IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*

Plaintiffs,

v.

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

Defendants,

and

CHEVRON U.S.A. INC.,
6001 Bollinger Canyon Road
San Ramon, California 94583-2324

Proposed Intervenor/Defendant.

No. 1:22-cv-01716-TSC

NOTICE OF LODGING OF PROPOSED MOTION TO DISMISS

Chevron U.S.A. Inc. ("Chevron") has filed a motion to intervene in the above-captioned matter. Pursuant to that motion and if allowed to join this case as an intervenor, Chevron hereby notifies the Court of its lodging of a Proposed Motion to Dismiss and Memorandum in Support of the Motion to Dismiss.

Respectfully submitted this 28th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2022, I caused a true and correct copy of the foregoing Notice of Lodging of the Proposed Motion to Dismiss and all attachments to be filed with the Court electronically and served by the Court's CM/ECF system upon listed counsel for the Plaintiffs, Federal Defendants, and Proposed Intervenors Oxy USA Inc., Oxy USA WTP LP, Anadarko E&P Onshore LLC, and the Petroleum Association of Wyoming.

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CHEVRON U.S.A. INC.'S MOTION TO DISMISS

Chevron U.S.A. Inc. moves to dismiss the complaint in part for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The grounds for the motion are set forth in the accompanying memorandum.

Respectfully submitted this 28th day of July, 2022.

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MEMORANDUM IN SUPPORT OF CHEVRON U.S.A. INC.'S MOTION TO DISMISS

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INTRODUCTION

In a suit of breathtaking scope, two environmental organizations allege that the Bureau of Land Management (BLM), which administers oil-and-gas leases on federal lands, failed to consider global climate change in connection with each and every application for permit to drill (APD) that BLM approved in the first year and a half of the current Administration—more than 3,500 of them. Plaintiffs maintain that the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and Federal Land Policy and Management Act of 1976 (FLPMA) require BLM to cumulatively assess the climate and environmental-justice impacts of all foreseeable drilling on all federal lands; to consider the impacts of that drilling on all endangered species everywhere in the United States and perhaps everywhere in the world; and to prevent unnecessary or undue degradation of public lands by prohibiting or aggressively mitigating oil-and-gas exploration on federal property.

But the Court need not wade into the merits of Plaintiffs' claims because Plaintiffs lack standing to challenge BLM's approval of APDs for wells in the Permian Basin, and definitely not the 90 APDs for wells that Chevron owns and operates in the Permian Basin.[1] Standing is "not dispensed in gross." *Town of Chester v. Laroe Ests., Inc.*, 137 S. Ct. 1645, 1650 (2017) (quoting *Davis v. Federal Election Comm'n*, 554 U.S. 724, 734 (2008)). Plaintiffs have chosen to lump all 3,500-plus APDs as a group in their complaint, but it is not enough for Plaintiffs to assert standing to challenge *some* APDs. They must plausibly plead standing for *each* APD they seek to vacate.

[1] Chevron's motion focuses on Plaintiffs' standing to challenge BLM's approval of APDs at wells in the Permian Basin. By moving as to these APDs, Chevron is not conceding Plaintiffs' standing to challenge APDs at wells in the Powder River Basin, and Chevron may move to dismiss those claims later. *See Cierco v. Mnuchin*, 857 F.3d 407, 415 (D.C. Cir. 2017) ("Standing can be raised at any point in a case proceeding. . . . . ." (citation omitted)).

Plaintiffs' complaint includes a "Parties" section that is presumably meant to shoulder their standing burden. *See* Compl. ¶¶ 20-29. It does not. Environmental-group plaintiffs usually identify members who recreate near the project site and who attest that their enjoyment of the site's natural beauty would be diminished by the approved federal action. Plaintiffs have not followed that script for APDs in the Permian Basin. None of the members identified in Plaintiffs' complaint recreates or works *anywhere* near the Permian Basin, let alone the specific sites for which BLM granted Chevron's 90 challenged APDs. And Plaintiffs do not otherwise assert any particularized or concrete injury caused by the Permian Basin APDs, as opposed to the generalized harms associated with global climate change that all Americans share in common.

