id.* Ms. Sorenson considers herself an amateur naturalist and is deeply concerned about the well being of the local wildlife population that will be harmed or displaced due to the data center, such as the Mojave desert tortoise. *Id.* at ¶ 12. She intended for Boulder City to be her forever home in her retirement years, as she loves the natural landscape of the desert, spending much of her time outside with her granddaughter and writing creative poetry inspired by the beauty of the desert. *Id.* at 16. Beyond that, Ms. Sorenson states that the "Eldorado Valley has been a place of refuge and inspiration for my life and the life of my family. To no longer be able to see the tortoises, the lizards, the wildflowers, and other natural features of the desert would be a tremendous personal loss from which there would be no coming back." *Id.*

Sierra Club member Brynn deLorimier also lives in Boulder City, having moved there specifically after visiting for many years and falling in love with the beautiful and stark desert landscape. Declaration of Brynn deLorimier, ¶ 3, 5. She is a local business owner and is very active in local politics, advocating for a "citizen first" style of living that Boulder City is typically known for. *Id.* at ¶ 8. As a business owner, she is concerned about what will happen to property values in the area should the data center go forward. *Id.* at ¶ 12. She has heard several residents express that

they will consider selling their homes should the Project be completed, as they fear rising cost of utilities will coincide with the falling value of property. *Id.* at ¶ 12-14. She does not believe that the city nor the project proponent has been forthright with the full scope of the project out of the gate and she is concerned how further pollution from the data center will affect Boulder City and the Mojave Desert. *Id.* at ¶ 16. She spends her free time organizing trash clean-up days in Eldorado Valley, often on the very lake bed the project is slated to be built near, as well as hiking and swimming in the Colorado River. *Id.* at ¶ 9. The weather in the area has been good for her rheumatoid arthritis, and she fears that she will not be able to afford to live there soon, nor will she be able to afford to move elsewhere that meets her health and spiritual needs. *Id.* at ¶ 11, 17. Ms. deLorimier also enjoys star gazing from her roof, as the darkness of the valley below allows the stars to be incredibly bright. *Id.* at ¶ 19. “This data center would irreparably harm all of that and more—drowning out the stars with its constant working, overtaking and driving out the wildlife with its constant buzzing of electricity, draining more from the local ecosystems that cannot be replenished. What will be left for us? For the earth?” *Id.*

For all of these reasons, Appellants 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), Appellants petition 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 the Center’s and Sierra Club’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. § 4.405(b)(3)(i)-(iv)

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 Appellants' interests therein. *See generally* deLorimier Decl; Laub Decl.; Sorenson 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. *See, 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 Ms. deLorimier, Ms. Sorenson, and Ms. Laub, the Center, Sierra Club, and their members will suffer immediate, imminent, and irreparable harm to their interests, absent a stay. For example, the Project would remove precious acres of desert vegetation, disturb the soil, and increase degradation of an already fragile desert environment. The Project area and its surrounding areas are places where Ms. Sorenson seeks spiritual renewal and educational bonding with her granddaughter. *See Sorenson Decl.* ¶ 8, 10. The loss of this environment and important wildlife habitat will irreparably harm Ms. Sorenson and inhibit future generations from places providing valuable outdoor education.

Additionally, the Project will have unknown impacts on air, noise, and light pollution, and relies on a vague, unknown source of water for the Project. Gas turbines such as those approved

as backup generators for the Project are known sources of NO_x pollution,³ which is implicated in a variety of negative mental and physical human health outcomes.⁴ Gas turbines also produce PM₁₀, PM_{2.5}, and numerous volatile organic compounds (VOCs)⁵ “pos[ing] a potentially considerable risk to human health and the environment.”⁶ Backup generators for data centers are a major source of air pollution in locations where they’ve been extensively deployed.⁷ Continuous operation of servers, cooling mechanisms, and electrical generators in data centers generates significant noise above ambient levels.⁸ Chronic exposure to environmental noise can result in a wide variety of negative health outcomes, from sleep disturbance, mental health declines, hearing loss, cardiovascular disease, endocrine disorders, and even increased diabetes.⁹

This likely constant noise and light pollution flooding into the valley at all hours will cancel out the ability for Sierra Club member Ms. deLorimier to stargaze and enjoy the quiet beauty of a desert night, thereby irreparably harming her quality of life in Boulder City. *See deLorimier Decl.*, ¶ 19. There is also no analysis of how wastewater will affect the local groundwater, nor is there any information or analysis regarding the socioeconomic impacts that the data center will have to the region. While there have been no studies of the impacts of data centers on tourism, studies have

³ Abdul-Wahab, S., Fadlallah, S., & Alnaamani, A. 2019. Impact of NO_x Emissions Released from a Gas Turbine-Based Power Plant on the Ambient Air Quality. *Environmental Forensics*, 20(1), 50–65. <https://doi.org/10.1080/15275922.2019.1566293>.

⁴ Shaw, S.; Van Heyst, B. 2022. An Evaluation of Risk Ratios on Physical and Mental Health Correlations due to Increases in Ambient Nitrogen Oxide (NO_x) Concentrations. *Atmosphere* 13: 967. <https://doi.org/10.3390/atmos13060967>.

⁵ Kim, J., Yu, J., Song, J. *et al.* 2021. Emission Characteristics of PM (PM_{total}, PM₁₀, PM_{2.5}), NO_x, CO and VOCs Emitted from LNG-fired Gas Turbine and Small Domestic Boiler. *Asian J. Atmos. Environ* 15, 2021129 <https://doi.org/10.5572/ajae.2021.15.4.129>.

⁶ Rahman, M., Hasan, K., Siddique, A.B, Ambade, B., Hussain, A., Salam, M.A., Tariq, S., Ibrahim, M. 2024. Particulate matter concentrations around natural gas-fired power plants and their associated health impact assessment. *Journal of King Saud University – Science* 36 (2024) 130270. doi:10.1016/j.jksus.2024.103270

⁷ Gour N, Ortiz L and Maibach E. 2026. Health implications of the rapid rise of data centers in Virginia: an exploratory assessment. *Front. Clim.* 8:1648912. doi:10.3389/fclim.2026.1648912.

