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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

WESTERN ENERGY ALLIANCE and the
STATE OF WYOMING,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR *et al.*,

Defendants,

Case No. 1:25-cv-00299-KHR

**[PROPOSED] BRIEF IN SUPPORT OF
THE CENTER FOR BIOLOGICAL
DIVERSITY AND WESTERN
WATERSHEDS PROJECT'S MOTION
TO STOP HOLDING THIS CASE IN
ABEYANCE AND DISMISS UNDER
RULE 12(b)(1) AND RULE 12(b)(6)**

INTRODUCTION

To be a justiciable “case or controversy” under Article III, a case must “embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions.” *Carney v. Adams*, 592 U.S. 53, 58 (2020). This case does not “embody a genuine, live dispute between adverse parties.” There is *no* dispute between the parties as to Plaintiffs’ first claim, which seeks a declaratory judgment that Defendants acted *lawfully* in adopting the 2025 Wyoming Resource Management Plan Amendments (“2025 Wyoming RMPA”) governing management of sage-grouse habitat in Wyoming. The lack of any dispute means that there is no adversity between the parties and that Plaintiffs lack Article III standing to bring this claim. As for Plaintiffs’ second claim, it presents a hypothetical dispute, not a “live” one, so the claim is not ripe and Plaintiffs lack standing to bring it.

On top of these jurisdictional issues, Plaintiffs do not state a claim for relief for either of their claims. The Declaratory Judgment Act, one of the two statutes invoked by Plaintiffs, does not provide a cause of action, while the Administrative Procedure Act (“APA”) provides a cause of action to challenge allegedly *unlawful* agency decisions. Because Plaintiffs do not allege that Defendants acted unlawfully in any way in adopting the 2025 Wyoming RMPA, they fail to state a viable claim for relief under the APA.

For these reasons, Intervenor Center for Biological Diversity (“Center”) and Western Watersheds Project (“WWP”) ask this Court to dismiss this case for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) or for failure to state a claim under Rule 12(b)(6).

BACKGROUND

The greater sage-grouse is a ground-dwelling bird dependent on the sagebrush steppe ecosystem. Once abundant across the American West, the species is declining toward extinction

due to habitat loss and fragmentation. Most of the sage-grouse's habitat is located on federal land managed by the Bureau of Land Management ("BLM"), an agency within the U.S. Department of the Interior ("Interior").

In 2010, the U.S. Fish and Wildlife Service found that the greater sage-grouse was in sufficient danger of extinction to warrant listing under the Endangered Species Act ("ESA"). To avoid ESA listing, BLM and the U.S. Forest Service made amendments to 98 resource management plans ("RMPs") across the sage-grouse's range in 2015 to better protect the bird's habitat from threats like oil and gas drilling, mining, and grazing.

In 2019, BLM amended most of its RMPs to weaken protections for the sage-grouse. Those 2019 amendments were challenged by the Center and WWP and quickly enjoined, so the 2015 Plans have been in effect for almost all of the last 10 years. *See W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019) (preliminarily enjoining 2019 amendments). Unfortunately, the 2015 Plans have not reversed the downward trend of the sage-grouse. A 2025 study from the U.S. Geological Survey in partnership with BLM found that sage-grouse populations are still declining at an average rate of 3 percent annually.¹

In late 2021, BLM announced that it intended to again amend its RMPs for sage-grouse habitat across the West. 86 Fed. Reg. 66,331 (Nov. 22, 2021). BLM released a set of proposed RMPAs in November 2024. On January 15, 2025, BLM released final RMPAs for Colorado and Oregon. Then, in September 2025, BLM announced that it intended to make "significant changes" to the proposed RMPAs covering the remaining states, including Wyoming. 90 Fed. Reg. 42,607, 42,607 (Sept. 3, 2025).

¹ <https://pubs.usgs.gov/dr/1217/dr1217.pdf>

In December 2025, BLM issued five records of decision adopting final RMPAs for the remaining states, including Wyoming. The 2025 Wyoming RMPA, which is the subject of this case, was approved on December 22, 2025. Complaint (Dkt. 1) ¶ 3.

The next day, Plaintiff Western Energy Alliance (“Alliance”) filed this suit, naming Interior and BLM as defendants alongside two agency officials in their official capacities. In the Complaint, the Alliance sought “a declaratory judgment ... holding that BLM complied with its statutory and regulatory obligations under the Federal Land Policy and Management Act (FLPMA) to ensure that the [2025 Wyoming RMPA] was ‘consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of [FLPMA].’ 43 U.S.C. § 1712(c)(9).” Complaint ¶ 2. The Alliance expressly disclaimed any desire “to invalidate or enjoin” the 2025 Wyoming RMPA; rather, it sought only “a judicial declaration confirming that, in adopting and maintaining the [2025 Wyoming RMPA], BLM complied with its statutory obligation under FLPMA.” *Id.* ¶ 15.