The problems with Plaintiffs' standing allegations do not stop there. Plaintiffs also do not plausibly explain how the emissions attributable to the Permian Basin APDs materially contribute to the global climate-change harms they assert or how vacating those APDs will prevent or alleviate those harms.

Plaintiffs' complaint should therefore be dismissed as to the APDs in the Permian Basin.

BACKGROUND

I. Statutory and Regulatory Background

The Mineral Leasing Act mandates the leasing of certain federal land for oil-and-gas development. 30 U.S.C. § 226(b)(1)(A). BLM carries out that statutory mandate through a competitive bidding process. The FLPMA governs the three-stage decisionmaking process that BLM follows when leasing federal lands for oil-and-gas development. *See* 43 U.S.C. §§ 1701-1787; Compl. ¶ 83. First, BLM develops a Resource Management Plan that guides future oil-and-gas development in a broad region by determining which lands should be open to leasing and under what conditions. 43 U.S.C. § 1712; Compl. ¶ 84. Next, BLM auctions off

leases on particular parcels of land. 43 C.F.R. Subpart 3120; Compl. ¶ 87. "Once sold, the lease purchaser has the right to use as much of the leased land as is necessary to explore and drill oil and gas within the lease boundaries, subject to stipulations attached to the lease." 43 C.F.R. § 3101.1-2; Compl. ¶ 91. In the third and final stage—the stage at issue in this case—BLM determines whether, and under what conditions, it will approve APDs for wells on leased land. 43 C.F.R. § 3162.3-1(c); Compl. ¶ 94.

NEPA adds procedural requirements that BLM must follow during its three-stage decisionmaking process. An "essentially procedural statute intended to ensure fully informed and well-considered decisionmaking," *New York v. Nuclear Regul. Comm'n*, 681 F.3d 471, 476 (D.C. Cir. 2012) (citation and internal quotation marks omitted), NEPA requires federal agencies to consider and report on the environmental effects of their proposed actions. *See Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). Although NEPA requires that federal agencies consider the environmental consequences of their actions, it "does not mandate particular results." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008). NEPA requires only that the agency take a "hard look" at the environmental consequences of proposed actions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

The ESA broadly protects endangered and threatened animal and plant species and their habitats. The Fish and Wildlife Service is charged with administering the Act. *See* 50 C.F.R. § 402.01(b). Once the Service lists a species as threatened or endangered, the ESA requires "[e]ach federal agency," in consultation with the Service, to ensure that any action "authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification

of [the] habitat of such species." 16 U.S.C. § 1536(a)(2). As part of that inter-agency consultation process, the Service will issue a "biological opinion" that explains whether "the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species." 50 C.F.R. § 402.14(g)(4).

Finally, the FLPMA requires the Secretary of the Interior to "by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). The Secretary has not yet defined by regulation what it means to unnecessarily or unduly degrade federal lands, instead adjudicating the question on a case-by-case basis. *See* Compl. ¶ 179.

II. The Permian Basin and Chevron's APDs

Much of the nation's oil and gas comes from the Permian Basin, which covers about 95,000 square miles from northwest Texas to southeast New Mexico. The Permian Basin is responsible for producing nearly a third of the country's crude oil, "making it the largest shale-oil producing region in the country." Compl. ¶¶ 135, 137; *NLRB v. Leatherwood Drilling Co.*, 513 F.2d 270, 271 (5th Cir. 1975).

Chevron is one of the largest producers of oil and natural gas in the Permian Basin, with 2.2 million net acres of holdings. Chevron, *The Permian Basin*, https://www.chevron.com/projects/permian (last visited July 28, 2022). As relevant here, Chevron applied for and BLM approved at least 90 of the challenged APDs listed in the complaint. Declaration of Scott Neal ¶ 3 (Neal Decl.) (filed with Chevron's motion to intervene). Chevron has expended billions of dollars leasing, exploring, drilling, completing, equipping, and maintaining its Permian Basin assets. *Id*.

