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9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 WESTERN WATERSHEDS PROJECT and  
12 the CENTER FOR BIOLOGICAL  
13 DIVERSITY,

14 Plaintiffs,

15 vs.

16 U.S. DEPARTMENT OF THE INTERIOR,  
17 BUREAU OF LAND MANAGEMENT,  
18 JARED BYBEE in his official capacity as  
19 Field Manager of the Bureau of Land  
20 Management Bristlecone Field Office, and  
21 SHIRLEY JOHNSON in her official capacity  
22 as Field Manager of the Bureau of Land  
23 Management Caliente Field office,

24 Defendants.

Case No: 2:23-cv-435-CDS-DJA

**MOTION FOR PRELIMINARY  
INJUNCTION**

1 **INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 65(b), Plaintiffs Western Watersheds Project  
3 (Western Watersheds) and the Center for Biological Diversity (the Center) request a preliminary  
4 injunction to prevent imminent irreparable harm from the indiscriminate destruction of pinyon-  
5 juniper woodlands on federal public lands in eastern Nevada. The lands in question provide  
6 habitat for a number of highly sensitive and imperiled wildlife species, including greater sage-  
7 grouse, pygmy rabbits, and pinyon jays. Plaintiffs’ members frequently visit these lands to view  
8 wildlife and enjoy their outstanding scenic, recreational, scientific, and spiritual values.  
9 Defendants plan to destroy up to 2,000 acres of these undisturbed woodlands and shrublands in  
10 October of this year as part of the euphemistically named “South Spring Valley and Hamlin Valley  
11 Watershed Restoration Plan,” (the Project) approved on September 28, 2022 over strenuous public  
12 objection and in violation of the National Environmental Policy Act (NEPA), the Federal Land  
13 Policy and Management Act (FLPMA), and the Administrative Procedure Act (APA). Plaintiffs  
14 seek preliminary injunctive relief to halt 2,000 acres of woodland destruction scheduled for  
15 October 2023, as well as any other ground-disturbing activities—including mechanical sagebrush  
16 removal, prescribed fire, and mechanical pinyon-juniper clearing—which may occur before this  
17 litigation is resolved.

18 **FACTUAL BACKGROUND**

19 **I. Imminent Harm to Public Lands and Wildlife**

20 Defendants intend to conduct up to 2,000 acres of “chaining” in Spring and Hamlin Valleys  
21 as early as October 2023. *See* Exh. 19. According to the Bureau of Land Management’s (BLM)  
22 Environmental Assessment (EA) for the Project, “chaining” involves using a “Navy ship anchor  
23 chain with 40-120 pound links and 18-inch railroad iron welded perpendicular to the chain link”  
24 or “smooth chain” with 40-120 pound links, pulled between two bulldozers. *See* Exh. 14 (EA) at  
25 95. This method of removing pinyon-juniper woodlands is particularly destructive. *See* Exh. 2  
26 (Stricklan Decl.) ¶ 22. It “uproot[s] and shred[s] juniper trees and sagebrush plants” alike, and  
27 “produces large areas of bare ground” that are nearly guaranteed to become infested with invasive

1 species like cheatgrass (*Bromus tectorum*). *Id.* The location of BLM’s proposed October chaining  
2 also overlaps with sage-grouse habitat and “lands with wilderness characteristics.” *Compare* Exh.  
3 19 at 11 (map of proposed chaining location) *with* Exh. 14 (EA) at 80-81.

## 4 **II. Affected Environment and Wildlife Species**

5 South Spring and Hamlin Valleys are located in far-eastern Nevada near Great Basin  
6 National Park. Both valleys contain vast areas of federal public land, managed by Defendant BLM.  
7 These public lands provide habitat for a wide variety of wildlife species, including the imperiled  
8 greater sage-grouse (*Centrocercus urophasianus*) and pinyon jay (*Gymnorhinus cyanocephalus*).  
9 ECF 1 (Complaint) ¶ 104; Exh. 14 (EA) at 33, 37-38. BLM itself has identified sagebrush  
10 shrublands in South Spring and Hamlin Valleys as having “the highest habitat value for  
11 maintaining sustainable [sage-grouse] populations.” ECF 1 (Complaint) ¶¶ 2, 93. South Spring and  
12 Hamlin Valleys also host millennia-old pinyon-juniper forests, including a grove of Utah juniper  
13 on the floor of Spring Valley known as *Bahsawahbee*, or the “Swamp Cedars,” which are sacred  
14 to the area’s original inhabitants, the Western Shoshone. *See* Exh. 6 (Delaine Spilsbury Decl.) ¶¶  
15 4-5; Exh. 5 (Rick Spilsbury Decl.) ¶¶ 9-10.