In its Complaint, the Alliance was candid about its motivation for bringing this suit. According to the Alliance, litigation over BLM’s past land-use plans governing sage-grouse habitat has “result[ed] in persistent uncertainty regarding the legality and durability of those plans.” *Id.* ¶ 13. That uncertainty, in turn, “directly affects the real property interests of Alliance members that hold federal oil and gas leases whose leasehold rights, investment-backed expectations, and development planning depend on stable, lawful, and predictable land use plans.” *Id.* ¶ 14; *see also id.* ¶¶ 17–21 (further describing the alleged effects of uncertainty on Alliance members). The purpose of this suit is to “promote regulatory certainty” and “reduce duplicative and piecemeal litigation.” *Id.* ¶ 67; *see also id.* ¶ 77 (similar). In other words, the

Alliance predicted that the 2025 Wyoming RMPA would be challenged in court and sought to preempt those challenges by bringing a case to affirm the legality of the RMPA.

The Alliance’s prediction was correct: in March 2026, the Center, WWP, and five other organizations brought suit in the District of Montana challenging the 2025 Wyoming RMPA and RMPAs covering several other states. *See Ctr. for Biological Diversity v. Davis*, No. 4:26-cv-00021, Dkt. 1 (Mar. 2, 2026). A few weeks later, a different set of groups also sued in the District of Montana, challenging both the 2025 Wyoming RMPA and the RMPA covering Montana and the Dakotas. *See Mont. Wildlife Fed’n v. Burgum*, No. 4:26-cv-00133, Dkt. 1 (Mar. 26, 2026). The State of Wyoming has intervened in both of those cases.²

On March 10, 2026, a First Amended Complaint was filed in this case. *See* First Amended Complaint (“FAC”), Dkt. 6 (Mar. 10, 2026). The First Amended Complaint added Wyoming as a plaintiff and also added a second claim. *See* FAC ¶¶ 82–88. In the second claim, Wyoming “seeks a declaratory judgment to clarify its rights and obligations concerning two provisions [in the 2025 Wyoming RMPA] that may conflict with the State’s sage-grouse executive order, depending on how they are interpreted.” FAC ¶ 3.³ Nowhere in the First Amended Complaint do Plaintiffs allege that Defendants acted unlawfully in adopting the 2025 Wyoming RMPA or that the RMPA is procedurally or substantively unlawful.

On September 22, 2026, counsel for the Center and WWP reached out to counsel for the parties to see if they would consent to the filing an *amicus curiae* brief addressing the Court’s

² Both Wyoming and the federal government tried to transfer the District of Montana cases to this district, in part based on the existence of this case. *Ctr. for Biological Diversity v. Davis*, No. 4:26-cv-00021, 2026 WL 2192256, at *2–3 (D. Mont. July 29, 2026). Their motions to transfer were denied. *Id.* at *3, 15. In denying the motions, the court noted that *this* case was seemingly “anticipatorily filed” in an attempt at forum shopping. *Id.* at *13–15.

³ It is not clear whether the Alliance joins in the second claim for relief.

jurisdiction. The next day, the parties moved to hold this case in abeyance so that they can pursue settlement discussions. Dkt. 29. The Court then granted that motion. Dkt. 30. The Center and WWP then quickly filed a motion for leave to file their *amicus* brief, noting in their motion that they would likely seek intervention in the near future. Dkt. 33 at 5 n.1.

LEGAL STANDARDS FOR MOTIONS TO DISMISS

When adjudicating a “facial” attack on jurisdiction under Rule 12(b)(1), a court “assumes the allegations in the complaint are true” and determines whether those allegations “establish jurisdiction.” *Baker v. USD 229 Blue Valley*, 979 F.3d 866, 872 (10th Cir. 2020). This assessment is done on a claim-by-claim basis. *U.S. ex rel. Boothe v. Sun Healthcare Grp., Inc.*, 496 F.3d 1169, 1176 (10th Cir. 2007).

Similarly, when adjudicating a motion to dismiss for failure to state a claim under Rule 12(b)(6), a “court must accept the truth of all properly alleged facts and draw all reasonable inferences in the plaintiff’s favor,” then determine whether those facts state a claim for relief. *Brown v. City of Tulsa*, 124 F.4th 1251, 1263 (10th Cir. 2025). Under this standard, “[m]ere ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action’ will not suffice.” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Dismissal at the pleading stage is appropriate in this circuit even in cases governed by the framework set forth in *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560 (10th Cir. 1994). *See Kane Cnty. v. Salazar*, 562 F.3d 1077, 1086 (10th Cir. 2009) (“[N]othing in *Olenhouse* (or, for that matter, other controlling case law or the APA itself) precludes an APA-based complaint from being summarily dismissed pursuant to Federal Rule of Civil Procedure 12(b).”).