III. Plaintiffs' Complaint

Plaintiffs are nonprofit environmental organizations. Plaintiff Center for Biological Diversity "advocate[s] for the conservation and recovery of species." Compl. ¶ 20. The Center claims more than 81,000 members and "1.7 million online members" that, along with the Center, "observe wildlife . . . including climate-imperiled species harmed by greenhouse gas emissions caused by oil and gas development on BLM lands, and recreate on public lands . . . that will be affected by the drilling permits challenged herein." *Id*. The Center identifies various members that enjoy viewing and photographing species allegedly threatened by global climate change. *Id.* ¶ 24. None of them is identified as living or recreating within the Permian Basin or near any of Chevron's APDs, and some of them quite plainly do not. *See id.* (noting that one plaintiff visits areas that are home to butterflies found in Florida and California, another travels to the Arctic, and another is a marine biologist focusing on coral species).

Plaintiff WildEarth Guardians "work[s] to replace fossil fuels with clean, renewable energy." *Id*. ¶ 21. WildEarth Guardians claims more than 187,000 members, "some of whom live, work, or recreate on public lands across the West and on and near the drilling permits in New Mexico and Wyoming challenged herein." *Id*. But WildEarth Guardians discusses only one member, Jeremy Nichols, a Montana resident, who allegedly recreates on BLM land in the Powder River Basin near some number of unidentified "areas directly impacted by development of many of the" APDs at issue in this case. *Id.* ¶ 25; *see also* WildEarth Guardians, *Jeremy Nichols, Climate & Energy Program Director*, https://wildearthguardians.org/about-us/staff-board/jeremy-nichols/ (last visited July 28, 2022) (noting that Nichols is a Montana resident). Just as the Center, WildEarth Guardians does not identify any member as living or recreating in the Permian Basin, let alone near any of Chevron's wells with a challenged APD.

Plaintiffs challenge, on their own behalf and on behalf of their "adversely affected members," all APDs approved between January 21, 2021 and May 31, 2022 in the Permian Basin and Powder River Basin. Compl. ¶¶ 21, 97. Plaintiffs allege this includes "at least" 3,535 APDs, but admit that the list "is possibly incomplete." *Id*. at ¶¶ 98, 113. Plaintiffs allege that BLM "failed to evaluate the cumulative impacts of greenhouse gas emissions that will result from these approvals under NEPA, and failed to consider the impact of these emissions as they relate to BLM's procedural and substantive obligations under the ESA and FLPMA." *Id*. at ¶ 4. Plaintiffs seek the vacatur of all 3,500-plus APDs and an injunction preventing BLM "from approving or otherwise taking action to approve any applications for permits to drill on federal public lands and minerals until Federal Defendants have fully complied with NEPA and its implementing regulations, and the substantive provisions of the ESA and FLPMA." *Id*. ¶ 11.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) authorizes a party to move for dismissal for lack of subject-matter jurisdiction and "provides an appropriate vehicle for challenging the plaintiff's Article III standing." *Center for Biological Diversity v. Regan*, No. CV 21-119 (RDM), __ F. Supp. 3d __, 2022 WL 971067, at *6 (D.D.C. Mar. 30, 2022). Plaintiffs bear the burden of establishing standing to sue, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), and it is "presume[d] that federal courts lack jurisdiction unless the contrary appears affirmatively from the record." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006) (citation omitted).