⁸ *Id.*

⁹ Hammer MS, Swinburn TK, Neitzel RL. 2014. Environmental noise pollution in the United States: developing an effective public health response. *Environ Health Perspect.* 122(2):115-9. doi: 10.1289/ehp.1307272.

shown that increased development and environmental degradation are negatively correlated with tourism.¹⁰ Perception of positive environmental attributes is a major factor in decision-making by prospective tourists, with large-scale utility or real estate developments likely to negatively affect tourism.¹¹ Tourists seek “high-quality destinations and are willing to pay a premium price to experience an attractive, pollution-free environment.”¹² This includes air quality, noise levels, and the aesthetics of the built environment.¹³

As Ms. Sorenson explains, she has already heard tell of tourists stating they will not return should the data center be built, as it will deplete the natural beauty and resources with its eyesore expanse prominently on display. Decl. of Sorenson, ¶ 14. In an ever-drying desert, the pollution impacts and strain on the resources in the area will only further accelerate climate change and a depletion of water resources.

Center member Ms. Laub cannot afford to take any risks with her health. The impacts of fugitive dust rolling into Boulder City, the impact on the electrical grid, and the potential for water pollution would all irreparably harm Ms. Laub, whose disabilities have traditionally been tended to well in Boulder City. *See generally* Decl. of Laub. Construction is a major source of fugitive dust, generated through the pulverization of the surface through grading and the entrainment of dust particles in turbulent air currents.¹⁴ Construction can result in a significant increase in

¹⁰ Alavalapati, JRR, Adamowicz, WL. 2000. Tourism impact modeling for resource extraction regions. *Annals of Tourism Research* 27(1): 188-202, ISSN 0160-7383, [https://doi.org/10.1016/S0160-7383\(99\)00064-X](https://doi.org/10.1016/S0160-7383(99)00064-X).

¹¹ Raitz, K., Dakhil, M. 1988. Recreational choices and environmental preference. *Annals of Tourism Research* 15(3):357-370. ISSN 0160-7383. [https://doi.org/10.1016/0160-7383\(88\)90027-8](https://doi.org/10.1016/0160-7383(88)90027-8).

¹² Inskeep, E. 1987. Environmental planning for tourism. *Annals of Tourism Research* 14(1): 118-135. ISSN 0160-7383, [https://doi.org/10.1016/0160-7383\(87\)90051-X](https://doi.org/10.1016/0160-7383(87)90051-X).

¹³ *Id.*

¹⁴ EPA. 1995. “Introduction to Fugitive Dust Sources.” Chap. 13.2 in AP-42, Compilation of Air Pollutant Emission Factors. Washington, DC: U.S. Environmental Protection Agency.

concentrations of total suspended particles, PM₁₀, and PM_{2.5}.¹⁵ Boulder City is located in a topographic bowl and several hundred feet upslope from the Project site. One study found that dust deposition increases in areas topographically upslope from dust sources.¹⁶ Dust has been found to cause significant effects on human health, increasing cardiopulmonary mortality,¹⁷ exacerbating asthma,¹⁸ and increased lung cancer risk.¹⁹ With these increased risks, Ms. Laub would be at risk of losing that safety and security.

Furthermore, BLM's blatant violations of NEPA, FLPMA, and the ESA, discussed below, are themselves the source of considerable irreparable harm. Ms. deLorimier stated that, because there was no public review process for the project, it is difficult to know what impacts to expect from the Project, including how wildlife will be impacted and how much water will be used, as competing information has been provided. Decl. of Brynn deLorimier, ¶15-16. Further, it has become apparent since publication of the DR and the DNA that several of the key issues raised by the Center, Sierra Club, 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, FLPMA, and the ESA in an untold number of substantive ways, including but not limited to failing to take a hard look at the project impacts, failing to adhere to public participation laws, and failing to consult on the five listed species within the area.

¹⁵ Yan, H.; Ding, G.; Li, H.; Wang, Y.; Zhang, L.; Shen, Q.; Feng, K. 2019. Field Evaluation of the Dust Impacts from Construction Sites on Surrounding Areas: A City Case Study in China. *Sustainability* 11:1906. <https://doi.org/10.3390/su11071906>.

¹⁶ Stovern, M., et al. 2014. Simulation of windblown dust transport from a mine tailings impoundment using a computational fluid dynamics model. *Aeolian Research* <http://dx.doi.org/10.1016/j.aeolia.2014.02.008>.

¹⁷ Giannadaki, D., Pozzer, A., and Lelieveld, J. 2014. Modeled global effects of airborne desert dust on air quality and premature mortality. *Atmos. Chem. Phys.*, 14:957–968. <https://doi.org/10.5194/acp-14-957-2014>.

¹⁸ Park, J.W., Lim, Y.H., Kyung, S.Y., An, C.H., Lee, S.P., Jeong, S.H. and Ju, Y.-S. 2005. Effects of ambient particulate matter on peak expiratory flow rates and respiratory symptoms of asthmatics during Asian dust periods in Korea. *Respirology* 10: 470-476. <https://doi.org/10.1111/j.1440-1843.2005.00728.x>

¹⁹ Gharibvand *et al.* 2017

This appeal represents Appellants’ final opportunity to challenge—and hopefully avert—a large, long-term data center, the environmental consequences of which will be severe and adverse. Should the Board deny a stay, the illegal plan will go forward as currently proposed, destroying at least 85 acres of land (and important sections of Priority 1 connectivity habitat for the Mojave Desert tortoise) directly through construction, as well as contributing substantially to the current water crisis and worsening drought conditions of the thirsty American southwest. The DNA and DR establishes that, if there is one thing BLM and Applicant know for certain, it is that they know nothing: there is no certainty regarding where the water needed will come from; there is no estimate on the safe level of commercial usage on the regional water supply; and there is no analysis for the impacts from increased noise, light, and dust pollution that the data center will have on local wildlife and plant community. 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 harm 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 and the developer face only a delay if a stay is granted, the harm to Appellants and their members would be severe and effectively permanent should the stay be denied. Appellants' interests in utilizing and enjoying federal public lands, as well as their quality of life, will be irreparably harmed, as described above. The real environmental harm caused by the proposed construction in a fragile desert environment, and the long-term load on the regional water supply and electrical grid, weighs heavily against the harm to BLM from a temporary 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 Appellants seek 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 habitat for the Mojave Desert tortoise, 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.