ARGUMENT

This case must be dismissed for lack of jurisdiction because it does not “embody a genuine, live dispute between adverse parties.” *Carney*, 592 U.S. at 58. Plaintiffs’ first claim presents no dispute whatsoever, whereas their second claim presents a hypothetical dispute, not a “live” one.

These defects in Plaintiffs’ claims can be placed in several related and overlapping doctrinal boxes, all of which stem from Article III’s “case or controversy” requirement. As to the first claim, Plaintiffs and Defendants do not satisfy Article III’s adversity requirement, because they desire the same result. Plaintiffs also lack Article III standing to bring their first claim, both because their injuries are not traceable to any allegedly unlawful actions of Defendants and because the relief sought would not redress the alleged injuries. For these reasons, the declaratory judgment sought by Plaintiffs in their first claim would be nothing more than an impermissible advisory opinion.

Plaintiffs’ second claim suffers from a slightly different set of problems. As with their first claim, Plaintiffs have failed to allege any unlawful actions by Defendants that have caused or will cause their alleged injuries, so they lack standing. Plaintiffs lack standing for their second claim for the additional reason that their alleged injuries are too speculative and hypothetical. For similar reasons, Plaintiffs’ second claim is not ripe. Thus, the declaratory judgment sought by Plaintiffs in their second claim, like the one sought in their first claim, would be an advisory opinion.

On top of all this, Plaintiffs fail to state a claim for relief for either of their claims. The APA, which is the only statute that could conceivably provide Plaintiffs with a cause of action for their claims, requires some allegation of *unlawful* agency action or action agency *unlawfully*

withheld or delayed. Plaintiffs do not allege that Defendants acted unlawfully or failed to perform any mandatory duty, and thus do not state a claim under the APA. Thus, even if the Court finds that Plaintiffs' claims are justiciable, the operative complaint should be dismissed under Rule 12(b)(6).

I. Plaintiffs' First Claim Does Not Present a Justiciable Case or Controversy.

In their first claim, Plaintiffs seek a declaratory judgment to the effect that BLM complied with its obligations under FLPMA when preparing and adopting the 2025 Wyoming RMPA. FAC ¶¶ 79–81, 89–90. Plaintiffs “do[] not seek to invalidate or enjoin” the 2025 Wyoming RMPA. *Id.* ¶ 19. This claim does not present a case or controversy within this Court's jurisdiction, because the parties are not adverse to one another and Plaintiffs lack Article III standing.

A. There Is a Lack of Adversity as to Plaintiffs' First Claim.

The most obvious jurisdictional problem with Plaintiffs' first claim is that Plaintiffs and Defendants are not adverse to one another. For a claim to present a justiciable “case or controversy,” it must reflect an “actual controvers[y] arising between adverse litigants.” *Muskrat v. United States*, 219 U.S. 346, 361 (1911). “[T]here is no Art. III case or controversy when the parties desire ‘precisely the same result.’” *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 383 (1980) (quoting *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47, 48 (1971) (per curiam)). For a declaratory judgment claim, “an actual controversy exists only when the parties ‘ha[ve] taken adverse positions with respect to their existing obligations.’” *Columbian Fin. Corp. v. BancInsure, Inc.*, 650 F.3d 1372, 1385 (10th Cir. 2011) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242 (1937)).

Plaintiffs’ first claim does not present an “actual controversy” between “adverse litigants.” In fact, there is no controversy whatsoever: Plaintiffs believe that BLM complied with the law, and Defendants—among them BLM—also obviously believe that BLM complied with the law. The Court is “thus confronted with the anomaly that both litigants desire precisely the same result, namely a holding that the” 2025 Wyoming RMPA is lawful. *Moore*, 402 U.S. at 47–48. “There is, therefore, no case or controversy within the meaning of Art. III of the Constitution.” *Id.* at 48.

The situation might be different if there were some indication that BLM did not intend to implement the 2025 Wyoming RMPA. *Cf. United States v. Windsor*, 570 U.S. 744, 756 (2013) (“The Government’s position—agreeing with Windsor’s legal contention but refusing to give it effect—meant that there was a justiciable controversy between the parties, despite what the claimant would find to be an inconsistency in that stance.”). But there is no such allegation in the First Amended Complaint, nor can a reasonable inference to that effect be drawn. On the contrary, the Court must presume that BLM will implement the 2025 Wyoming RMPA unless and until it is adjudged to be unlawful by a court, repealed by the agency, replaced by some new agency decision, or overridden by statute. *See Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004) (discussing the “general working principle” that government actors are presumed to carry out their duties properly).

