IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, *et al.*;	)	
	)	Case No. 1:20-cv-00673-KG-JHR
Plaintiffs,	)	
v.	)	
BUREAU OF LAND MANAGEMENT, *et al.*;	)	
Federal Defendants.	)	

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM

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INTRODUCTION

Diné Citizens Against Ruining Our Environment, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians (collectively "Community Groups") move for a Preliminary Injunction, pursuant to Fed. R. Civ. P. 65(a), to enjoin Federal Defendants from, (1) authorizing any new applications for permit to drill ("APDs") on the challenged leases, and (2) allowing any further ground disturbance, construction, oil and gas drilling, and oil and gas production on the 118 APDs that BLM already approved.

Counsel for Community Groups has conferred with Counsel for Federal Defendants and Counsel for Intervenor-Defendants regarding their positions on this Motion, pursuant to Local Rule 7.1 (a). Federal Defendants and Intervenor-Defendants both oppose this Motion. Counsel for Community Groups has also conferred with Counsel for Federal Defendants and Counsel for Intervenor-Defendants regarding their positions on attaching exhibits in excess of 50 pages, pursuant to Local Rule 10.5. Federal Defendants and Intervenor-Defendants both consent to Community Groups' attachment of exhibits over 50 pages. However, Federal Defendants state that they reserve the right to contest the relevance of those exhibits. Similarly, Intervenor-Defendants state that they reserve the right to object to Community Groups' arguments about those exhibits.

As detailed in Community Groups' Response (ECF No. 50) to Federal Defendants' Motion for Voluntary Remand Without Vacatur (ECF No. 47), remand of the agency's decisions *with vacatur* of the leases is the appropriate and necessary remedy in this case, and best achieves the environmental protection goals of the National Environmental Policy Act ("NEPA") while also conserving judicial resources. *See* ECF No. 50 at 10-11. As the Tenth Circuit recently explained, courts need not analyze injunction factors where vacatur provides

NEPA plaintiffs with sufficient relief. *Diné CARE v. Bernhardt*, 923 F.3d 831, 859 (10th Cir. 2019). Accordingly, here, "[b]ecause vacatur is 'sufficient to redress [Community Groups'] injury, no recourse to the additional and extraordinary relief of an injunction [is] warranted.'" *Id.* (quoting *Monsanto Co. v. Geertson Seed Farms,* 561 U.S. 139, 166 (2010).

However, in the alternative, should the Court decide to grant remand without vacating the challenged leases, Community Groups respectfully request that the Court maintain continuing jurisdiction and grant injunctive relief pending completion of the agency's remanded NEPA analysis and the Court's determination that such analysis complies with federal law.

This case challenges three separate Bureau of Land Management ("BLM") oil and gas lease sales in the Rio Puerco Field Office ("RPFO") and Farmington Field Office ("FFO")—December 2018 RPFO, November 2019 RPFO, and February 2020 RPFO and FFO—which together involve four corresponding environmental assessments ("EAs"), an EA Addendum, and two Supplemental NEPA Analyses. Together, these BLM decisions authorized the issuance of 42 lease parcels covering nearly 45,000 acres of federal public land in the San Juan Basin, within the Greater Chaco Landscape. If additional development is allowed, it will result in irreparable harm to both these lands and to Diné peoples. *See* Atencio Decl. ¶¶ 7-10, 12-13.

As BLM admits, at least 118 drilling permits have already been approved on just eight of the challenged lease parcels. ECF No. 47 at 11 n.7 (citing Barnes Decl. ¶10). BLM has also approved road construction to provide access for drilling and development on some of those APDs. *Id*. These APD approvals have already authorized development of nearly three times more wells than BLM considered in its leasing analyses—where it projected development of

just one well per parcel, for a total of 42 wells, not 118[1]—with additional well approvals likely. This will cause significantly more greenhouse gas and air pollutant emissions, as well as health impacts on nearby people and communities, than BLM analyzed in its NEPA documentation for the challenged leases.

BLM's actions, if maintained, will also inflict substantial and irreparable harm to the sacred Sisnaateel Mesa Complex that is central to Diné cosmology. Atencio decl. ¶¶ 8-10. The Sisnaateel Mesa Complex is a 20-mile sacred area, and within those lands, there are particular places that hold even greater importance and a heightened level of sacredness to Diné peoples. *Id*. The story of these lands, as publicly available, is about the Diné story of the creation of the horse, and is part of the Diné National Epic of "two-sons-that-went-to-their-father." *Id.* These stories are central to Diné national identity. *Id*. The physical destruction or impairment of these lands result in irreparable damage to Diné culture and history. *Id*.

The present case is the latest example of BLM continuing to approve Greater Chaco lease sales, drilling permits, and related development despite ongoing legal challenges and a pending FFO amendment and RPFO revision to underlying resource management plans. Moreover, industry has consistently proceeded with development despite the known risk that the approvals could be deemed unlawful and vacated. In the absence of preliminary relief, ongoing harms from APD approvals and development on the leases will continue and worsen, and additional APD approvals and development are likely to exacerbate these harms. Atencio Decl. ¶¶ 5-7, 9-10, 12-13. *See also* Beasley Decl. ¶¶ 2-6; Beasley Decl. Exhibit 1 (Ford EA, approving APD development on some of the challenged leases); Beasley Decl. Exhibit 2

[1] AR_Dec2018_010828 (Assuming full development of the 30 nominated lease parcels equals 30 wells); AR_Nov2019_072453 (same one-well-per-parcel assumption); AR_Feb2020_137188 (same); AR_Feb2020_137366 (same).

(Arterial Road EA, approving an arterial road and access roads to the Ford development area for well drilling and operations).

If vacatur is not granted, a preliminary injunction of ongoing and future APD approvals and development on the challenged leases is necessary to ensure that further irreparable harms do not occur during the pendency of this case. Accordingly, Community Groups respectfully request that, in the alternative to vacatur of the leases, the Court grant Community Groups' Motion for a Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a).

BACKGROUND

Community Groups' Opening Merits Brief, ECF No. 46, and Supplemental Petition for Review of Agency Action, ECF No. 33-1, describe BLM's legal obligations under NEPA, *see* ECF No. 46, at 2-6, ECF No. 33-1, ¶¶ 27-46; BLM's oil and gas planning and management framework generally and in the Greater Chaco, *see* ECF No. 46 at 3-6, ECF No. 33-1, ¶¶ 47-64; and the procedural history and factual background surrounding each of the three lease sales challenged here, *see* ECF No. 46 at 6-9, ECF No. 33-1 ¶¶ 67-101.