When the defendant contests the legal sufficiency of a complaint's jurisdictional allegations, "the Court must resolve the motion in a manner similar to a motion to dismiss under Rule 12(b)(6)." *Regan*, 2022 WL 971067, at *6. The Court must accept the complaint's factual allegations in the complaint as true but need not "accept inferences unsupported by the facts

alleged or legal conclusions that are cast as factual allegations." *Cartwright Int'l Van Lines, Inc. v. Doan*, 525 F. Supp. 2d 187, 193 (D.D.C. 2007) (citation omitted). Because the Court has "an affirmative obligation . . . to ensure that it is acting within the scope of its jurisdictional authority," it may "consider matters outside the pleadings" in addressing a Rule 12(b)(1) motion without converting it to a motion for summary judgment. *Ord v. District of Columbia*, 587 F.3d 1136, 1140 (D.C. Cir. 2009). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

ARGUMENT

Plaintiffs allege that BLM failed to consider global climate change impacts, including impacts on species located thousands of miles from where drilling and exploration are authorized, in connection with every single APD the agency has approved in the last year and a half. Compl. ¶ 97. Plaintiffs have not plausibly alleged that they have standing to assert these sweeping claims against any Permian Basin APDs. The "irreducible constitutional minimum" of standing requires that Plaintiffs demonstrate (1) an injury in fact (2) that is fairly traceable to the defendant's challenged conduct and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Defenders of Wildlife*, 504 U.S. at 560). These requirements apply whether an organization asserts standing to sue on its own behalf or on behalf of its members. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982); Compl. ¶¶ 21, 22. If any of these essential elements is lacking, Article III requires dismissal. *Defenders of Wildlife*, 504 U.S. at 560.

Plaintiffs' complaint challenges thousands of APDs, including Chevron's 90 Permian Basin APDs, in one fell swoop. But "standing is not dispensed in gross," and it "instead may differ claim by claim." *Electronic Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election*

Integrity, 878 F.3d 371, 377 (D.C. Cir. 2017) (citation and internal quotation marks omitted). Plaintiffs must therefore "demonstrate standing for *each* claim that they press and for *each* form of relief that they seek." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021) (emphasis added). That is, Plaintiffs must establish standing as to *each* APD they seek to vacate; the APDs are "discrete regulatory actions with—importantly—discrete effects." *Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1205 (D.C. Cir. 2020). Plaintiffs have not done so for the Permian Basin APDs.

I. Plaintiffs' Complaint Does Not Plausibly Allege Organizational Standing To Vacate The Permian Basin APDs.

Organizations suing in their own right, like any individual plaintiff, must "show actual or threatened injury in fact." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015). To satisfy the injury-in-fact requirement, an organization must plausibly allege that it has suffered a "concrete and demonstrable injury to [its] activities." *Equal Rts. Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011). The D.C. Circuit has repeatedly emphasized that "conflict between a defendant's conduct and an organization's mission is alone insufficient to establish Article III standing," *Center for Law & Educ. v. Department of Educ.*, 396 F.3d 1152, 1161-62 (D.C. Cir. 2005) (citation omitted), because "frustration of an organization's objectives is the type of abstract concern that does not impart standing," *Food & Water Watch*, 808 F.3d at 919 (citation omitted). As a result, organizations cannot establish standing by pointing to expenditures on advocacy, *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015); litigation or investigation, *Food & Water Watch*, 808 F.3d at 919; or education, unless doing so subjects the organization to "operational costs beyond those normally expended," *National Ass'n of Home Builders v. EPA*, 667 F.3d 6, 12 (D.C. Cir. 2011). A mere "setback to the

organization's abstract social interests" is not enough. *National Treasury Emps. Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996).

Plaintiffs fall far short of plausibly alleging organizational standing under these standards. The complaint states Plaintiffs' organizational purposes in broad and generic terms—"the conservation and recovery of species on the brink of extinction and the habitats they need to survive" and "protecting and restoring the wildlife, wild places, wild rivers, and health of the American West"—and asserts only that their "interests will be adversely affected and irreparably injured if Federal Defendants continue to violate NEPA, the ESA, and FLPMA." Compl. ¶¶ 14, 20, 21. These are precisely the kinds of general conflicts with organizational interests that the D.C. Circuit routinely rejects as insufficient. *See Center for Law & Educ.*, 396 F.3d at 1161-62; *Food & Water Watch*, 808 F.3d at 920-921.