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

A. Statutory Background

i. The National Environmental Policy Act

NEPA declares a national policy “to promote efforts which will prevent or eliminate damage to the environment and biosphere.” 42 U.S.C. § 4321. NEPA’s “twin aims” are to ensure federal agencies “consider every significant aspect of the environmental impact of a proposed action” and to “inform the public that it has considered environmental concerns in its decision making process.” *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983). Accordingly, NEPA establishes “a set of ‘action-forcing’ procedures that require that agencies take a ‘hard look’ at environmental consequences” before committing to a proposed action. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)). “Simply by focusing the agency’s attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Id.* at 349.

One of the key action-forcing procedures when agencies propose to take “major Federal actions significantly affecting the quality of the human environment,” 42 U.S.C. § 4332(2)(C), NEPA requires them to prepare a “detailed” EIS that analyzes the “reasonably foreseeable

environmental effects of the proposed agency action,” including “adverse” effects that “cannot be avoided should the proposal be implemented”; “a reasonable range of alternatives to the proposed agency action”; and “any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented,” *id.* § 4332(2)(C)(i)-(iii), (v).

As an alternative to the more robust EIS process, agencies may prepare an environmental assessment (EA) and “finding of no significant impact” for proposed actions that do not have a reasonably foreseeable significant effect on the environment. *Id.* § 4336(b)(2). If the significance of the proposed action’s effects is “unknown,” agencies must also use the EA process to determine whether an EIS is required. *See id.* Like EISs, EAs must take a “hard look” at the reasonably foreseeable environmental effects of the proposed action and consider alternative courses of actions. *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1155 (9th Cir. 2008).

Where an existing EIS or EA adequately covers a proposed action, agencies need not prepare a new EIS or EA and instead may use a “Determination of NEPA Adequacy” or “DNA” to determine that the existing EIS or EA sufficiently takes a hard look at the proposed action. *Pennaco Energy, Inc. v. U.S. DOI*, 377 F.3d 1147, 1162 (10th Cir. 2004). DNAs are administrative “non-NEPA procedures” that may be used “to determine whether new NEPA documentation is required,” *id.*, so long as the DNA is not used to circumvent NEPA’s environmental analysis and disclosure requirements, *see id.* at 1157-59 (affirming IBLA’s invalidation of DNA, because existing EIS for oil and gas plan did not address the greater and qualitatively different impacts of unconventional gas extraction techniques); *Bd. of Cnty. Comm’rs of the Cnty. of San Miguel v. U.S.*

BLM, 584 F. Supp. 3d 949, 972-973 (D. Colo. 2022) (BLM unlawfully used DNA to avoid addressing site-specific effects of oil and gas leases).

ii. The Federal Land Policy and Management Act

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 addressing the full extent of a project’s harms and alternatives to avoid or reduce them, violates not only NEPA, but FLPMA’s mandate to prevent UUD. *Island Mountain Protectors*, 144 IBLA 168, 202, 1998 WL 344223, * 28 (“To the extent BLM failed to meet its obligations under NEPA, it also failed to protect public lands from unnecessary or undue degradation.”). On the other hand, compliance with NEPA’s procedural requirements does not necessarily mean BLM has complied with its substantive duty to prevent UUD. The two requirements are distinct. *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 623

F.3d 633, 645 (9th Cir. 2010). For instance, a “finding that there will not be significant impact [under NEPA] does not mean either that the project has been reviewed for unnecessary and undue degradation or that unnecessary or undue degradation will not occur.” *Id.* at 645 (quoting *Kendall's Concerned Area Residents*, 129 I.B.L.A. 130, 140 (1994)) (internal quotation marks omitted).

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).

Another critical feature of FLPMA's comprehensive scheme to ensure the protection of public lands is Section 309(e)'s requirement that the public be allowed meaningful opportunities for participation in public lands management decisions. 43 U.S.C. § 1739(e). Specifically, BLM “shall . . . 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). FLPMA’s use of “the terms ‘execution,’ ‘management,’ and ‘decision making’ indicate a Congressional requirement that the Bureau provide opportunities for public participation on the adoption of land use plans *and* for down-the-line decisions as to the implementation of such plans.” *Montana Wildlife Fedn. v. Haaland*, 127 F.4th 1, 40 (9th Cir. 2025) (emphasis added) (citing *Nat’l Wildlife Fed’n v. Burford*, 835 F.2d 305, 322 (D.C. Cir. 1987), *rev’d on other grounds*, 497 U.S. 871 (1990)). In addition, FLPMA requires that BLM “shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of . . . land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.” 43 C.F.R. § 1712(c)(9).

iii. The Endangered Species Act

The Endangered Species Act is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). In enacting the ESA, “Congress intended endangered species to be afforded the highest of priorities.” *Id.* at 174. 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). The ESA’s purposes include providing “a program for the conservation of...endangered species and threatened species” and “a means whereby the ecosystems upon which [such] species depend may be conserved.” 16 U.S.C. § 1531(b). Consistent with these purposes, the ESA proclaims that it is “the policy of Congress that all Federal departments and

agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines conservation as “the use of all methods and procedures, which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary.” 16 U.S.C. § 1532(3). To those ends, section 7 of the ESA requires all federal agencies to work to recover listed species and contains procedural and substantive requirements to do so.