I. Facts Giving Rise to This Litigation

This case challenges BLM's approvals and issuance of leases through three oil and gas lease sales in New Mexico: the December 2018 RPFO lease sale, the November 2019 RPFO lease sale, and the February 2020 RPFO and FFO lease sale. *See* ECF No. 33-1, ¶¶ 1-4. Together, these leasing decisions and the four accompanying EAs, EA Addendum, and two Supplemental Analyses involve the issuance of leases on 42 parcels covering nearly 45,000 acres of federal public land across the Greater Chaco landscape, including the sacred 20-mile Sisnaateel Mesa Complex. *Id*. *See also* Atencio decl. ¶¶ 8-10. Despite the present challenge,

and despite BLM's professed commitment to Protect Chaco,[2] BLM has already approved at least 118 drilling permits on just eight of the challenged parcels. ECF Nos. 47 at 11 n.7, 47-1 ¶10. *See also* Beasley Decl. Exhibit 1 at 1-2; ECF No. 46-4, Nichols Decl. ¶ 12 (mapping the challenged lease parcels and drilling permits approved since January 1, 2020). Notably, for the 118 APD approvals issued to-date, BLM relied upon the same leasing-stage NEPA analyses about which it has identified "substantial concerns," and for which the agency is already reviewing its decisions. *See* Beasley Decl. Exhibit 1 at 2 (Ford EA, which "tiers to and incorporates by reference" the 2018 RPFO Lease Sale EA and Addendum); *see also* ECF No. 47-1 at ¶ 4 (Barnes Decl., identifying concerns and describing plan to review the leasing decisions).

BLM has also approved a right-of-way for the East Continental Divide Arterial Road, which would allow additional access for construction and drilling of wells on the challenged leases. Beasley Decl. Exhibit 2 at 4-5 (Arterial Road EA), and attached Decision Record, at 1-7. Despite the present challenge, road construction—including grading and vegetation removal—has already begun and is ongoing. *See* Atencio Decl. ¶¶ 9-10 and accompanying photographs.

Community Groups filed their original Petition for Review of Agency Action on July 9, 2020, challenging BLM's sale of 30 oil and gas leases pursuant to the December 2018 lease sale. ECF No. 1. On January 19, 2021, Community Groups filed a Supplemental Petition, adding challenges to the November 2019 and February 2020 lease sales. ECF No. 33-1. Community Groups allege that BLM violated NEPA, 42 U.S.C. § 4321 *et seq*., and the Federal

[2] *See* January 5, 2022 BLM Press Release, available at https://www.blm.gov/press-release/bureau-land-management-takes-next-steps-protect-chaco-canyon; *See also* ECF No. 46-2, King-Flaherty Decl. ¶ 19.

Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq*., by failing to take a hard look at cumulative greenhouse gas emissions and resulting climate change impacts, air pollutant emissions and air quality impacts, human health, and environmental justice; failing to allow for sufficient public participation; and failing to prepare an environmental impact statement. ECF No. 33-1 ¶¶ 181-209. After two extensions to allow Federal Defendants and Community Groups to discuss potential settlement, ECF Nos. 42 and 44, those discussions collapsed and Community Groups filed their Opening Merits Brief on November 23, 2021. ECF No. 46. Instead of filing a response brief, Federal Defendants then filed a Motion for Voluntary Remand Without Vacatur. *See* ECF No. 47. Community Groups filed a Response to Federal Defendants' Motion for Voluntary Remand Without Vacatur, ECF No. 50, supporting remand of BLM's leasing decisions but also requesting vacatur of the leases. While vacatur of the leases remains the appropriate and necessary remedy under the circumstances presented here, while also best conserving judicial resources, Community Groups are filing the present Motion for a Preliminary Injunction in the alternative, in the event that the court declines to grant vacatur of the leases.

ARGUMENT

To obtain a preliminary injunction, the moving party must establish: "(1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest." *RoDa Drilling v. Siegal,* 552 F.3d 1203, 1208-09 (10th Cir. 2009) (citing *Winter v. NRDC, Inc.,* 555 U.S. 7, 20 (2008)). Community Groups satisfy each element of this four-part test.

I. Community Groups Are Likely to Prevail on the Merits

Community Groups are likely to prevail on the merits because (1) BLM admits to "substantial concerns" with the NEPA analyses for its approval of the challenged leases and has already announced plans to supplement those analyses, and (2) Community Groups' opening brief demonstrates a likelihood of success on the merits of its claims regarding climate, health, environmental justice, and public participation. Courts have found NEPA violations under analogous circumstances, ordering either vacatur or injunctive relief as remedy.

A. BLM Admits to "Substantial Concerns" With the NEPA Analyses Approving the Challenged Leases and Has Already Announced Plans to Supplement.

BLM has admitted that the NEPA analyses approving the challenged leases are likely deficient and require supplementation. In its Motion for Voluntary Remand Without Vacatur, ECF No. 47, the agency provided that "remand is appropriate if an agency has identified 'a substantial and legitimate' concern regarding the challenged decision." ECF No. 47 at 5 (citing *SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001); *Navajo Nation v. Regan*, No. 20-CV-602-MV/GJF, 2021 WL 4430466, at *2 (D.N.M. Sept. 27, 2021); *Ctr. For Native Ecosystems v. Salazar*, 795 F. Supp. 2d 1236, 1239 (D. Colo. 2011); *TransWest Express LLC v. Vilsack*, No. 19-CV-3603-WJM-STV, 2021 WL 1056513, at *3 (D. Colo. Mar. 19, 2021)). BLM then acknowledged such "substantial concerns with the NEPA analysis underlying the challenged leasing decisions, including the analysis of the potential impact of the leases on air quality, greenhouse gas emissions, and environmental justice." ECF No. 47 at 3-4 (citing Barnes Decl. ¶ 4). BLM's concerns regarding the sufficiency of its NEPA documentation directly correlate to the failures articulated in Community Groups' Opening Merits Brief. *See* ECF No. 47 at 6; ECF No. 46.