The lack of adversity between the parties as to Plaintiffs’ first claim appears to be unprecedented: the Center and WWP were unable to find *any* federal court case in which a plaintiff sued a federal agency seeking a declaration that the agency had acted lawfully.⁴ The

⁴ The closest case is *Shell Gulf of Mexico Inc. v. Center for Biological Diversity*, 771 F.3d 632 (9th Cir. 2014). In that case, oil companies sued several environmental organizations seeking a declaration that a federal agency’s approval of the companies’ oil-spill response plans was

likely reason there are no such cases is that the lack of adversity is so obvious as to make such a claim potentially frivolous. A declaratory-judgment claim must present “a specific dispute having real-world consequences” in order to be justiciable, *BancInsure*, 650 F.3d at 1379, and Plaintiffs’ first claim presents no dispute at all.

B. Plaintiffs Lack Standing to Bring Their First Claim.

Plaintiffs’ first claim is not justiciable for the additional reason that Plaintiffs lack Article III standing to bring it. “Under Article III, a case or controversy can exist only if a plaintiff has standing to sue.” *United States v. Texas*, 599 U.S. 670, 675 (2023). “To establish standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a court order.” *Id.* at 676. Standing is assessed “on a claim-by-claim basis; a plaintiff may have standing to bring some, but not all, claims raised in a complaint.” *Santa Fe All. for Pub. Health & Safety v. City of Santa Fe*, 993 F.3d 802, 813 (10th Cir. 2021).

Plaintiffs’ theory of standing for their first claim appears to go as follows: litigation over BLM’s sage-grouse plans has resulted in “persistent uncertainty regarding the legality and durability of those plans,” FAC ¶ 17, which in turn has caused “business uncertainty” for the Alliance’s members, *id.* ¶ 23. A declaratory judgment to the effect that BLM complied with the law in adopting the 2025 Wyoming RMPA “will clarify legal obligations for federal oil and gas

lawful. *Id.* at 634. As the Ninth Circuit put it, this represented “a novel litigation strategy, whereby the beneficiary of agency action seeks to confirm its lawfulness by suing those who it believes are likely to challenge it.” *Id.* The Ninth Circuit found that the case was not justiciable because the parties did not have “adverse legal interests.” *Id.* at 636–38. The first claim in this case, like *Shell Gulf of Mexico*, represents a “novel litigation strategy.” But whereas the justiciability problem in that case was the lack of adverse legal interests, the basic problem with Plaintiffs’ first claim is the lack of any “controversy” whatsoever. *See id.* at 636 (declining to decide whether the case presented a “substantial controversy”).

lessees and other stakeholders, reduce litigation, and alleviate ongoing business hardship caused by unresolved legal and regulatory uncertainty.” *Id.* ¶ 81; *see also id.* ¶ 71 (similar).

For purposes of this brief, the Center and WWP will assume that uncertainty over the legality of the 2025 Wyoming RMPA may adversely affect Plaintiffs, such that Plaintiffs have alleged an “injury-in-fact” for their first claim. *See* FAC ¶¶ 16–25, 70–71. Even with that assumption, Plaintiffs lack standing for their first claim, because their alleged injuries are not “caused by the defendant[s]” or “redressable by a court order.” *Texas*, 599 U.S. at 676.

1. Plaintiffs’ Requested Relief Would Not Redress Their Injuries.

The relief that Plaintiffs seek in their first claim is a declaratory judgment to the effect that BLM complied with the law in adopting the 2025 Wyoming RMPA. FAC ¶¶ 2, 80, 89–90. This relief would in no way prevent or redress Plaintiffs’ alleged injuries flowing from legal uncertainty, because it would not reduce uncertainty over the legality of the 2025 Wyoming RMPA or otherwise prevent litigation challenging the RMPA.

The reason for this is simple: a declaratory judgment does not bind nonparties. *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023). If this Court were to issue a declaratory judgment to the effect that the 2025 Wyoming RMPA is lawful, that judgment would have no effect on nonparties wishing to challenge the legality of the RMPA. In particular, it would have no preclusive effect on the plaintiffs challenging the 2025 Wyoming RMPA in the two cases

pending in the District of Montana.⁵ Thus, the declaratory judgment sought by Plaintiffs would not reduce uncertainty over the legality of the RMPA.⁶

The fact that the declaratory judgment sought by Plaintiffs might be accompanied by an opinion explaining why the 2025 Wyoming RMPA is lawful is irrelevant. “Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power.” *Franklin v. Massachusetts*, 505 U.S. 788, 825 (1992) (Scalia, J., concurring in part and concurring in the judgment) (emphases in original). “It is a federal court’s judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability.” *Brackeen*, 599 U.S. at 294.