B. The DNA and DR Violate NEPA

BLM’s reliance on the 2023 EA violates NEPA because the previous analysis evaluated a fundamentally different proposed action—a solar project—as opposed to the now proposed data center. By treating the two projects as though they are “substantially the same” through the issuance of a DNA, BLM failed to take the requisite hard look at the impacts and alternatives associated with the proposed data center.

i. BLM Failed to Take a Hard Look at the Data Center Project and Its Effects, and Arbitrarily Concluded that the 2023 EA for the Solar Project Adequately Analyzed the Data Center’s Effects

“The textual focus of NEPA is the ‘proposed action’—the project at hand—not other separate projects.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 169 (2025) (citing 42 U.S.C. § 4332(2)(C)). Accordingly, the 2023 EA, which only addressed the impacts of the solar project, could not have addressed the impacts of the proposed data center, much less take a “hard look” at its effects. BLM’s conclusion to the contrary is nonsense.

Data centers and solar farms are entirely different projects, with different purposes, infrastructure, operations, footprint, scale, and impacts. 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 titled 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.²⁰ 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.

Accordingly, the Townsite data center will host four, 300,000 square foot buildings totaling more than 27 acres, each rising several stories, (up to 25 feet tall), DNA at 1, where, previously, no such buildings were proposed. The construction will purportedly take 12 to 18 months—but could take much longer due to widespread shortages in specialized labor and the supply chain precipitated by the current AI boom²¹—compared to 12 months for the solar farm. The data center will require a “closed loop” cooling system, servers, and other electronic equipment running 24/7—none of which are features of the solar project. Altogether, the data center equipment will consume 167 megawatts of power to facilitate AI data processing, in stark contrast with the solar project’s purpose to generate power.

Because the 2023 EA only addressed the effects of a solar farm project and did not address the effects of the proposed data center, BLM failed to take a hard look at the “proposed action’s” reasonably foreseeable effects, unavoidable effects, alternatives, and “irreversible and irretrievable commitments of Federal resources.” 42 U.S.C. § 4332(C)(i)-(v); *see also Southern Utah*

²⁰ Siddik, M.A.B; Shehabi, Arman; Marston, Landon. The Environmental Footprint of Data Center in the United States. *Environmental Research Letters*. 16-6 (2021).

²¹ Blunt, Katherine, America’s Data-Center Build-Out Is Falling Way Behind Schedule, Wall Street Journal (June 3, 2026) <https://www.wsj.com/tech/ai/americas-data-center-build-out-is-falling-way-behind-schedule-e408a9a8>; Macchi, Rob, Solving Data Center Development Challenges, Wesco (April 14, 2026) <https://www.wesco.com/us/en/knowledge-hub/articles/solving-data-center-development-challenges.html>.

Wilderness Alliance, 166 IBLA 270, 3 (2005) (“DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.”)

Rather than recognizing these obvious, commonsense differences between solar farms and data centers, and preparing an EA or EIS for the proposed data center, BLM uses a DNA to find that the 2023 EA was adequate to address the data center’s environmental impacts. The DNA makes a strained attempt to draw similarities between the two projects and their impacts, essentially trying to drive a square peg through a round hole.

The DNA concludes that the data center is “a feature of, or substantially the same as an alternative analyzed in the existing environmental document(s),” because the proposed data center “is essentially like” the original solar farm project. *See* DNA at 5. BLM’s comparison includes similarities that have no bearing on whether the project is the “same” (e.g., “Both projects are from LLC applicants operated by the same parent entity”) and refers to broad-brushed physical similarities, which could apply to dozens of other projects (e.g., both projects have “industrial uses that will operationalize cutting-edge technologies that are predominantly electrical and solid-state in nature” and “involve improvements/facilities that are visually geometric and less than 30 feet in height”). *Id.* BLM also notes certain common features between the two projects, including a power line right-of-way, access road, perimeter fencing, and staging area sited in the same locations. *Id.* But focusing on project similarities while entirely ignoring their core, essential differences does not make them “substantially the same” proposed action. 42 U.S.C. § 4332(2)(C)(i).

The same error infects the DNA in its conclusion that the projects' impacts would be "similar, both quantitatively and qualitatively." *See* DNA at PDF 7. For example, with respect to impacts on "Soils and Surface Hydrologic Conditions," the DNA states that:

The 2023 EA demonstrates that potential impacts to these resources are mostly due to the original 2023 proposed action's location, construction duration and methods, and overall surface grading. Since these project characteristics remain very similar for the new proposed action, it is reasonable to conclude that the effects would remain similar as well, thereby resulting in analysis in the 2023 [EA] that is adequate to cover the new proposed action.

See DNA at 10. BLM uses the same flawed reasoning to conclude vegetation impacts would be the same: "Because the new proposed action's location, construction duration and methods, and intensity of development (including grading) remain the same or similar, it is reasonable to conclude that impacts and mitigation measures would remain the same as well. . . ." *Id.*

Again, just because the original project shares certain "project characteristics" with the new project does not mean that other project characteristics *unique to the data center* will not create additional impacts different in kind or degree. *See also id.* at 10. Shared project characteristics do not establish shared environmental consequences. *See Southern Utah Wilderness Alliance*, 166 IBLA 270, 3 (2005) (discussing that DNA cannot replace an EA when there are site-specific environmental effects not previously considered).