As Community Groups' merits brief explained, BLM failed to take a hard look at cumulative greenhouse gas emissions and resulting climate impacts of the challenged lease sales by evaluating and disclosing emissions in a piecemeal manner, and ignoring available tools for assessing and contextualizing the severity and significance of cumulative greenhouse emissions and effects, as NEPA demands. *See* ECF No. 46 at 13-24. The agency also failed to take a hard look at the direct and cumulative health impacts of its leasing decisions, in particular the effects of long-term exposure to air pollutants caused by industrialized oil and gas exploitation on area residents. *See id.* at 24-35. Finally, BLM also ignored the environmental justice implications of its leasing decisions. *See id.* at 35-41. These failures were magnified by the agency's refusal to meaningfully engage the public, *see id.* 41-44, and by ignoring the threatened and ongoing harms to the specific lands where these leases were sold, which are sacred and central to Diné cosmology and include many sites in the Sisnaateel Mesa Complex that hold a heightened level of sacredness to Diné peoples. Atencio Decl. ¶¶ 8-11. Likewise, the agency notes that the concerns it has identified with its NEPA analyses "substantially overlap with the issues raised by Plaintiffs in their claims challenging the lease sale decisions." ECF No. 47 at 6 (citing Supp. Pet. ¶¶ 102-38, 181-86, ECF No. 33-1).

Indeed, due to these serious concerns, BLM has already announced its plans to review its NEPA analyses and the resulting decisions for the challenged lease sales. *See* ECF No. 47 at 1, 3; ECF No. 47-1 ¶6 (Barnes Decl.). In its December 21, 2021 Notice of Intent to review the challenged leasing decisions, BLM stated:

> To ensure compliance with the National Environmental Policy Act (NEPA), relevant judicial authority, and applicable Executive and Secretarial Orders and Departmental policies regarding analysis of the impacts of greenhouse gas emissions—including Executive Order 13990, Secretary's Order 3399, and the 2020 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends—the BLM has determined to review the adequacy of NEPA analyses for

> its leasing decisions in the December 2018 Rio Puerco Field Office lease sale, the November 2019 Rio Puerco Field Office lease sale, and the February 2020 Rio Puerco and Farmington Field Offices lease sale. BLM anticipates that its review will encompass an assessment of lease sale impacts on air quality, greenhouse gas emissions, and environmental justice.[3]

BLM also explained that, "[c]onsistent with permanent Instruction Memorandum 2022-001, which applies to this reconsideration, these leases *remain in effect* during the review of the NEPA analyses. *Id.* (emphasis added); *see also* ECF No. 50 at 5. Accordingly, if the Court declines to grant vacatur of the leases, a preliminary injunction is necessary to prevent the additional development and irreparable harm that will ensue during that review and the pendency of this case.

B. Community Groups Have Demonstrated a Likelihood of Success on the Merits

In addition to BLM's own admission of "substantial and legitimate concerns" regarding its NEPA analyses for the challenged leases, Community Groups' opening merits brief demonstrates a likelihood of success on the merits. *See* ECF No. 46. Specifically, as Community Groups explained, BLM failed to take a hard look at cumulative greenhouse gas ("GHG") emissions and climate impacts; direct and cumulative health impacts (including health impacts related to air pollution); and environmental justice; BLM also failed to provide adequate opportunities for public participation.

As detailed in Community Groups' opening brief, ECF No. 46 at 12-23, BLM arbitrarily failed to take NEPA's requisite hard look at cumulative greenhouse gas emissions and climate impacts of all of the challenged lease sales in two main ways: (1) by merely listing projects piecemeal and quantifying GHG emissions in a vacuum, rather than analyzing their

[3] BLM's December 21, 2021 Notice of Intent, available at: https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing.

cumulative *impacts* in the context of the urgent, global climate crisis; and (2) by ignoring or rejecting the use of available tools, such as carbon budgeting and the social cost of carbon, for assessing and contextualizing the severity and significance of cumulative GHG emissions and effects. The court in *WildEarth Guardians v. Zinke* ("*Guardians I*") found that BLM's NEPA analysis for its oil and gas leasing decisions was arbitrary, capricious, and inadequate for similar failures to take a hard look at greenhouse gas emissions, and enjoined development on the leases accordingly. 368 F. Supp. 3d 41, 85 (D.D.C. 2019). *See also WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237 (D.D.C. 2020) (accord); *San Juan Citizens Alliance v. Bureau of Land Mgmt.,* 326 F. Supp. 3d 1227, 1248 (D.N.M. 2018) (requiring cumulative climate analysis and setting aside oil and gas leases); *WildEarth Guardians v. Bureau of Land Mgmt*., 457 F. Supp. 3d 880, 892, 894, 897 (D. Mont. 2020) (vacating oil and gas leases where cumulative climate analysis was ignored).

Moreover, courts in this Circuit have affirmed NEPA's requirement that agencies take a hard look at health effects in determining the significance of their decisions. *See, e.g., Middle Rio Grande Conserv. Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002)("the possible failure of flood protections presents a danger to public health and safety and thus is significant"). On this point, the court in *Wilderness Workshop v. United States Bureau of Land Mgmt.* recognized BLM's duty to take a hard look at health impacts in its NEPA analyses at the oil and gas leasing stage. 342 F. Supp. 3d 1145, 1163 (D. Colo. 2018). As discussed in Community Groups' opening brief, ECF No. 46 at 23-36, and indicated by BLM's concern regarding the sufficiency of its NEPA analyses, BLM was required to take a hard look at health impacts, including cumulative impacts, for the challenged lease sales, but failed to do so.

Likewise, BLM has identified serious concerns with its environmental justice analysis, a "relevant factor" requiring a hard look under NEPA. *See Coliseum Square Ass'n v. Jackson,* 465 F.3d 215, 232 (5th Cir. 2006); *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers,* 440 F. Supp. 3d 1, 9 (D.D.C. 2020), *aff'd sub nom. Standing Rock Sioux Tribe v. United States Army Corps of Engineers,* 985 F.3d 1032 (D.C. Cir. 2021). As detailed in Community Groups' opening brief, ECF No. 46 at 34-40, despite its mandate, BLM failed to take a hard look at environmental justice in any of its NEPA documentation for the challenged leases. Simply including a subsection titled "environmental justice" in BLM's lease sale EAs, while conducting only a cursory analysis, is not enough. *See Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 139-40 (D.D.C. 2017) (finding that agency's "limited analysis" of environmental justice, covering only construction impacts but not spill impacts or other factors, was "not enough to discharge the [agency's] environmental justice responsibilities under NEPA."). In its 2018 EA Addendum, and the November 2019 and February 2020 lease sale EAs, BLM acknowledged that the lease sale areas are home to a high percentage of "Native American," "minority," and "low-income populations," but failed to analyze disproportionate impacts to these populations or take this into account in its decision-making. *See, e.g.,* AR_Feb2020_137266. And, like the deficient EA in *Standing Rock,* BLM's NEPA analyses here were silent on "the distinct cultural practices of the Tribe and the social and economic factors that might amplify its experience of the environmental effects of an oil spill." *Standing Rock Sioux Tribe*, 255 F. Supp. 3d at 140. As the court articulated in *Standing Rock*, to meet its NEPA "hard look" mandate, the agency "needed to offer more than a bare-bones conclusion that Standing Rock would not be disproportionately harmed by a spill." *Id.*

Here, too, BLM has failed to take a hard look at environmental justice, and Community Groups are likely to succeed on the merits of this claim. *See* ECF No. 46, at 34-40.