### 16 **A. Sagebrush Shrublands**

17 Sagebrush is the most widespread vegetation in the intermountain lowlands in the western  
18 United States and is considered one of the most imperiled ecosystems in North America. Exh. 9,  
19 75 Fed. Reg. 13910, 13912, 13916 (March 23, 2010). Sagebrush ecosystems across the West are  
20 threatened by ground-disturbing human activities, which encourage the invasion of cheatgrass and  
21 other invasive annual grasses. Exh. 9 (75 Fed Reg. 13936); Exh. 2 (Stricklan Decl.) ¶¶ 28-32; Exh.  
22 1 (Rosentreter Decl.) ¶¶ 19, 21-23. Once established, these invasive, non-native grasses provide  
23 abundant and continuous fuel for wildfires, thus increasing both wildfire risk and frequency. Exh.  
24 9 (75 Fed Reg. 13932); Exh. 2 (Stricklan Decl.) ¶ 33; Exh. 1 (Rosentreter Decl.) ¶¶ 17, 21, 29, 32.  
25 While sagebrush plants are killed by fire and extremely slow to reestablish, cheatgrass recovers  
26 quickly, often within one to two years. Exh. 9 (75 Fed Reg. 13932); Exh. 2 (Stricklan Decl.) ¶¶  
27 28-30. Consequently, ground-disturbing projects, such as the proposed chaining here, often lead

1 to a recurring “cheatgrass-fire cycle” that prevents sagebrush reestablishment and permanently  
2 eliminates sagebrush habitat. Exh. 9 (75 Fed Reg. 13932, 13957); Exh. 2 (Stricklan Decl.) ¶ 35;  
3 Exh. 1 (Rosentreter Decl.) ¶ 17.

4 Ground disturbance further harms sagebrush ecosystems by reducing or eliminating  
5 biological soil crusts—“complex assemblages of lichens, algae, cyanobacteria, mosses and  
6 bryophytes” that stabilize soils, prevent erosion, and contribute vital nutrients to the soil. Exh. 2  
7 (Stricklan Decl.) ¶ 59, Exh. 14 (EA) at 21. Biological soil crusts also protect shrublands from weed  
8 invasion, including from invasive species such as cheatgrass. Exh. 2 (Stricklan Decl.) ¶ 59, Exh. 1  
9 (Rosentreter Decl.) ¶ 14. However, they are extremely susceptible to damage and destruction,  
10 particularly from heavy machinery and, like sagebrush, can take decades to recover. Exh. 2  
11 (Stricklan Decl.) ¶ 59, Exh. 1 (Rosentreter Decl.) ¶¶ 15-16. Currently, very little sagebrush within  
12 its extant range is undisturbed or unaltered from its condition prior to EuroAmerican settlement in  
13 the late 1800s. Exh. 9 (75 Fed. Reg. 13917).

## 14 **B. Sagebrush Wildlife Species**

### 15 **1. The Greater Sage-Grouse**

16 The greater sage-grouse is the largest grouse species found in North America. Sage-grouse  
17 are ground-dwelling birds, and because they depend upon sagebrush for food, shelter, and hiding  
18 cover throughout their lifecycle, they are considered “sagebrush obligates.” ECF 1 (Complaint) ¶  
19 42; Exh. 9 (75 Fed. Reg. at 13912, 13915). Sage-grouse populations have been declining since the  
20 1960s due to the destruction and degradation of their sagebrush habitat. ECF 1 (Complaint) ¶ 43.  
21 Average population declines across the range of the species are estimated at 2 percent per year  
22 from 1965 to 2015, or a total of 66 percent over that same time period. *Id.*; *see also* Exh. 9 (75  
23 Fed. Reg. 13920-22). More recently, a study by the U.S. Geological Survey concluded that sage-  
24 grouse populations have plummeted by 80 percent since 1965. ECF 1 (Complaint) ¶ 43. Half of  
25 that decline has happened since 2002. *Id.* According to the U.S. Fish and Wildlife Service (FWS),  
26 leading threats to the greater sage-grouse include land-use practices that destroy sagebrush habitat,  
27

1 increase the prevalence of invasive annual grasses such as cheatgrass, and increase wildfire risk.  
2 Exh. 9 (75 Fed Reg. 13917-18).