The DNA glosses over or ignores various unique energy consumption impacts of the proposed data center, including:

- the large impervious surfaces they will create, affecting hydrology, runoff, and vegetation in different ways than solar panels that largely leave the land exposed;
- the presence of bulkier structures that will more conspicuously disrupt the natural landscape than a low-rise solar field;

- the larger-scale construction activities, resulting in more dust and other air pollution and dust impacts on vegetation and wildlife, and the need for greater water volumes to suppress dust over a longer construction period;
-
- the project's 50-year life span, *see* DNA at 1.1.1, p. 9, compared to the solar project's 30-year life, EA, *et. seq.*;
- the project's highly complex decommissioning needs, including removal of several warehouse-like structures, which are likely to have far greater dust, vehicle traffic, hazardous waste, and soil and hydrology impacts than removal of solar panels—or alternatively, the potential for the data center's permanent presence on the landscape;

Thus, even if, hypothetically, an EA could be used to cover an entirely different project (it cannot), BLM did not consider whether the EA adequately addressed key elements of the data center project and its potential impacts.

In addition, the DNA concludes that the range of alternatives analyzed in the 2023 EA is appropriate with respect to the new proposed action. But the reasonableness of alternatives is judged with respect to the “purpose and need” of the proposed action, including the agency’s statutory mandate and applicant’s objectives. *See Westlands Water Dist. v. United States DOI*, 376 F.3d 853, 865-866 (9th Cir. 2004) (discussing that a project’s alternatives derive from the purpose and need of the project and the reasonableness thereof). Here, the 2023 EA only evaluated potential project alternatives in terms of whether they would meet the applicant’s objectives “to provide an efficient, economic, and reliable PV solar generating facility that would provide approximately 19 MW of solar-generated electricity and the State of Nevada’s renewable energy goals,” *see* 2023 EA at 2, and not the totally new purpose and need to build a “reliable data center” and “to support advancements in technologies like artificial intelligence (AI) and strengthen the U.S.’s resilient digital infrastructure.” *See* Data Center PoD at 9. Given the entirely different project needs and purpose of a data center versus a solar field, it is entirely unclear why the same alternatives

considered in the 2023 EA (or eliminated from detailed consideration) were sufficient to address the data center. For example, the 2023 EA does not consider a smaller data center, an alternative site for the data center, or an alternative configuration that could reduce impacts on desert tortoise.

In sum, BLM failed to take a hard look at the proposed data center, its reasonably foreseeable impacts, and reasonable range of alternatives, and BLM's determination that the 2023 EA adequately addressed these issues is arbitrary.

ii. DNA Procedures Cannot Replace the NEPA Process

To the extent that BLM recognizes key differences between the data center and solar project, BLM attempts to downplay those differences and improperly use the DNA process to explain how potential impacts of the data center would be non-existent, insignificant, or no worse than already analyzed in the 2023 EA. But the place to evaluate the degree and significance of those impacts was in an EA or EIS. A DNA is not a NEPA document, *see* 42 U.S.C. § 4336e(5)—it is the agency's documentation of whether the existing analysis adequately addressed the proposed project, or “whether new NEPA documentation is required.” *Pennaco*, 377 F.3d at 1161. A DNA, thus, cannot replace NEPA's “action-forcing” procedures.

In the DNA, BLM repeatedly attempts to circumvent the NEPA process using speculation and cursory analysis as to the potential degree and significance of impacts. These weak efforts to downplay noise, water, air, scenic, and fire risk impacts belie the plain fact that the 2023 EA did not address the data center's potential harms.

For example, data centers are notoriously known for increasing noise 24/7 in neighboring communities.²² With respect to the project's noise impacts on wildlife, BLM states that “these

²² Hassan, Adeel, The Cloud Has Sound: The Unrelenting and Unseen Cost of A.I. Data Centers, New York Times (June 17, 2026), available at <https://www.nytimes.com/2026/06/17/us/data-centers-noise-pollution.html> (“The humming of those [data center] cooling systems, the rumbling of the generators and the whirring of fans can be heard, and felt, for hundreds of feet and even up to a mile away.”); Kostick, Heather, No One Likes Data Center

differences in effects *could be minor* considering the surrounding lands and resources are already heavily disturbed with hundreds of acres of solar photovoltaic panels as well as noise-inducing mining quarry operations, high voltage powerline corridors, a highway corridor, and a firearms shooting range.” *See* DNA at 8 (emphasis added). BLM can only speculate here because no noise analysis, including an estimate of the data center’s projected impacts on noise levels from cooling systems, servers, backup generators, vehicle traffic, and other data-center-specific construction equipment exists to support BLM’s claim—neither within the 2023 EA or any other NEPA document.²³

With respect to water use, the DNA states that, between the two projects, water use for dust suppression water will increase from 8,000,000 gallons total to 500,000 gallons *per day*. *See* EA at 2.2.4, p. 9; *See* DNA at 1.2.7, p. 21. The DNA concludes “this consumptive use will not adversely affect regional water supply volume,” because “reclaimed effluent water discharged by the City of Boulder City Wastewater Treatment Plant,” from which the water will be sourced “is not recycled and returned to the Colorado River / Lake Mead system” but “is sent to local evaporation ponds where this water is ultimately lost to the atmosphere.” *See* DNA at 12. But the DNA ignores that this water source is not guaranteed. According to the Plan of Development, the applicant will have to resort to “commercial sources” if water from the treatment plant is not available, without any indication of how likely that could occur. *See* Data Center PoD at 15. The 2023 EA does not

Noise Pollution – The Zoo Animals Won’t Either, University of Pennsylvania, Center for Science, Susintability & the Media (June 22, 2026), available at <https://web.sas.upenn.edu/pccsm/commentary/no-one-likes-data-center-noise-pollution-the-zoo-animals-wont-either/>.

²³ The potential for noise from data centers to harm tortoises and other wildlife could be significant. *See* Harju, Seth, Indirect impacts of a highway on movement behavioral states of a threatened tortoise and implications for landscape connectivity, *Sci Rep.* 2024 Jan 6;14:716. doi: [10.1038/s41598-024-51378-z](https://doi.org/10.1038/s41598-024-51378-z) (noting potential for “noise or vibrations permeating from the highway outwards” to cause tortoises to avoid roads or alter movement near roads); Bowles, Ann et al., Effects of Flight Noise From Jet Aircraft and Sonic Booms On Hearing, Behavior, Heart Rate and Oxygen Consumption of Desert Tortoises (*Gopherus Agassizii*), US Airforce Research Laboratory (May 1999) (noting tortoise sensitivity to noise).

identify potential alternative sources, nor the potential depletion effects on the region's overstressed supplies

With respect to air pollution, the DNA calculates the data center's air-cooling system fugitive emissions to be "*de minimis* under the Clean Air Act standards" for hazardous air pollutants, *see* DNA at 7, but no data supports this analysis. The appropriate place for BLM to conduct that quantitative analysis and show BLM's work is in an EA or EIS.