Finally, as detailed in Community Groups' opening brief, ECF No. 46 at 40-43, BLM also failed to provide adequate opportunity for public participation. *Western Watersheds Project v. Zinke* is instructive on this point. 336 F. Supp. 3d 1204 (D. Idaho 2018). The court held that Instruction Memorandum (IM) 2018-034—under which BLM conducted the inadequate public participation process for the challenged lease sales—was "both procedurally and substantively invalid under FLPMA and NEPA," and issued a preliminary injunction barring BLM from using IM 2018-034's inadequate public participation provisions. *Id.* at 1239, 1247-48. *See also W. Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042, 1073, 1090 (D. Idaho 2020) (holding IM 2018-034 to be "both procedurally and substantively invalid under FLPMA and NEPA" and setting aside lease sales conducted under its public participation provisions). In adopting IM 2018-034—and applying it to the lease sales here—BLM acted with the intent to "dramatically reduce and even eliminate public participation" in its decision-making process. *Western Watersheds Project*, 336 F. Supp. 3d at 1238. However, "the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales." *Id*. Thus, Community Groups are also likely to succeed on the merits of their public participation claim. *See* ECF No. 46, at 40-43.

Under analogous circumstances, Community Groups also succeeded on the merits of a drilling-stage challenge in this same Greater Chaco region, where BLM similarly failed to take a hard look at cumulative impacts—in that case, water impacts. *See Diné CARE v. Bernhardt*, 923 F. 3d 831 (10th Cir. 2019). By requiring analysis of the "cumulative impacts [that] result from individually minor but collectively significant actions taking place over a period of time,"

NEPA ensures that agency decisions affecting the environment are not made in a vacuum. 40 C.F.R. § 1508.7; *see also Wilderness Workshop v. Bureau of Land Mgmt.*, 531 F.3d 1220, 1228 n.8 (10th Cir. 2008); *Northern Plains Res. Council v. Surface Trsp. Bd.*, 668 F.3d 1067, 1078-79 (9th Cir. 2011) (holding an agency is not permitted to pretend its project "operat[ed] in a vacuum" by ignoring reasonably foreseeable cumulative impacts of nearby drilling). Cumulative impacts analysis prevents agencies from undertaking a piecemeal review of environmental impacts. *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1306-07 (9th Cir. 2003). The Tenth Circuit rejected BLM's piecemeal approach and required a cumulative water impacts analysis in *Diné CARE*, 923 F. 3d at 856, 858-59. BLM's continued use of this approach must also be rejected here, especially where BLM itself has acknowledged serious concern with its cumulative impacts analyses, or lack thereof, for the challenged lease sales.

Finally, where, as here, BLM has failed to provide a "reasoned explanation" for its leasing decisions, courts have found this to be a "'serious failing' that 'leaves the Court in doubt as to whether the agency chose correctly in making its' leasing decisions." *Guardians I*, 368 F. Supp. 3d at 85 (quoting *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 282 F. Supp. 3d 91, 98 (D.D.C. 2017)). "To guard against the possibility that BLM did not choose correctly the first time around," the court in *Guardians I* enjoined BLM from issuing any APDs for the challenged leases during remand of the agency's flawed NEPA analysis, stating, "[u]ntil BLM sufficiently explains its conclusion that the [challenged] Lease Sales did not significantly affect the environment, BLM may not authorize new drilling on the leased parcels." 368 F. Supp. 3d at 85. Here, if the Court declines to vacate the leases, injunctive relief is warranted given the agency's similar failure to adequately consider GHG emissions and

climate impacts, as well as the agency's acknowledged "substantial concerns" with its prior analyses.

II. Community Groups Will Suffer Immediate and Irreparable Injury

Irreparable harm occurs when an injury is "certain, great, actual and not theoretical." *Vill. of Logan v. U.S. Dep't of Interior*, 577 F. App'x 760, 766 (10th Cir. 2014) (citations omitted); *see also Winter*, 555 U.S at 22 (irreparable injury must be "likely" but for an injunction). A plaintiff satisfies the irreparable harm requirement by demonstrating "a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages." *Greater Yellowstone Coal. v. Flowers,* 321 F.3d 1250, 1258 (10th Cir. 2003). As the Supreme Court recognizes: "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Amoco Prod. Co. v. Vill. of Gambell,* 480 U.S. 531, 545 (1987); *see also, Catron Cnty. Bd. of Comm'rs, New Mexico, v. U.S. Fish & Wildlife Serv.*, 75 F.3d 1429, 1440 (10th Cir. 1996) (accord). While "harm to the environment may be presumed when an agency fails to comply with the required NEPA procedure … [p]laintiffs must still make a specific showing that the environmental harm results in irreparable injury to their specific environmental interests." *Davis v. Mineta*, 302 F.3d 1104, 1115 (10th Cir. 2002) (abrogated on other grounds).

Here, Community Groups demonstrate irreparable harm from: (1) damage and permanent destruction of sacred lands and environmental resources from ground disturbance, road-building, drilling, and production associated with APD development and other development on the challenged leases; (2) health risks and impacts and increased concerns over potential health impacts from development on the challenged leases; and (3) leasing and APD

approvals and development occurring in the absence of adequate environmental review required by NEPA, which undermines the statute's purpose that agencies "look before they leap" and risks unleashing a "bureaucratic steamroller" that makes it less likely Citizen Groups will obtain any meaningful on-the-ground relief if they prevail on the merits. *See Davis*, 302 F.3d at 1115.