“Without preclusive effect, a declaratory judgment is little more than an advisory opinion.” *Id.* at 293. A declaratory judgment that BLM complied with the law in adopting the 2025 Wyoming RMPA would not have preclusive effect on the people actually causing Plaintiffs’ alleged injuries—*i.e.*, those challenging the legality of the 2025 Wyoming RMPA. For that reason, the relief sought by Plaintiffs would not redress their alleged injuries.

⁵ The Center and WWP have now intervened and could potentially be bound by a judgment in this case. But for two independent reasons, that does not change the redressability analysis. First, the other five plaintiffs in the *Center for Biological Diversity v. Davis* case and the plaintiffs in the *Montana Wildlife Federation v. Burgum* case would not be bound by any judgment in this case, so those cases would go forward and continue to create legal uncertainty. Second, standing is measured as of the time the complaint is filed, and a lack of standing at the outset of a case cannot be “cured” through intervention. *Disability Advocates, Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149, 160–61 (2d Cir. 2012).

⁶ The declaratory judgment sought by Plaintiffs would not have an effect on the Montana cases for the additional reason that the issues in those cases are different from the issues in Plaintiffs’ first claim in this case. *See Ctr. for Biological Diversity v. Davis*, 2026 WL 2192256, at *14 (acknowledging the differences between the cases). That is yet another reason that the relief sought by Plaintiffs would not redress their alleged injuries.

2. *Plaintiffs Have Not Alleged an Injury Traceable to the Unlawful Acts of Defendants for Their First Claim.*

Plaintiffs also lack standing to bring their first claim because their alleged injuries do not flow from any “allegedly unlawful conduct” of Defendants. *California v. Texas*, 593 U.S. 659, 669 (2021) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)). On the contrary, Plaintiffs allege that Defendants acted *lawfully* in adopting the 2025 Wyoming RMPA. Absent any claim of injury traceable to the allegedly *unlawful* conduct of Defendants, Plaintiffs have failed to plead one of the required elements of Article III standing for their first claim. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Greystone Serv. Corp., Inc.*, No. 3:06-cv-0575, 2008 WL 918298, at *3 (N.D. Tex. Mar. 13, 2008) (dismissing a third-party complaint for lack of standing because “there is no allegation ... that [the third-party defendants] engaged in any unlawful conduct that caused an injury to [the third-party plaintiff]”).

In fact, the causation problem runs even deeper: Plaintiffs’ alleged injuries flowing from legal uncertainty are not caused by *any* actions of Defendants, lawful or unlawful. The legal uncertainty is caused by those who challenge BLM’s sage-grouse plans, not by Defendants, who defend against those challenges. “The principle of causation for Article III standing requires a plaintiff’s injury to be ‘fairly traceable to the challenged *action of the defendant*, and not the result of the independent action of some third party not before the court.’” *Colorado v. U.S. Env’t Prot. Agency*, 989 F.3d 874, 889 (10th Cir. 2021) (quoting *Bronson v. Swensen*, 500 F.3d 1099, 1109 (10th Cir. 2007)) (emphasis in original).⁷

⁷ The Center and WWP are now “before the court,” but their intervention cannot fix an Article III standing problem. *See Disability Advocates*, 675 F.3d at 160–61; *see also* 7C Wright & Miller, Federal Practice & Procedure § 1917 (3d ed. Apr. 2026 update) (“Intervention cannot cure any jurisdictional defect that would have barred the federal court from hearing the original action.”).

Plaintiffs do allege that “[a]pplication of the [2025 Wyoming RMPA] will ... adversely affect and aggrieve [oil and gas] industry members,” including members of the Alliance. FAC ¶ 69. “But for purposes of traceability, the relevant inquiry is whether the plaintiffs’ injury can be traced to ‘allegedly unlawful conduct’ of the defendant, not to the provision of law that is challenged.” *Collins v. Yellen*, 594 U.S. 220, 243 (2021) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)). The fact that the RMPA may harm Plaintiffs is not enough absent some allegation of illegality on the part of Defendants in connection with the RMPA.⁸

Because Plaintiffs do not allege that their injuries are “directly traceable to any actual or possible unlawful Government conduct,” they “lack Article III standing.” *California*, 593 U.S. at 675.

II. Plaintiffs’ Second Claim Does Not Present a Justiciable Case or Controversy.

In their second claim, Plaintiffs seek a declaratory judgment that “[Wyoming’s] Density Disturbance Calculation Tool (DDCT) is the only appropriate tool for measuring disturbance in Wyoming” and that “if there is a contradiction between [BLM’s] project-level analysis for HAF-fine scale and project-level DDCT, the project-level DDCT will control.” FAC ¶ 3; *see also* FAC ¶¶ 91–92. Plaintiffs lack standing for this claim and the claim is not ripe, so the Court must dismiss it.