As for visual resources, BLM vaguely recognizes that "certain structures in the new proposed action would be different from the original 2023 proposed action," but rationalizes that any visual impacts "would remain weak" given the same surrounding visual resources at issue and the "similar" "size, location, and technologically advanced industrial use" of the project area. Again, BLM's attempt to downplay visual resource impacts belies the absence of any analysis in the 2023 EA or any other NEPA document addressing the specific impacts of bulkier warehouse-like buildings disrupting the visual landscape.

And although the DNA acknowledges that the data center "poses a larger fire risk than solar panel arrays," the DNA claims without any evidentiary support that the EA's analysis of a 35 MW battery system is sufficient to address the fire risks of the data center's 70 MW battery system. *See* DNA at 1, 8; *see* EA at 3.6.1.2, p. 29.

In each of these instances, the DNA's perfunctory attempts to minimize the potential environmental damage is not an appropriate substitute for detailed, science-based analysis required in an EA or EIS. *See* 42 U.S.C. § 4332(2)(D), (E) (agencies must "ensure the professional integrity, including scientific integrity of the discussion and analysis in an environmental document" and "make use of reliable data and resources"). And unlike the DNA, an EIS or EA process would have allowed opportunities for sister agencies with special expertise and other state and local

agencies with environmental enforcement authority to weigh in, *id.* § 4332(2)(C); consideration of public input; evaluation of “appropriate alternatives” where “unresolved conflicts” as to “alternative uses of available resources” exist, *id.* § 4332(2)(H); and “detailed discussion of possible mitigation measures” to minimize impacts, *Robertson*, 490 U.S. at 351.

Accordingly, the proper forum for BLM to analyze the project’s noise, water, air pollution, and scenic resource impacts is a new EA or EIS, not a DNA. BLM’s cursory analyses in the DNA cannot replace NEPA’s action-forcing procedures, informed by agency expertise, public participation, reliable data and scientific analysis, and thorough consideration of alternatives and mitigation.

C. BLM Violated FLPMA

i. BLM Violated FLPMA’s Public Involvement Mandate.

BLM did not provide any opportunity for the public to participate in “management” or “decision making” with respect to the data center project, or for state and local officials to meaningfully participate, in violation of FLPMA’s public participation mandates. 43 U.S.C. §§ 1702(d), 1739(e), 1712(c)(9). As discussed above, FLPMA is a principal federal land law governing 250 million acres of U.S. Bureau of Land Management 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,” and/or such other procedures as may be necessary to provide “public comment.” *Id.* § 1702(d).

At a minimum, the public was entitled to least one or more of those public involvement opportunities in BLM’s decision making concerning the data center. The chance for communities to weigh in was especially important in these circumstances, where the applicant’s proposal was the first data center to be sited on federal public lands, in the backyard of Boulder City, and against the backdrop of growing nationwide controversy over data centers sited near small rural communities like Boulder City. Indeed, the applicant’s proposal for a similar project sited on private lands within Boulder City had already provoked public outcry and controversy.²⁴ Nevada and Boulder City officials were also entitled to “meaningful public involvement” in BLM’s “land use decisions” for the project site, including “early public notice,” due to the project’s potential for “a significant impact on non-Federal lands.” BLM, however, failed to provide any such public involvement opportunities to the local community or state and local officials concerning the data center project and its environmental impacts.

The public meeting in 2023 for the original solar project and 15-day “public comment period on the 2023 Environmental Assessment,” *see* DNA at p. 13, do not constitute “adequate notice and an opportunity . . . to participate in” public lands management and decision making concerning the data center proposal that arose several years after the solar project’s approval. 43 U.S.C. § 1739(e),” as is required under FLPMA. Asserting that a one-time public comment period open for less than three weeks, three years ago, is adequately involving the public in the present Project is patently untrue. As noted above, the data center at hand is entirely different in numerous substantive ways from the solar project on which scant public involvement was had to begin with. While BLM believes that the DNA was sufficient to account for adequate public participation as

²⁴ Boulder City commission vote denies AI data center application after public pushback, Fox5, KVVU-TV, <https://www.fox5vegas.com/2026/05/21/boulder-city-commission-vote-denies-data-center-application-after-public-pushback/>.

well as analysis, the DNA's sufficiency is dependent on whether the previous EA comprised "adequate environmental analysis and documentation supporting the action" "within the scope of...an existing...[EA]." 516 DM 1, 1.3(b)(1)(ii). And because the existing EA is insufficient to analyze the data center Project, the previous public involvement on the 2023 EA, then, could not possibly have constituted an adequate opportunity to comment on the data center and its environmental impacts. 43 U.S.C. §1712(c)(9). Further, because several years have passed since the solar project's environmental review, it was important for the public to have the opportunity to raise new information or changed circumstances concerning resources to be affected by the project.

In sum, BLM's approval of this project violates FLPMA's requirement to involve the public in the management and decision making concerning the data center.

ii. BLM Failed to Prevent Unnecessary and Undue Degradation.