Plaintiffs have not alleged that any deficiencies in BLM's approval of the Permian Basin APDs have inhibited their "daily operations" so as to constitute actual injury. *Food & Water Watch*, 808 F.3d at 920. Indeed, the complaint does not allege that Plaintiffs' organizational activities have been impaired *at all* by BLM's allegedly procedurally inadequate approvals of the Permian Basin APDs. Plaintiffs therefore have not adequately alleged organizational standing to challenge the Permian Basin APDs.

II. Plaintiffs' Complaint Does Not Plausibly Allege Associational Standing To Vacate The Permian Basin APDs.

Organizations have standing to sue on behalf of their members if (1) at least one member would have standing to sue in her own right, (2) the interests the association seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires an individual member's participation in the suit. *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002).

As in many cases, "the crux of the standing issue" here is whether Plaintiffs' members would have standing to sue in their own right. *Sierra Club v. Perry*, 373 F. Supp. 3d 128, 136 (D.D.C. 2019) (citation omitted). Plaintiffs have not pleaded that their members—either separately or in combination—have suffered any concrete and particularized harm with respect to the Permian Basin APDs, as opposed to generalized public harms associated with global climate change. Nor have Plaintiffs alleged that the harms they assert are traceable to BLM's approval of the Permian Basin APDs or that those harms will be redressed by vacatur of these APDs.

A. Plaintiffs Do Not Adequately Allege Injury-in-Fact Because They Have Not Identified Any Member With Any Interest In The Permian Basin, Let Alone Any Of Chevron's Sites With A Challenged APD.

Plaintiffs' sole identified injury is procedural; they allege that BLM flouted the procedural requirements of its governing statutes. Compl. ¶¶ 187-216. Although courts somewhat "relax the normal standards of redressability and imminence" when parties allege injury to their procedural rights, *Environmental Def. Fund v. FERC*, 2 F.4th 953, 968 (D.C. Cir. 2021) (citation omitted), *cert. denied sub nom. Spire Missouri Inc. v. Environmental Def. Fund*, 142 S. Ct. 1668 (2022), "the requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute," *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009). A deprivation of a procedural right "without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing." *Summers*, 555 U.S. at 496. As a result, "omission of a procedural requirement does not, by itself, give a party standing to sue." *Food & Water Watch*, 808 F.3d at 921 (quoting *Center for Biological Diversity v. Department of Interior*, 563 F.3d 466, 479 (D.C. Cir. 2009)). Plaintiffs must establish "some connection between the alleged procedural injury and a substantive injury

that would otherwise confer Article III standing." *National Ass'n of Home Builders*, 667 F.3d at 15.

Plaintiffs identify a single substantive interest to support their procedural theory: harm to their members' "recreational and aesthetic pursuits" resulting from the effects of global climate change. Compl. ¶¶ 20, 22, 23, 25, 29. Harms to recreational and aesthetic interests can constitute a concrete injury. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000). But a plaintiff relying on such harms must allege a harm to those interests "which has occurred or is imminent due to geographic proximity to the action challenged." *City of Olmsted Falls v. FAA*, 292 F.3d 261, 267 (D.C. Cir. 2002); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 61 (D.D.C. 2019) (same).

Plaintiffs have not done so for the Permian Basin APDs. Plaintiffs allege only that some unidentified members of their national organizations might visit some unidentified parcels in the Permian Basin affected by the challenged APDs. Plaintiffs *do not* allege that any of their members intend to recreate anywhere near the Permian Basin wells, or that the drilled and undrilled wells in the Permian Basin relating to the challenged APDs impede those recreational interests. Indeed, Plaintiffs do not identify even a single member who lives or recreates anywhere in the entire Permian Basin.

Plaintiffs broadly allege that their members "use and enjoy the cultural resources, wildlands, wildlife habitat, rivers, streams, and healthy environment on BLM and other public lands across the nation, including BLM lands and other public lands in New Mexico and Wyoming that are in and adjacent to the oil and gas well sites that are the subject of th[eir] Complaint." Compl. ¶ 22. But "it is not enough to aver that unidentified members have been injured." *Chamber of Com. v. EPA*, 642 F.3d 192, 199-200 (D.C. Cir. 2011).