A. Plaintiffs Lack Standing for Their Second Claim.

1. Plaintiffs Have Failed to Allege an Injury-in-Fact for Their Second Claim.

For Article III standing purposes, there must be at least a “substantial risk” that a threatened injury will occur for that injury to constitute an “injury-in-fact.” *Dep’t of Com. v. New*

⁸ Moreover, any injury traceable to the application of the RMPA would not be redressed by a declaratory judgment to the effect that the RMPA is lawful.

York, 588 U.S. 752, 767 (2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). An alleged injury that is “conjectural or hypothetical” does not suffice for standing purposes. *Carney*, 592 U.S. at 58 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Here, the alleged injuries underlying Plaintiffs’ second claim are too speculative to support standing.

As for the first declaration sought in Plaintiffs’ second claim—“[d]eclare that [BLM] must use DDCT,” FAC ¶ 91—there is absolutely nothing in the First Amended Complaint to indicate how Plaintiffs would be injured by BLM’s use of some approach other than DDCT. Plaintiffs aver that Wyoming “uses the DDCT process,” *id.* ¶¶ 83, 88, and suggest that BLM would violate its duties under 43 U.S.C. § 1712(c)(9) if it were to use some other approach, *id.* ¶¶ 85–86, but nowhere do Plaintiffs allege how such conduct would harm them. A suggestion of possible unlawful conduct in the future is not sufficient for standing purposes; a plaintiff must allege how that conduct will harm them *in fact*. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021) (“[U]nder Article III, an injury in law is not an injury in fact.”).

The closest Plaintiffs come to alleging an injury from the use of a non-DDCT approach is the statement that BLM’s use “of a different tool ... *could* create mismatched calculations across the project area,” FAC ¶ 86 (emphasis added), but this is far too speculative to support standing. See *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 16 (1st Cir. 2004) (“It is not enough for a plaintiff to assert that she ‘could be’ subjected in the future to the effects of an unlawful policy or illegal conduct by a defendant”). Moreover, Plaintiffs fail to explain how these entirely speculative mismatched calculations would harm them.

As for the second declaration sought by Plaintiffs in their second claim—“[d]eclare that when the HAF fine-scale and the project-level DDCT conflict, the State may rely on the DDCT

analysis,” FAC ¶ 92—Plaintiffs again do not explain how such a conflict would harm them. The allegation that Wyoming “as a commentor and project-approver *may* come across conflicts between the DDCT and HAF scale” and that it “has a strong interest in clarity of when it is appropriate to rely solely on the project scale determination,” *id.* ¶ 88 (emphasis added), is not sufficient, because any alleged harm is too speculative. *See Steir*, 383 F.3d at 16; *see also Kansas Nat. Res. Coal. v. U.S. Dep’t of Interior*, 971 F.3d 1222, 1232 (10th Cir. 2020) (finding no concrete injury where the plaintiff failed to allege with any specificity how a lack of certainty would harm them).

More fundamentally, Plaintiffs fail to allege any kind of present or imminent *disagreement* with BLM over the proper interpretation of the 2025 Wyoming RMPA that warrants declaratory relief. A declaratory judgment is within the power of a federal court to award only if there is some kind of “difference[] of opinion or conflict[] of interest,” some kind of “disagreement” between the parties. *Pub. Serv. Comm’n of Utah v. Wycoff Co., Inc.*, 344 U.S. 237, 243–44 (1952). And “[t]he disagreement must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” *Id.* at 244. Here, Plaintiffs’ allegations, even construed liberally, show only that at some point in the future the 2025 Wyoming RMPA could be interpreted in a way that would (in Plaintiffs’ view) conflict with BLM’s obligations under 43 U.S.C. § 1712(c)(9). *See* FAC ¶ 3 (“Wyoming seeks a declaratory judgment to clarify its rights and obligations concerning two provisions that *may* conflict with the State’s sage-grouse executive order, *depending on how they are interpreted.*”) (emphasis added). This is not an “actual controversy” warranting declaratory relief, because “an actual controversy exists only when the parties ‘ha[ve] taken adverse

positions with respect to their existing obligations.” *BancInsure*, 650 F.3d at 1385 (quoting *Aetna Life Ins. Co.*, 300 U.S. at 242).

2. *Plaintiffs Have Not Alleged an Injury Traceable to the Unlawful Acts of Defendants for Their Second Claim.*

As with their first claim, Plaintiffs have failed to allege that the injuries underlying their second claim are “directly traceable to any actual or possible unlawful Government conduct,” so they “lack Article III standing.” *California*, 593 U.S. at 675.