3 On March 23, 2010, FWS determined that protecting the greater sage-grouse under the  
4 Endangered Species Act was “warranted” due to persistent population declines. Exh. 9 (75 Fed.  
5 Reg. 13910).<sup>1</sup> In response to FWS’s “warranted” finding, BLM and other federal agencies initiated  
6 a range-wide sage-grouse conservation effort, which focused on amending BLM Resource  
7 Management Plans (RMPs) to better protect the species and avoid an Endangered Species Act  
8 (ESA) listing. ECF 1 (Complaint) ¶ 85. That planning effort produced two documents which  
9 continue to guide sage-grouse conservation today—BLM’s 2011 National Technical Team (NTT)  
10 report, and FWS’s 2013 Conservation Objectives Team (COT) report. *Id.* ¶ 86-90; *see also* Exh.  
11 10 (NTT Report); Exh. 11 (COT Report). Both of these reports emphasize the need to limit ground-  
12 disturbing activities in sagebrush habitats. *See generally* Exh. 10 (NTT Report); Exh. 11 (COT  
13 Report).

14 The NTT Report explains that “[s]age-grouse populations have the greatest chance of  
15 persisting when landscapes are dominated by sagebrush and . . . disturbances are minimal.” Exh.  
16 11 (NTT Report) at 6. It therefore recommends reducing human disturbance within important sage-  
17 grouse habitats, and avoiding land-management practices that reduce or eliminate sagebrush. *Id.*  
18 at 15-16, 25-28. Federal Courts have acknowledged that the NTT report “contains the best  
19 available science concerning the sage-grouse.” *W. Watersheds Project v. Schneider*, 417 F. Supp  
20 3d 1319, 1325 (D. Idaho 2019).

21 The COT’s peer-reviewed report identifies Priority Areas for Conservation (PACs) and  
22 explains that “[m]aintenance of the integrity of PACs . . . is the essential foundation for sage-  
23 grouse conservation.” Exh. 11 (COT Report) at 36. The COT Report recommends an “avoidance  
24 first strategy” and includes specific conservation measures intended to reverse sage-grouse  
25 population declines and protect the species. *See generally id.* Many of the COT’s recommendations

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26  
27 <sup>1</sup> Despite this finding, FWS refused to formally list the species at the time because it determined  
that listing was “precluded” by other priorities. Exh. 9 (75 Fed. Reg. 13910).

1 focus on limiting disturbance to important habitats and preventing cheatgrass invasion. *See id.* at  
2 31-32, 41-45.

3 In 2015, drawing on the findings and recommendations made in FWS’s 2010 “warranted”  
4 finding, the NTT Report, the COT report, and other scientific sources, BLM amended several of  
5 its RMPs across the West, including the RMP that governs the Project area, to incorporate more  
6 robust protections for the greater sage-grouse. ECF 1 (Complaint) ¶ 91. According the BLM’s  
7 Record of Decision (ROD) amending the RMPs, the amendments—known as Approved Resource  
8 Management Plan Amendments or ARMPAs—are “consistent with measures identified or  
9 recommended in the NTT Report, the COT report, recent [U.S. Geological Survey] studies, and  
10 other relevant research and analysis.” *Id.*

11 Based largely on BLM’s adoption of the ARMPAs, FWS concluded in 2015 that the greater  
12 sage-grouse was no longer warranted for ESA listing. FWS found that the ARMPAs represented  
13 a “paradigm shift in western Federal lands management in their focus on maintaining large  
14 expanses of sagebrush ecosystem for the benefit of sage-grouse and many other species.” 80 Fed.  
15 Reg. 59858, 59875 (Oct. 2, 2015). FWS specifically noted that the ARMPAs followed the “COT  
16 Report and NTT guidance [by] restricting impacts in the most important habitat [thereby] . . .  
17 ensur[ing] that high-quality sage grouse lands with substantial populations are minimally disturbed  
18 and sage-grouse within this habitat remain protected.” *Id.* at 59882.