Instead, Plaintiffs "must show that at least one specifically-identified member has suffered an injury-in-fact." *American Chemistry Council v. Department of Transp.*, 468 F.3d 810, 815, 820 (D.C. Cir. 2006). Plaintiffs have not so; they do not identify any member who lives or recreates in the Permian Basin. Nor do any of Plaintiffs' identified members suffer any concrete injury as a result of the Permian Basin APDs; none of them engage in any activities anywhere near Permian Basin well sites with a challenged APD. *See* Compl. ¶ 24 (identifying members with interests in habitats in Arizona, Florida, California, the Arctic, and the ocean); *id.* ¶ 25 (identifying member who recreates in the Powder River Basin). Even if a member recreates near some well sites impacted by some recently approved APDs in the *Powder River Basin*, that says nothing about the APDs issued for sites in the *Permian Basin*— a separate 95,000-square-mile tract far to the south where nearly 80% of Plaintiffs' total challenged APDs are located. *See* Compl. ¶ 98.

To the extent Plaintiffs suggest their identified members with interests in lands hundreds or thousands of miles away have suffered an injury in fact because their interests are "imperiled" by the APDs "exacerbat[ing] climate change," Compl. ¶¶ 24, 27, 29, the Supreme Court has already rejected similar arguments. The Court has rejected, for instance, an "ecosystem theory," where "any person who uses any part of a 'contiguous ecosystem' adversely affected by a funded activity has standing even if the activity is located a great distance away." *Defenders of Wildlife*, 504 U.S. at 565 (emphasis omitted). The Court has also rejected an " 'animal nexus' approach, whereby anyone who has an interest in studying or seeing the endangered animals anywhere on the globe has standing," and a " 'vocational nexus' approach, under which anyone with a professional interest in such animals can sue." *Id.* Arguments about harm related to climate change share the same deficiencies. As the D.C. Circuit has explained, "climate change is a

harm that is shared by humanity at large, and the redress that [Plaintiffs] seek—to prevent an increase in global temperature—is not focused any more on these [plaintiffs] than it is on the remainder of the world's population." *Center for Biological Diversity*, 563 F.3d at 478; *see also Berka v. Nuclear Regul. Comm'n*, No. 21-1134, 2022 WL 412470, at *1 (D.C. Cir. Feb. 3, 2022) (an "asserted injury based on climate change is not a particularized injury").

Plaintiffs also do not say *which* areas directly impacted by development of *which* of the challenged Permian Basin APDs their unidentified members recreate near, likely because Plaintiffs do not know. *See* Compl. ¶ 98 n.6 (admitting that Plaintiffs' "list of challenged permits is developed based on available data from BLM, which may or may not be complete"). It is not enough that unidentified members might recreate generally in the Permian Basin somewhere near a well site with recently approved APDs.

A plaintiff asserting "injury from environmental damage must use the area affected by the challenged activity and not an area roughly in the vicinity of it." *Defenders of Wildlife*, 504 U.S. at 555-556; *see also Montana Env't Info. Ctr. v. Bernhardt*, No. 1:19-cv-130, 2020 WL 6948999, at *3 (D. Mont. July 29, 2020) (no standing where plaintiffs failed to plead "use of the affected area or their injury in fact beyond the general statement that the challenged actions cause them economic, professional, recreational, and aesthetic harm," which, "standing alone, amounts to a bare legal conclusion" that "simply recites the legal requirements for standing"), *report and recommendation adopted*, 2020 WL 6042291 (D. Mont. Oct. 13, 2020). Plaintiffs cannot establish standing by speculating that some unidentified members might "use[] unspecified portions of an immense tract of territory," here, the 95,000 square miles that make up the Permian Basin, on some portion of which oil-and-gas development "has occurred or probably will occur by virtue of the governmental action." *Lujan v. National Wildlife Fed'n*, 497 U.S.