B. Plaintiffs’ Second Claim Is Not Ripe.

For largely the same reasons that Plaintiffs have failed to allege an injury-in-fact for their second claim, they have failed to allege facts sufficient to support the conclusion that their second claim is ripe. “Constitutional ripeness overlaps with the injury-in-fact element of Article III standing, and ‘therefore the inquiry is largely the same: whether the issues presented are definite and concrete, not hypothetical or abstract.’” *Stavrianoudakis v. U.S. Fish & Wildlife Serv.*, 108 F.4th 1128, 1139 (9th Cir. 2024) (quoting *Ass’n of Irrigated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021)). In the context of a request for a declaratory judgment, the “disagreement must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” *Wycoff*, 344 U.S. at 244.

Here, any dispute over what the Wyoming RMPA prescribes as the proper disturbance-cap methodology is too “nebulous” and “contingent” to support declaratory relief. There is no allegation that BLM intends to use a tool that will likely lead to conflicts with the DDCT approach; on the contrary, the First Amended Complaint states that BLM has committed in the 2025 Wyoming RMPA to “us[e] an approach similar to the DDCT approach” at the project level. FAC ¶ 84. Given that commitment, it is speculative that there will ever be “mismatched

calculations” of the type Plaintiffs fear. Similarly, the potential conflict between the project-level DDCT analysis and the HAF fine-scale analysis may never come to pass or may be easily resolved: as Plaintiffs allege, the Wyoming RMPA contemplates a process by which exceptions to the HAF fine-scale disturbance cap may be granted, and Wyoming has a role in that process. FAC ¶ 87. In short, there are too many “uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all” for Plaintiffs’ second claim to be ripe. *Initiative and Referendum Inst. v. Walker*, 450 F.3d 1082, 1097 (10th Cir. 2006) (cleaned up).

As discussed above in the context of standing, the First Amended Complaint lacks *any* allegations to the effect that Plaintiffs and BLM actually disagree about the proper construction of the 2025 Wyoming RMPA so as to warrant declaratory relief. That there could be disagreement one day “depending on how [the RMPA] is interpreted,” FAC ¶ 3, is insufficient; for a declaratory judgment to be proper, the “disagreement ... must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” *Wycoff*, 344 U.S. at 244.

The fact that Plaintiffs’ claimed injury may flow, in part, from *uncertainty* over the proper disturbance-cap methodology does not render Plaintiffs’ second claim ripe. *See* FAC ¶ 88 (stating that Wyoming “has a strong interest in clarity of when it is appropriate to rely solely on the project scale determination”). The Supreme Court has rejected the argument that “mere uncertainty as to the validity of a legal rule constitutes a hardship for purposes of the ripeness analysis.”⁹ *Nat’l Park Hospitality Ass’n v. Dep’t of the Interior*, 538 U.S. 803, 811 (2003). Were

⁹ It is not clear whether the Supreme Court in *National Park Hospitality Association* was referring to “constitutional ripeness,” “prudential ripeness,” or both, but it doesn’t matter. “The ripeness doctrine ... is drawn both from Article III limitations on judicial power and from

it otherwise, “courts would soon be overwhelmed with requests for what essentially would be advisory opinions.” *Id.* That is precisely what Plaintiffs seek here: an opinion as to what the Wyoming RMPA means in the absence of “a specific dispute having real-world consequences.” *BancInsure*, 650 F.3d at 1379. It is not the role of this Court to offer such an advisory opinion.

III. Plaintiffs Have Failed to State a Claim for Relief for Either Claim.

A final problem with Plaintiffs’ case is that they have failed to state a claim for relief for either claim. Plaintiffs “seek[] declaratory relief under the Declaratory Judgment Act ... and the APA.” FAC ¶ 16. The Declaratory Judgment Act “does not create substantive rights” or provide a cause of action. *Hanson v. Wyatt*, 552 F.3d 1148, 1157 (10th Cir. 2008) (quoting *Farmers Alliance Mut. Ins. Co. v. Jones*, 570 F.2d 1384, 1385 (10th Cir. 1978)); *Nero v. Oklahoma*, No. 22-6121, 2022 WL 14423872, at *2 (10th Cir. Oct. 25, 2022) (unpublished) (“the Declaratory Judgment Act does not provide an independent federal cause of action”). The APA provides a cause of action, *Citizens for Constitutional Integrity v. United States*, 70 F.4th 1289, 1311 (10th Cir. 2023), but Plaintiffs have not stated a claim for relief under the APA, because they have not alleged that BLM acted unlawfully.