Diné CARE v. Jewell considered irreparable harm in a similar context and concluded that, absent preliminary relief, continued development of challenged APDs would cause irreparable harm. 2015 WL 4997207 (D.N.M. Aug. 14, 2015), *aff'd,* 839 F.3d 1276 (10th Cir. 2016). There, the court summarized: "the harms that the requested injunction seeks to prevent would be irreparable. Environmental harms are often irreparable, and the particular environmental injury in this case—that associated with fracking—is irreversible once a well is fracked." *Id.* at *1. The court concluded that "[a]ny fracking-related environmental impacts that accrue during the pendency of this case—and it is undisputed that such impacts exist—would be irreversible." *Id.* at *46. While the present case involves leasing rather than drilling, the same development harms apply because the leasing stage represents the point of irretrievable commitment of resources to a project. *New Mexico ex rel. Richardson v. Bureau of Land Mgmt*, 565 F.3d 683, 718 (10th Cir. 2009). Accordingly, Community Groups seek to enjoin further APD approvals, development, and other ground-disturbing activities on the leases, as in *Diné CARE v. Jewell.* Thus, the court's conclusion that APD development would cause irreparable harm warranting injunction is also true, here.

A. Irreparable Harm to People and Communities, Sacred Lands, and the Environment is Already Occurring and Will Continue if Future Development is Not Enjoined.

Courts have consistently found irreparable harm where the authorized activity will result in impacts to the natural environment—the precise type of harm threatened here by

approval of APDs and related development on the leases challenged here. For example, the court in *San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Serv.* found irreparable harm from drilling just two exploratory oil and gas wells, disturbing 14 acres of public lands, because such development would threaten, *inter alia*: "water for the community, clean air, and [a] large expanse of undeveloped land with a significant 'sense of place' and quiet[,]" and because plaintiffs "have interests in the water, wildlife, air, solitude and quiet, and natural beauty [the area] provides." 657 F. Supp. 2d 1233, 1240 (D. Colo. 2009).[4] The court specifically noted that individuals would be affected "by noise and their aesthetic interests … by increased traffic and drill rigs." *Id.* Moreover, *San Luis Valley* enjoined well construction even where impacts to environmental resources might be temporary and disturbance eventually reclaimed. *Id.* at 1241. *Diné CARE v. Jewell* provided:

> Plaintiffs have pointed to a number of ways in which even properly functioning directionally drilled and fracked wells produce environmental harms. These are cited in the Court's findings of fact, and include air pollution, water usage, and surface impacts.

2015 WL 4997207 *48. Other courts have similarly found irreparable harm where the proposed action would impair the natural setting or result in harm to physical or aesthetic values in the environment, none of which are compensable with money damages.[5]

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[4] *See also Anglers of the AU Sable v. U.S. Forest Serv.,* 402 F. Supp. 2d 826, 837 (E.D. Mich. 2005) (staying development of a single 3.5-acre exploration well based on irreparable harm from destruction of "the quiet and peaceful aspects" of the tract; altered wildlife patterns; effects on predator-prey relationships; species habitat disturbance; and lost recreational opportunities.).

[5] *See Colorado Wild, Inc., v. U.S. Forest Service,* 523 F. Supp. 2d 1213, 1220 (D. Colo. 2007) (finding irreparable harm due to "environmentally destructive road construction" and associated site development); *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 323 (D.C. Cir. 1987) (issuing a preliminary injunction where "any mining or leasing could cause irreparable injury by permanently destroying wildlife habitat, air and water quality, natural beauty, and other environmental and aesthetic values and interests.").

Here, Community Groups face each of these discrete environmental harms through BLM's approval of the 42 lease parcels across nearly 45,000 acres of lands, the subsequent approval of 118 individual Mancos Shale drilling permits,[6] as well as related road access and arterial road right-of-way approvals. Beasley Decl. Exhibit 2 at 4-5 (Arterial Road EA), and attached Decision Record, at 1-7. One well has already been spudded, and road construction has already begun. ECF Nos. 47 at 11 n.7, 47-1 ¶10; Atencio Decl. ¶ 9, and accompanying photographs. This development adds to a legacy of environmental harm across the Greater Chaco Landscape, including over 40,000 historic wells in the San Juan Basin. These 42 lease authorizations, the 118 APDs approved to-date, future APD approvals, and ongoing and future road construction and related development will result in direct and cumulative, irreparable harms to people and communities, sacred landscapes, and environmental resources—including increased traffic and accidents, increased spill risks, and drinking water contamination,[7] and myriad, adverse health risks and effects associated with air pollution, from acute headaches and eye and skin irritation to long-term, even deadly respiratory illness and birth defects.[8] Yet BLM has never analyzed the cumulative impacts of this development across the Greater Chaco Landscape. Moreover, BLM has failed to provide adequate opportunities for public participation and consultation, both for the challenged lease sales and for the associated APD and road right-of-way approvals. *See* Atencio Decl. ¶¶ 9-11.

These impacts cause or contribute to specific harms suffered by individual members of Community Groups, including, for example: degradation of their use and enjoyment of Chaco

[6] *See* ECF Nos. 47 at 11 n.7, 47-1 ¶10; Beasley Decl. ¶¶ 2-3 and Exhibit 1 at 1-2.
[7] *See* ECF No. 46-5, Pinto Decl. ¶¶ 5-10; ECF No 46-2, King-Flaherty Decl. ¶¶ 8-11; Atencio Decl. ¶¶ 3-7, 12-13.
[8] *See* ECF No. 46-2, King-Flaherty Decl. ¶¶ 12-14; ECF No. 46-3, Seamster Decl. ¶¶ 7-18. ECF No. 46-6, Pinto Decl. ¶ 5.