FLPMA requires that BLM "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C.s. 1732(b). The requirement to prevent unnecessary or undue degradation of public lands under FLPMA is distinct from the requirement to comply with NEPA. *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 645 (9th Cir. 2010). For instance, a "finding that there will not be significant impact [under NEPA] does not mean either that the project has been reviewed for unnecessary and undue degradation or that unnecessary or undue degradation will not occur." *Id.* at 645 (quoting *Kendall's Concerned Area Residents*, 129 I.B.L.A. 130, 140 (1994)) (internal quotation marks omitted). BLM's duty to prevent UUD is "the heart of FLPMA" and BLM cannot under any circumstances approve a project that would cause UUD. 43 C.F.R. §2801.2(b). BLM's failure to engage in any detailed analysis of options that would avoid impact to the desert tortoise and other listed species and sensitive wildlife violates BLM's obligation to protect the public lands against UUD.

Written in the disjunctive, BLM must prevent degradation that is “unnecessary” and degradation that is “undue.” *Mineral Policy Ctr. v. Norton*, 292 F.Supp.2d 30, 41-43 (D.D.C. 2003).

As explained in the Department of the Interior’s final rule:

“Unnecessary degradation” means harm to land resources or values that is not needed to accomplish a use's stated goals. For example, approving a proposed access road causing damage to critical habitat for a plant listed as endangered under the Endangered Species Act that could be located without any such impacts and still provide the needed access may result in unnecessary degradation. “Undue degradation” means harm to land resources or values that is excessive or disproportionate to the proposed action or an existing disturbance. For example, approving a proposed access road causing damage to the only remaining critical habitat for a plant listed as endangered under the Endangered Species Act, even if there is not another location for the road, may result in undue degradation. The statutory obligation to prevent “unnecessary or undue degradation” applies when either unnecessary degradation or undue degradation, and not necessarily both, is implicated.

43 C.F.R. § 6100.6101.4(aa)

The DNA fails to acknowledge either of these distinct obligations or explain how BLM intends to prevent UUD associated with the Project by incorrectly relying on the preexisting EA for an entirely dissimilar solar project. BLM’s failure to conduct and refusal to adhere to federal regulations requiring environmental analysis under NEPA before the Project’s approval results in impacts that are both unnecessary and undue. *Island Mountain Protectors*, 144 IBLA at 202, 1998 WL 344223, * 28. For example, because the EA did not consider the data center at issue, the EA failed to consider alternatives to reconfigure the Project or relocate it outside Priority 1 desert tortoise connectivity habitat, to avoid permanent habitat loss, burrow destruction, and other barrier effects that impede tortoise movement, such as concrete, foundations, and other structures. Such an alternative would be consistent with BLM’s obligation to “provide the desert tortoise with the highest possible quality of habitat with limitation on the interference by man” under the applicable resource management plan (RMP). *See* Record of Decision for the Approved Las Vegas Resource Management Plan and Final Environmental Impact Statement (1998) at p. 7. However, BLM failed

to examine in any detail any alternative that would meaningfully avoid or reduce impacts to the desert tortoise and other listed wildlife and thus failed to even consider whether the Project's impacts to this vulnerable species are "unnecessary" (i.e., avoidable).

The Project's impacts would also be "undue"—that is, "excessive or disproportionate." 43 C.F.R. § 6100.6101.4(aa). Because there were no alternatives explored in this scenario, the project would require violating the Desert Tortoise Recovery Plan's objective to "protect existing populations and habitat," and the Las Vegas RMP's prohibition on commercial activities that are in conflict with recovery of the desert tortoise, as determined on a case-by-case basis.²⁵ *See* Revised Recovery Plan for the Mojave Population of the Desert Tortoise, Region 8, Pacific Southwest Region, U.S. Fish and Wildlife Service (2011) at p. 33; *see* Las Vegas RMP at p. 12, (j). BLM seemingly made its own expert determination that a case-by-case analysis of commercial use was best to ensure recovery of desert tortoise. Allowing this large-scale commercial development within Priority 1 connectivity habitat without the critical protection of case-by-case analysis specific to the data center fails to ensure against "undue" genetic isolation and extirpation of local and regional tortoise populations and fails to ensure desert tortoise recovery.

Unlike contexts such as hard-rock mining or development on already-issued leases where BLM may have more limited discretion remaining at the development/permitting stage to completely prohibit the activity causing degradation, in the present context, BLM had complete discretion to reject the Project. Consequently, whether the degradation resulting from the project would be unnecessary or undue must be evaluated with regard to that broad discretion. To approve of this data center without any evaluation of whether the project's impacts could be reduced, or

²⁵ The failure to analyze the project on a case-by-case basis, as required in the RMP, also constitutes a violation of FLPMA. "The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available." 43 U.S.C. § 1732(a).

whether the project could be relocated out of tortoise habitat, and without any case-by-case consideration of the project's potential to conflict with recovery objectives, BLM failed to uphold its duty to protect the public lands from unnecessary or undue degradation.

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

i. BLM Failed to Initiate a Section 7 Consultation

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. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.10-402.16. The ESA's implementing regulations require the BLM to initiate consultation whenever a proposed action "may affect" a listed species or its critical habitat. 50 C.F.R. § 402.14(a). Effects of the action are defined as "the project's immediate impacts on the species...and those impacts that are reasonably certain to occur in the future." *Sierra Club v. Marsh*, 816 F.2d 1376, 1387 (9th Cir. 1987) (referencing 50 C.F.R. § 402.02). "Any possible effect, whether beneficial, benign, adverse or of an undetermined character, triggers the formal consultation requirement". See 51 Fed. Reg. 19926, 19949 (June 3, 1986). Where this low threshold is met, the U.S. Fish and Wildlife Service must issue a Biological Opinion that, among other things, "detail[s] how the agency action affects the species or its critical habitat," 16 U.S.C. §1536(a)(2), "conservation recommendations" to reduce or eliminate the proposed action's on listed species or critical habitat, and "reasonable and prudent measures" to "minimize" harms to the species, 40 C.F.R. §§ 402.02, 402.14(g)(6), (8).