To state an APA claim, a plaintiff must allege either that the defendant agency has “unlawfully withheld or unreasonably delayed” agency action, 5 U.S.C. § 706(1), or that the agency took some action that is unlawful, *id.* § 706(2). See *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004) (“[A] claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*.”) (emphases in original); *Wyoming v. United States*, 279 F.3d 1214, 1239 (10th Cir. 2002)

prudential reasons for refusing to exercise jurisdiction. Accordingly, ripeness can be raised at any time, even by the court sua sponte for the first time on appeal.” *Utah v. U.S. Dep’t of the Interior*, 210 F.3d 1193, 1196 n.1 (10th Cir. 2000) (cleaned up).

(reversing the dismissal of an APA claim because, taking the allegations in the complaint as true, the agency decision at issue could “well be ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’”) (quoting 5 U.S.C. § 706(2)(A)). When challenging agency action under § 706(2), a plaintiff may allege that the action is unlawful in one or more of several different ways: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” *id.* § 706(2)(A); “contrary to constitutional right, power, privilege, or immunity,” *id.* § 706(2)(B); and so on. In any event, the challenged action must be alleged to be *unlawful*. See *Scottsdale Capital Advisors v. SEC*, 183 F.4th 1302, 1304 (10th Cir. 2026) (“To pursue a challenge under the APA, the challenger must identify an *unlawful* ‘final agency action.’”) (quoting 5 U.S.C. § 704) (emphasis added).

Here, there is no allegation that BLM acted unlawfully in adopting the 2025 Wyoming RMPA. There is no request to the Court to “compel agency action unlawfully withheld or unreasonably delayed” or “hold unlawful and set aside agency action” alleged to be unlawful. Thus, Plaintiffs have failed to allege one of the key elements of an APA claim: some kind of *unlawful* agency action or failure to act.

A complaint that contains only “‘a formulaic recitation of the elements of a cause of action’ will not suffice” and is subject to dismissal under Rule 12(b)(6). *Brown*, 124 F.4th at 1263 (quoting *Twombly*, 550 U.S. at 555). Here, the First Amended Complaint doesn’t even include a “formulaic recitation of the elements” of an APA cause of action—it completely omits a required element of the cause of action. “If the plaintiff fails to allege an essential element of his claim, the complaint is appropriately dismissed pursuant to Rule 12(b)(6).” *Ellis ex rel. Estate of Ellis v. Ogden City*, 589 F.3d 1099, 1102 (10th Cir. 2009).

IV. The Court Should Stop Holding this Case in Abeyance and Address the Motion to Dismiss.

This case is currently being held in abeyance per the request of the parties. *See* Dkt. 30 (order granting the parties’ request to hold the case in abeyance); Dkt. 29 (parties’ joint motion to hold the case in abeyance). The parties will likely argue that the Court should continue to hold the case in abeyance and not rule on this motion. For two reasons, that would be improper.

First, this motion raises substantial questions about this Court’s jurisdiction. “Without jurisdiction [a] court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Ex parte McCardle*, 74 U.S. 506, 514 (1868). Continuing to hold this case in abeyance and, in so doing, refusing to rule on this motion would violate the Court’s “obligation—no matter the stage of litigation—to consider whether a case creates a live case or controversy and belongs in federal court.” *Gad v. Kansas State Univ.*, 787 F.3d 1032, 1035 (10th Cir. 2015).

Second, the nature of this case and the recent conduct of the parties suggest that a rather unsavory settlement is potentially on the horizon, and the Court should not let the pendency of this case serve as cover for such a settlement. As detailed in this brief, this case suffers from many fundamental jurisdictional and other threshold defects. It is difficult to see why Defendants would not raise these issues unless they are ultimately on the same page as Plaintiffs—*i.e.*, unless they ultimately are fine with “losing” this case. But it is entirely improper for the parties to use this case as “cover for a collusive settlement.” *Trump v. IRS*, 836 F. Supp. 3d 1225, 1256 (S.D. Fla. 2026) (internal quotation marks omitted), *appeal filed*, No. 26-12692 (11th Cir. July 31, 2026), *stay denied*, 2026 WL 2931539 (11th Cir. Sep. 29, 2026) (unpublished per curiam order). If the parties want to enter into an agreement, they may, but they cannot be allowed to “do so by

claiming to be adverse and engaging the legitimacy of a court proceeding.” *Id.* at 1253. The Court should quickly stop holding this case in abeyance and resolve the motion to dismiss so that the parties cannot use this case as cover.

CONCLUSION

For the reasons stated herein, this Court lacks jurisdiction to hear this case, and Plaintiffs have failed to state a claim for relief for either of their claims. The Court should dismiss this case on the pleadings.

Date: October 15, 2026

Respectfully submitted,

/s/ Andrew R. Missel

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CERTIFICATE OF SERVICE

I certify that on this 15th day of October, 2026, I filed the foregoing with the Clerk of the U.S. District Court for the District of Wyoming and caused it to be served on all parties using the CM/ECF system.

Date: October 15, 2026

/s/ Andrew R. Missel
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