871, 889 (1990); *id*. at 877 (plaintiff could not assert standing based on unspecified use of an area of land that consisted of 5.5 million acres); *Summers*, 555 U.S. at 497 (rejecting "statistical probability that some of [organization's] members are threatened with concrete injury" as a "hitherto unheard-of test" for standing).

Indeed, Plaintiffs' theory of standing is identical to the one the Supreme Court rejected in *Summers*. There, the Sierra Club asserted that it was "probable" that at least some of its 700,000 members "have planned to visit some (unidentified) small parcels affected by the Forest Service's procedures and will suffer (unidentified) concrete harm as a result." *Summers*, 555 U.S. at 497-498. The Supreme Court rejected that theory, explaining that accepting it "would make a mockery of our prior cases, which have required plaintiff-organizations to make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Id*. at 497. Just so here. Like in *Summers*, accepting Plaintiffs' broad speculation that their members "use and enjoy" federal "lands and other public lands in New Mexico," Compl. ¶ 22, as adequate to confer standing to challenge BLM's approval of the Permian Basin APDs "affecting any portion" of the Permian Basin "would be tantamount to eliminating the requirement of concrete, particularized injury in fact." *Summers*, 555 U.S. at 496.

In short, some of Plaintiffs' members might well be interested in seeing or photographing or studying endangered species hundreds or thousands of miles away from well sites in the Permian Basin, but that does not mean they have suffered an injury in fact. Plaintiffs' alleged injuries are "too generalized to establish standing." *Center for Biological Diversity*, 563 F.3d at 478.

B. Plaintiffs' Complaint Fails To Plausibly Allege Traceability And Redressability As To The Permian Basin APDs.

Plaintiffs' complaint also fails to establish Article III standing because it does not plausibly plead that any of their members' claimed injuries are fairly traceable to the challenged Permian Basin APDs and are redressable by a judgment vacating the APDs.

Start with traceability. Plaintiffs' complaint must adequately allege that there is a "causal connection between" their members' claimed "injur[ies] and the conduct complained of—the injur[ies] must 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." *Bennett v. Spear*, 520 U.S. 154, 167 (1997). Thus, even in procedural-injury cases, the Supreme Court "has never freed a plaintiff alleging a procedural violation from showing a causal connection between the government action that supposedly required the disregarded procedure and some reasonably increased risk of injury to its particularized interest." *Florida Audubon Soc'y v. Bentsen*, 94 F.3d 658, 664 (D.C. Cir. 1996) (en banc).

In procedural-injury cases, an adequate causal chain contains two links: "one connecting the omitted [analysis] to some substantive government decision that may have been wrongly decided because of the lack of [proper analysis] and one connecting that substantive decision to the plaintiff's particularized injury." *Id*. at 668. The second link requires a "causal connection between the agency action and the alleged injury," *City of Dania Beach v. FAA*, 485 F.3d 1181, 1186 (D.C. Cir. 2007), meaning that Plaintiffs must demonstrate a "substantial probability" that the agency action will adversely affect local conditions and thus harm one of their members. *Sierra Club v. EPA*, 755 F.3d 968, 973 (D.C. Cir. 2014).

Plaintiffs' complaint omits the second link. Plaintiffs never explain how the harms from *the Permian Basin APDs*, as opposed to any other source of greenhouse gases, will cause the

climate harms that they allege. After all, the Permian Basin APDs are an infinitesimal source of greenhouse gases in the greater scheme of global emissions. And as Plaintiffs put it, it is "increasing greenhouse gas emissions" as a whole that will lead to harmful climate change. *See* Compl. ¶ 5. Plaintiffs' failure to plausibly allege that emissions caused by BLM's approval of the Permian Basin APDs will make a meaningful difference to climate change means that the recreational and aesthetic harms that Plaintiffs' members allege will occur with or without the Permian Basin APDs. *See id*. ¶ 24.