Culture National Historical Park, the surrounding areas, and cultural sites and resources including the Sisnaateel Mesa Complex;[9] impacts to air quality and water quality; disturbance from flaring; a reduction in solitude and quiet; increased noise; increases in traffic; and disruptions of spiritual experiences associated with the natural landscape and traditional cultural and ceremonial practices.[10] These harms are irreparable.[11]

B. The Health of Diné and Other Community Members Is Threatened by Ongoing and Future Development of the Mancos Shale.

In addition to the irreparable environmental harms suffered by Community Groups' members from degradation of the Greater Chaco Landscape, Community Groups' members are already experiencing adverse impacts to their health and wellbeing, and are at risk of additional impacts, from the challenged leasing decisions, the associated APD and right-of-way approvals, and imminent future development. Where a proposed action threatens to adversely affect human health, courts consistently issue preliminary injunctions to prevent such harm. For example, in *Sierra Club v. U.S. Dep't of Agric.*, the court enjoined a proposed action that "will emit substantial quantities of air pollutants that endanger human health and the environment and thereby cause irreparable harm." 841 F. Supp. 2d 349, 356, 358 (D.D.C. 2012) (finding that "remedies available at law, such as monetary damages, are inadequate to compensate for th[e] injury") (quoting *Monsanto v. Geertson Seed Farms*, 561 U.S. 139, 141 (2010)).[12]

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[9] Atencio Decl. ¶¶ 8-10; ; ECF No. 46-4, Nichols Decl. ¶¶ 14-19; ECF No. 46-2, King-Flaherty Decl. ¶¶ 18-21; ECF No. 46-5, Pinto Decl. ¶¶ 4, 11-12.

[10] *See* Atencio Decl. ¶¶ 2-13; ECF No. 46-3, Seamster Decl. ¶¶ 6-20; ECF No. 46-2, King-Flaherty Decl. ¶¶ 8-11, 12-14; ECF No. 46-4, Nichols Decl. ¶¶ 14-19; ECF No. 46-6 Eisenfeld Decl. ¶¶ 2-5; ECF No. 46-5, Pinto Decl. ¶¶ 3-12.

[11] *See Diné CARE v. Jewell,* 2015 WL 4997207 *48.

[12] *See also, Fairway Shoppes Joint Venture v. Dryclean U.S.A. of Florida, Inc.,* 1996 WL 924705 at *10 (S.D. Fla. 1996) ("the requirement of irreparable harm for a preliminary injunction is satisfied by showing a threat of harm to the public health or environment: actual harm to human health or the environment is not required to preliminarily enjoin the polluter.").

The harm to public health from oil and gas operations is well-documented and acknowledged by frontline communities and scientific and medical researchers and practitioners alike.[13] For example, hydraulic fracturing involves the use of chemicals known to impact and cause long-term harm to organs and body systems, including impacts to skin, eyes, sensory organs, the respiratory system, the gastrointestinal system, and the reproductive system.[14] Moreover, oil and gas operations authorized by the leases and associated APD and road development result in elevated concentrations of health-damaging air pollutants such as volatile organic compounds, aromatic hydrocarbons, particulate matter, and ground level ozone.[15] As detailed in the record and in Community Groups' opening brief, ECF No. 46 at 32, even short-term exposures to these air pollutants can have serious long-term effects, even death—the ultimate irreparable harm.[16]

Here, Community Groups' members already suffer many of these adverse health impacts, which the proposed actions threaten to exacerbate in the absence of preliminary relief. Atencio Decl. ¶¶ 5-10, 12. Such adverse human health impacts cause irreparable harm to people and communities.

C. BLM's Continued Authorization of Mancos Shale Leasing, Drilling Permits, and Related Development Absent NEPA and FLPMA Compliance Threatens Irreparable Harm.

Finally, Community Groups will suffer irreparable harm from leasing authorizations

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[13] *See, e.g.,* AR_Feb2020_154871 (Compendium of scientific and medical findings re: fracking risks and harms); AR_Feb2020_155164 (peer-reviewed literature assessment on health effects of fracking).; ECF No. 46-3, Seamster Decl. ¶¶ 6-20; *See also* Opening Br. at 23-36.
[14] *See, e.g.,* AR_Feb2020_151579-84 (pollutant emissions and adverse birth outcomes); AR_Feb2020_153751-60 (occupational exposures); ECF No. 46-3, Seamster Decl. ¶ 9-14.
[15] *See, e.g.,* AR_Feb2020_154888-90; AR_Feb2020_155249 (respiratory health effects of oil and gas air pollutant emissions); AR_Feb2020_155137; ECF No. 46-3, Seamster Decl. ¶ 9-14.
[16] *See* AR_Feb2020_155226; AR_Feb2020_155146; U.S. EPA, National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292, 65302, 65306-08 (Oct. 26, 2015).

and associated drilling permit approvals that fail to comply with NEPA. As a procedural statute, NEPA's fundamental purpose is to influence the agency's decision-making process "by focusing the [federal] agency's attention on the environmental consequences of a proposed project," so as to "ensure[ ] that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 349 (1989). *See also Sierra Club v. Hodel,* 848 F.2d 1068, 1097 (10th Cir. 1988). The "assessment of all 'reasonably foreseeable' impacts must occur at the earliest practicable point, and must take place before an 'irretrievable commitment of resources' is made." *Richardson*, 565 F.3d at 718; 42 U.S.C. § 4332(2)(C)(v); 40 C.F.R. §§ 1501.2, 1502.22.

Accordingly, courts routinely issue preliminary injunctions where, as here, the agency fails to comply with the required NEPA procedure. *Davis,* 302 F.3d at 1114 ("In mandating compliance with NEPA's procedural requirements as a means of safeguarding against environmental harms, Congress has presumptively determined that the failure to comply with NEPA has detrimental consequences for the environment."). "[W]hen a decision to which NEPA obligations attach is made without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent has been suffered." *Sierra Club v. Marsh,* 872 F.2d 497, 500 (1st Cir. 1989) (citations omitted). As explained in *Colorado Wild, Inc., v. U.S. Forest Service*:

> Thus, the irreparable injury threatened here is not simply whatever ground-disturbing activities are conducted in the relatively short interim before this action is decided, it is the risk that in the event the [agency's NEPA decisions] are overturned and the agency is required to 'redecide' the [ ] issues, the bureaucratic momentum created by Defendants' activities will skew the analysis and decision-making of the [agency] towards its original, non-NEPA compliant [ ] decision.