BLM violated its obligations under Section 7 by failing to perform the requisite Section 7 consultation for the four listed species within the Project area identified in the DNA: the southwestern willow flycatcher (*Empidonax traillii extimus*), Ridgeway's rail (*Rallus obsoletus*

yumanensis), the yellow-billed cuckoo (*Coccyzus americanus*), and the Mojave desert tortoise. *See* DNA at 3.12.1, p 47. The DNA and DR assume that all previous analyses performed—including Section 7 consultation—are “appropriate with regard to the new proposed action.” *See* DNA at PDF 10; *see* DR at p. 19. This Project, however, is an entirely new project and therefore requires initial consultation under Section 7, because the data center “may affect” a listed species. 50 C.F.R. § 402.14(a).

The proposed data center is located in the same southwestern willow flycatcher, yellow-billed cuckoo, Ridgway’s rail, and desert tortoise habitat that the solar project would have occupied, including Priority 1 desert tortoise connectivity habitat, and therefore “may affect” those species. BLM effectively admits as much, asserting that the same BiOp prepared for the solar project applies to the data center. *Compare* DR at 19 *with* Solar Townsite Solar 2 Project DR at 3, 5. In addition, The Data Center PoD states that the applicant will “pay the currently applicable desert tortoise remuneration fee to BLM” in order to “offset the adverse effects from the Project,” admitting that adverse effects will occur to the tortoise and its environment. *See* Data Center PoD at 6.5.1, p. 43. But, contrary to BLM’s and the applicant’s assertion, just because the BiOp addressed the solar project’s effects on the same species, in the same project area, does not mean that BLM consulted over the data center, or that the projects impacts are the same, or the same remuneration fee required by the BiOp is required to offset the Project’s effects.²⁶ The data center is altogether a different endeavor than that of a solar project involving previously unaddressed features, including permanent concrete structures, a larger-capacity battery system, various electronic equipment, cooling systems, emergency generators, and continuous 24-hour operations. The prior consultation could not have possibly analyzed these project features and their potential

²⁶ The remuneration fee is based on the permanent habitat loss effects.

for greater noise, dust, heat waste, air pollution, traffic volumes, and fire hazards. BLM was required to initiate consultation over this entirely new “action.” 50 C.F.R. § 402.14(a).

Because it is known that several listed species are in the area, it is reasonable to assume that any alteration of the environment “may affect” any one of the listed species. In fact, all documents pertaining to the Project explicitly state that the Project will, in fact, have affects on the listed species, most specifically the Mojave desert tortoise. The DNA asserts that “the outcome of interagency consultation would remain the same...thereby resulting in analysis in the 2023 EA that is adequate to cover the new proposed action.” *See* DNA at Section D, sub header 5, Fish and Wildlife (excluding T&E species). Elsewhere, however, the DNA states that the Project could result in “new noise impacts” and other adverse effects on fish and wildlife generally. *See* DNA at PDF 8. The BLM does not explain why there may be differing impacts for some species in the area but allegedly not for listed species.

For example, the solar BiOp notes that dust from construction could result in “the loss of foraging plants and cover for desert tortoises, while increased construction noise levels “may affect desert tortoise foraging and sheltering behavior, potentially resulting in injury or mortality.” *See* Solar BiOp at 31. Although the BiOp concludes these construction effects would be “minimal and short-term” based on the 9-12-month construction schedule, *id.*, the BiOp does not consider continuous 24-hour noise effects from data center operations, *see above et. seq.*, nor the potential for longer-term construction noise impacts due to the longer 18-month construction schedule, DNA at PDF 4, or potential construction delays given existing labor shortages and data-center supply chain disruptions.²⁷

²⁷ Ghosh, Soham; Damodara, Jaya. Scalable Data Centers—Power Generation and Delivery Challenges and Solutions. *Energy Reports* 15 (2026) 109178. <https://doi.org/10.1016/j.egyr.2026.109178>.

The solar BiOp also notes the potential for solar facilities to generate “extra heat” that would stress and shift surrounding vegetation communities, and “ultimately reduce habitat suitability for desert tortoises.” *See* Solar BiOp at 35-36. However, the BiOp did not consider the effects of heat waste produced by data center cooling systems, which have been shown to raise land surface temperatures by as much as 16 degrees Fahrenheit and air temperatures by up to 4 degrees Fahrenheit.²⁸ These increased heat waste, noise, and dust effects meet the “may affect” threshold and therefore trigger consultation under section 7.

ii. BLM Failed to Reinitiate Consultation Under Section 7

In the alternative, and at a bare minimum, BLM was required to reinitiate consultation over the original project. “If new information reveals effects of the action that may affect listed species...in a manner or to an extent not previously considered...” or, “if the identified action is subsequently modified in a manner that causes an effect to the listed species...that was not considered in the biological opinion...” then “reinitiation of consultation is required.” 50 C.F.R. § 402.16(a)(2-3). As explained above, the increased heat waste, construction noise, operations noise, and construction dust effects may affect the desert tortoise “in a manner or to an extent not previously considered,” and the transformation of the solar field project into a data center will cause effects on the desert tortoise “that [were] not considered in the [prior BiOp],” triggering reinitiation of consultation.

In sum, BLM’s failure to either initiate consultation on the data center or reinitiate consultation on the original project violates the ESA. These procedural violations also result in the

²⁸ Data Centers, Urban Heat, and AI Growth, Yale School of the Environment, available at <https://environment.yale.edu/news/article/data-centers-urban-heat-and-ai-growth>; *see also* Zafra, Mariano, The floor is lava (July 1, 2025), <https://www.reuters.com/graphics/CLIMATE-CHANGE/URBAN-HEAT/byvrejywdpe/> (noting compounding effects of climate change and heat waves on heat island effects).

violation of BLM's substantive duty to "insure" that BLM's actions do not jeopardize the continued existence of any threatened or endangered species.

CONCLUSION

In light of the foregoing, Appellants respectfully requests that the IBLA grant a stay of the BLM's June 26, 2026 Decision Record and DNA for the Townsite 2 Data Center Project.

Respectfully submitted this 27th day of July, 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 July 27, 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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