To be sure, traceability "does not require that the 'challenged action must be the 'sole' or 'proximate' cause of the harm suffered, or even that the action must constitute a 'but-for cause' of the injury." *National Treasury Emps. Union v. Whipple*, 636 F. Supp. 2d 63, 73 (D.D.C. 2009) (citation omitted). But Plaintiffs must still plausibly allege a "substantial probability" that BLM's approval of the Permian Basin APDs "will cause the alleged injury-in-fact" and that "local conditions will be adversely affected." *City of Waukesha v. EPA*, 320 F.3d 228, 234 (D.C. Cir. 2003) (second quoting *Sierra Club*, 292 F.3d at 898). Plaintiffs have not plausibly done so here; they have not explained how it is "substantially probable" that the emissions attributable to the Permian Basin APDs "created a demonstrable risk, or caused a demonstrable increase in an existing risk, of injury to the particularized interests of the plaintiff[s]." *Environmental Def. Fund*, 2 F.4th at 968. Plaintiffs "cannot 'substitute speculation for substantial probability, and hope that doing so will carry them across the causation bridge.' " *Eastern Band of Cherokee Indians v. Department of the Interior*, 534 F. Supp. 3d 86, 115 (D.D.C. 2021) (quoting *San Juan Audubon Soc'y v. Wildlife Servs., Animal & Plant Health Inspection Serv.*, 257 F. Supp. 2d 133, 141 (D.D.C. 2003)), *appeal dismissed*, No. 21-5114, 2022 WL 102544 (D.C. Cir. Jan. 5, 2022).

Plaintiffs' claims do not pass the traceability test for a second reason, as well. The climate-change impacts they allege are largely due to the actions of third parties whose actions BLM does not control. *See Bennett*, 520 U.S. at 167. The D.C. Circuit has explained that climate-change standing arguments like Plaintiffs' "rely on too tenuous a causal link": They assume that "drilling . . . will bring about more oil; this oil will be consumed; the consumption of this oil will result in additional carbon dioxide being dispersed into the air; this carbon dioxide will consequently cause climate change; this climate change will adversely affect the animals and their habitat; therefore [Plaintiffs] are injured by the adverse effects on the animals they enjoy." *Center for Biological Diversity*, 563 F.3d at 478-479. "Such a causal chain cannot adequately establish causation because [Plaintiffs] rely on the speculation that various groups of actors not present in this case—namely, oil companies, individuals using oil in their cars, cars actually dispersing carbon dioxide—might act in a certain way in the future." *Id.* at 479.

Finally, and for similar reasons, Plaintiffs have not plausibly alleged that a judgment vacating the Permian Basin APDs would "materially reduce the expected harm" to their members. *Huddy v. FCC*, 236 F.3d 720, 722 (D.C. Cir. 2001). Because Plaintiffs have not plausibly alleged that the emissions caused by the Permian Basin APDs will materially contribute to the climate-change harms that their members assert, Plaintiffs also have not plausibly alleged that vacating the Permian Basin APDs would materially *reduce* the climate-change harms that their members assert.

Plaintiffs' members accordingly fail all three prongs of the Article III standing inquiry. That, in turn, means that Plaintiffs cannot assert associational standing on their behalf. *See National Ass'n of Home Builders*, 667 F.3d at 12, 16 (affirming district court's dismissal for lack

of standing where trade association had established neither organizational standing nor that any of its members had standing in their own right).

CONCLUSION

For the foregoing reasons, Chevron's motion should be granted and Plaintiffs' complaint dismissed as to the Permian Basin APDs.

Respectfully submitted,

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Dated: July 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2022, I caused a true and correct copy of the foregoing Memorandum in Support of Chevron's Motion to Dismiss and all attachments to be filed with the Court electronically and served by the Court's CM/ECF system upon listed counsel for the Plaintiffs, Federal Defendants, and Proposed Intervenors Oxy USA Inc., Oxy USA WTP LP, Anadarko E&P Onshore LLC, and the Petroleum Association of Wyoming.