523 F. Supp. 2d 1213, 1221 (D. Colo. 2007); *see also, Marsh,* 872 F.2d at 504 ("The difficulty

of stopping a bureaucratic steam roller, once started … seems to us … a perfectly proper factor for a district court to take into account … on a motion for preliminary injunction.").[17]

Here, because BLM has already initiated a remand process to reconsider its leasing decisions, allowing further development on those leases pending remand will inherently bias that analysis and cause the type of bureaucratic momentum NEPA aims to avoid. *Colorado Wild*, 523 F. Supp. 2d at 1221. BLM has already recognized that unanalyzed environmental impacts could occur from development of the leases, and the agency has identified "substantial concerns" about the NEPA analyses on which it relied in approving the lease sales ECF Nos. 47 and 47-1. Yet BLM relied on these same flawed NEPA analyses from December 2018 in approving 118 drilling permits on the challenged leases. *See* Beasley Decl. Exhibit 1, at 2; Beasley Decl. ¶ 5. In spite of the agency's serious concerns about these NEPA analyses and the present legal challenge, the agency has defiantly approved more than a hundred new drilling permits on the challenged leases, over three times as many wells than BLM considered in its NEPA analyses to date. *See Methow Valley*, 490 U.S. at 349 (agencies must "look before they leap"). The agency has also done so without adequate opportunities for participation or consultation. Atencio Decl. ¶¶ 9-11. Community Groups thus face irreparable harm from the inability to participate effectively in agency environmental evaluations—as well as irreparable environmental and health harms—if this Court allows development to continue on the challenged leases while BLM's review of its NEPA analyses and decisions proceeds.

[17] *See also San Luis Valley*, 657 F. Supp. 2d at 1241-42 ("Plaintiffs' procedural interest in a proper NEPA analysis is likely to be irreparably harmed if [the industry proponent] were permitted to go forward with the very actions that threaten the harm NEPA is intended to prevent, including uninformed decisionmaking."); *Save Strawberry Canyon v. Dep't of Energy,* 613 F. Supp. 2d 1177, 1187 (N.D. Cal. 2009) ("There is no doubt that the failure to undertake an EIS when required to do so constitutes procedural injury to those affected by the environmental impacts of a project.").

III. The Balance of Equities Tips Strongly in the Plaintiffs' Favor

Permanent harms to the environment, human health, and Community Groups' legal rights outweigh any ostensible harm BLM and intervenors may incur by maintaining the status quo, as well as the temporary, conditional, and purely economic harm to lessees. Any injury incurred by BLM through a delay in drilling, or any prospective harm to lessees, is both speculative and pales in comparison to the irreparable harm faced by Community Groups, detailed above. Moreover, BLM has indicated that it plans to complete its supplemental NEPA analysis for the challenged leases by April 15, 2022, followed by a 30-day public comment period. ECF No. 47 at 4 (citing ECF No. 47-1 ¶7). While Community Groups request that the injunction remain in place pending this Court's determination that such supplemental analysis is legally sufficient, the schedule advanced by BLM confirms that any delay would not be open-ended. A delay in drilling, and any ostensible economic harms to Intervenors associated with delay, would thus be minimal. Moreover, as the Tenth Circuit has consistently recognized, "financial concerns alone generally do not outweigh environmental harm." *Valley Cmty. Pres. Comm'n v. Mineta*, 373 F.3d 1078, 1086 (10th Cir. 2004).[18] This case is no exception.

The balance of harms must also be considered in the context of the challenged activity, which is subject to compliance with NEPA and the protection of natural resources,[19] and therefore also tips in favor of Community Groups. The approval of the leases and subsequent

[18] *See also Amoco*, 480 U.S. at 545; *Acierno v. New Castle Cnty.,* 40 F.3d 645, 653 (3d Cir. 1994); *San Luis Valley,* 657 F.Supp.2d at 1242.

[19] 43 C.F.R. § 3161.2 (requiring "all [oil and gas] operations be conducted in a manner which protects other natural resources and the environmental quality, protects life and property…"); 43 C.F.R. § 3162.1(a) ("The [oil and gas] operating rights owner or operator … shall comply with applicable laws and regulations;" including "conducting all operations in a manner … which protects other natural resources and environmental quality."). *See also* 30 U.S.C. § 226(p)(2)(A) (requiring BLM to defer APD approval where it has not sufficiently completed the NEPA process, or where approval would not be in compliance with other applicable laws).

drilling permits and development violates NEPA by failing to take a hard look at GHG emissions and climate impacts, air quality impacts, health impacts, and environmental justice and failing to provide adequate opportunity for public participation, and thus BLM's environmental mandate cannot be satisfied. *See Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371, (1989) (holding "NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."). *See also Grand Canyon Trust v. Federal Aviation Admin.,* 290 F.3d 339, 342 (D.C. Cir. 2002) (in evaluating the environmental consequences of a proposed action, the agency "must give a realistic evaluation of the total impacts and cannot isolate a proposed action, viewing it in a vacuum.").

Finally, more than economic harm must be shown to outweigh certain environmental destruction, harm to human health, and the desecration of lands sacred to Diné peoples. *Northern Alaska Envtl. Ctr. v. Hodel*, 803 F.2d 466, 471 (9th Cir. 1986). *See also, Acierno,* 40 F.3d at 653 (recognizing that "[e]conomic loss does not constitute irreparable harm…"); *Lands Council v. McNair*, 494 F.3d 771, 780 (9th Cir. 2007) ("We have held time and again that the public interest in preserving nature … outweighs economic concerns"). This is particularly true where, as here, *permanent* environmental destruction and harm to human health must be weighed against the *temporary* suspension of further APD approvals, ground-disturbing activities, and development on the challenged leases.

Critically, the leasing authorizations, associated drilling permits, and road approvals at issue—and any economic gains therefrom—are by law and rule expressly subject to and conditioned upon compliance with NEPA.[20] Put differently, oil and gas lessees have neither the

[20] *See* 30 U.S.C. § 226 (p)(2) (requiring BLM to defer APD approval where it has not sufficiently completed the NEPA process); 43 C.F.R. § 3162.1(a) (requiring oil and gas operating rights to comply with applicable laws and regulations).

legal right nor any legitimate expectation to drill before BLM fully complies with NEPA. In an analogous case, *San Luis Valley,* the court halted construction of a drilling project because the "likelihood of irreparable environmental injury and the risk of uninformed decisionmaking regarding such delicate and intertwined natural resources, outweighs any potential harm accruing to Defendants." 657 F.Supp.2d at 1242. There, the court concluded that the balance of harms favored the environmental plaintiffs because "harm, delay in drilling the exploratory wells, is not irreparable in that it can be compensated by money damages." *Id.*[21] Similarly, any monetary interest that BLM, lessees, or drilling proponents may allege cannot outweigh the injuries that Community Groups would suffer in the absence of an injunction, including harms from the ongoing and imminent future desecration of lands sacred to Diné peoples. The balance of equities supports preliminary relief.

IV. Granting Preliminary Relief is in the Public Interest

The public interest is strongly served through the protection of people and the environment, as well as by ensuring BLM's compliance with federal law. These interests are threatened by ongoing and future leasing and drilling of Mancos Shale wells and the sacred Sisnaateel Mesa Complex. As recognized in *Colorado Wild v. U.S. Forest Serv.,* "[t]here is an overriding public interest in the preservation of biological integrity and the undeveloped character of the Project area that outweighs public or private economic loss in this case." 299 F.

[21] *See also Colorado Wild,* 523 F. Supp. 2d at 1222 ("[E]conomic harm, however, is not irreparable and does not outweigh the serious risk that irreparable environmental harm will result if [the project proponent] is allowed to proceed with [development] in reliance on the [agency's] decision."); *Save Our Sonoran, Inc. v. Flowers,* 408 F.3d 1113, 1125 (9th Cir.2005) (affirming preliminary injunction in NEPA case because, while developer "may suffer financial harm" if injunction issued, balance of harms favored issuance of injunction where irreparable harm was likely if development was allowed to proceed without proper review).

Supp. 2d 1184, 1190-91 (2004).[22] Likewise, the "protection of human health, safety and the affected communities also serves the public interest." *San Luis & Delta-Mendota Water Auth. v. Locke*, No. 1:09-cv-01053-OWW-DLB, 2010 WL 500455, at *8 (E.D. Cal. 2010). BLM itself has acknowledged the significance of Greater Chaco to those who call it home and to the broader public, stating that "Chaco Canyon is unique and is one of the world's most culturally significant landscapes."[23] Absent vacatur of the leases, an injunction in this case is vital to protecting the public interest by preventing ongoing environmental harm and public health impacts from further leasing and oil and gas development in Greater Chaco and, specifically, the Sisnaateel Mesa Complex.

Similarly, "the public has an interest in ensuring that federal agency actions … comply with the requirements of NEPA." *Sierra Club*, 841 F. Supp. 2d at 360. As recognized in *Colorado Wild*: "The public has an undeniable interest in the [agency's] compliance with NEPA's environmental review requirements and the informed decision-making that NEPA is designed to promote." 523 F. Supp. 2d at 1223. Indeed, the refusal of administrative agencies to comply with environmental laws "invokes a public interest of the highest order: the interest in having government officials act in accordance with law." *Seattle Audobon Society v. Evans*, 771 F. Supp. 1081, 1096 (W.D. Wash. 1991).

The approval of oil and gas leasing and development is subject to and does not

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[22] *See also Wyo. Outdoor Coordinating Council v. Butz*, 484 F.2d 1244, 1250 (10th Cir. 1973) ("[T]here is an overriding public interest in preservation of the undeveloped character of the area recognized by the statute.") *overruled on other grounds by Vill. of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970 (10th Cir. 1992).

[23] BLM Press Release, available at: https://www.blm.gov/press-release/bureau-land-management-takes-next-steps-protect-chaco-canyon.

supersede the public's interest in environmental protection, public health, and compliance with federal law. *See* 43 C.F.R. § 3161.2 (a); 30 U.S.C. § 226(p)(2)(A). On this point, in a case involving natural gas development on public lands, the District of Wyoming held:

> The Court is cognizant of the importance of mineral development to the economy of the State of Wyoming. Nevertheless, mineral resources should be developed responsibly, keeping in mind those other values that are so important to the people of Wyoming, such as preservation of Wyoming's unique natural heritage and lifestyle. The purpose of NEPA … is to require agencies … to take notice of these values as an integral part of the decisionmaking process.

Wyo. Outdoor Council v. U.S. Army Corps of Eng'rs, 351 F.Supp.2d 1232, 1260 (D. Wyo. 2005). Similarly, here, the public interest in protecting our environment, sacred lands, human health, and environmental justice, and ensuring meaningful public participation and lawful agency decision-making, strongly favors the need for a preliminary injunction absent vacatur of the leases, particularly given that a likelihood of success on the merits has already been established through BLM's remand.

V. Requiring Community Groups to Pay a Substantial Bond Would Chill or Preclude Access to the Courts and Frustrate NEPA's Purposes

If this Court grants Community Groups' Motion for preliminary relief, Community Groups respectfully request that the Court impose no bond or a nominal bond under the public interest exception to Fed. R. Civ. P. 65(c). Although Rule 65(c) generally requires a security to be posted in conjunction with a preliminary injunction, "the trial judge has wide discretion in the matter of requiring security" and under some circumstances, "no bond is necessary." *Continental Oil v. Frontier Refining*, 338 F.2d 780, 782 (10th Cir. 1964). Under Tenth Circuit precedent, "[o]rdinarily, where a party is seeking to vindicate the public interest served by NEPA, a minimal bond amount should be considered." *Davis*, 302 F.3d at 1126. Because

Community Groups here are seeking to "vindicate the public interest served by NEPA," a nominal or no bond is appropriate. *Id.*; *see also Colorado Wild*, 523 F. Supp. 2d at 1230-31.

Community Groups are not-for-profit organizations whose missions involve protecting the environment and public health and vindication of the public interest; none of the plaintiffs has any financial interest in the outcome of this case. If substantial bonds were regularly required from these groups in order to obtain preliminary relief, they would be precluded from seeking such relief—even when a court would otherwise find it appropriate. Because a preliminary injunction is necessary to prevent the very harm that necessitated this suit, denial of preliminary relief would deny Community Groups effective access to judicial review of illegal agency actions. As the Tenth Circuit implicitly recognized in *Davis*, such a result would defeat NEPA's purpose.

CONCLUSION

Because Community Groups have satisfied each element for preliminary relief, they respectfully request the Court grant their Motion for a Preliminary Injunction if the Court does not grant vacatur of the leases. *See* ECF No. 50. An injunction would prevent further irreparable harm to people and communities, and to the specific sacred lands at issue, during the pendency of BLM's supplemental NEPA analysis for the challenged leases. Community Groups request the Court order BLM to suspend all APD approvals and associated development on the challenged leases, and enjoin all further APD approvals and ground-disturbing activities and other development on the challenged leases, pending the Court's determination that the agency's supplemental NEPA analysis is legally adequate.

Respectfully submitted this 19th day of January, 2022.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on January 19, 2022, I electronically filed the foregoing PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND SUPPORTING MEMORANDUM with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to other participants in this case.

s/*Allyson A. Beasley*

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