## 19 **2. The Pygmy Rabbit**

20 The widespread degradation of sagebrush ecosystems across the West has affected other  
21 sagebrush-obligate species in addition to the greater sage-grouse. For example, the pygmy rabbit  
22 (*Brachylagus idahoensis*), a BLM-designated “sensitive” species, is found primarily on sagebrush-  
23 dominated plains and valley bottoms, where sagebrush occurs in tall, dense clumps. ECF 1  
24 (Complaint) ¶ 55; Exh. 14 (EA) at 38. Pygmy rabbits require dense stands of sagebrush and prefer  
25 sites with greater shrub cover and height. *Id.* As with the greater sage-grouse, pygmy rabbits  
26 depend on sagebrush for both cover and food. *Id.*; Exh. 2 (Stricklan Decl.) ¶ 54-55. Pygmy rabbits,  
27 like sage-grouse, have suffered habitat degradation from ground-disturbing land-use activities and

1 the resulting “cheatgrass-fire cycle.” ECF 1 (Complaint) ¶ 56; Exh. 14 (EA) at 38. Due to ongoing  
2 habitat losses and population declines, the pygmy rabbit was petitioned for ESA listing in March  
3 2023. *See generally* Exh. 8 (Petition to List the Pygmy Rabbit as Threatened or Endangered).

#### 4 **C. Pinyon-Juniper Forests**

5 Pinyon-juniper forests are ecologically rich areas that provide habitat for hundreds of plant  
6 and animal species. Exh. 15 (Center’s Comments on Project EA) at 7; *see also id.* at 40 (Jones et  
7 al. 2019 p. 10, discussing ecological value of pinyon-juniper woodlands). Wildlife species such as  
8 elk, mule deer, wild turkey, and several species of birds are year-round residents of pinyon-juniper  
9 woodlands and depend on this habitat for food and cover. *Id.* Pinyon-juniper woodlands also make  
10 significant contributions to carbon sequestration, and thus help mitigate the impacts of global  
11 climate change. *Id.* at 68 (Jones et al. 2019 p. 38). Like sagebrush habitats, pinyon-juniper forests  
12 are vulnerable to the “cheatgrass-fire” cycle, particularly in arid locations. ECF 1 (Complaint) ¶  
13 67; Exh. 2 (Stricklan Decl.) ¶ 35; Exh. 1 (Rosentreter Decl.) ¶ 21. Projects that remove mature  
14 woodlands and disturb the soil often end up increasing wildfire risk by favoring disturbance-  
15 tolerant invasive species like cheatgrass, which are easily ignited and contribute to larger, more  
16 frequent, and more intense wildfires. Exh. 2 (Stricklan Decl.) ¶ 33, 35-41; Exh. 1 (Rosentreter  
17 Decl.) ¶ 19-21.

#### 18 **D. Pinyon-Juniper Species**

##### 19 **1. Pinyon Jay**

20 The pinyon jay (*Gymnorhinus cyanocephalus*)—a medium-sized, blue, crestless bird  
21 species found throughout the western United States—is a pinyon-juniper obligate. ECF 1  
22 (Complaint) ¶ 58; Exh. 14 (EA) at 38. Due in part to the loss and degradation of its pinyon-juniper  
23 habitat, the pinyon jay is declining at an alarming rate. ECF 1 (Complaint) ¶ 59; Exh. 15 (Center’s  
24 Comments on Project EA) 7-8. Over the last 50 years, the species has declined by an estimated 80  
25 percent, even faster than the greater sage-grouse. *Id.* According to the International Union for the  
26 Conservation of Nature (IUCN), the pinyon jay is “vulnerable” to extinction due to the continuing  
27 loss of pinyon-juniper habitat. ECF 1 (Complaint) ¶ 59; Exh. 7 (Petition to List the Pinyon Jay as

1 Threatened or Endangered) at 5. Because of this steep population decline, the pinyon jay was  
2 petitioned for ESA listing in April 2022. *See generally* Exh. 7 (Petition to List the Pinyon Jay as  
3 Threatened or Endangered). On August 17, 2023, FWS found, based on information regarding  
4 “adverse habitat treatments in piñon-juniper woodlands,” increased wildfire frequencies, invasive  
5 species, climate change, and the “inadequacy of existing regulatory mechanisms,” that listing the  
6 pinyon jay as an endangered or threatened species “may be warranted.” Exh. 16, 88 Fed. Reg.  
7 55991, 55995 (Aug. 17, 2023).

8         Researchers are just beginning to understand effects of federal land management actions  
9 on pinyon jays and their habitat. *See* Exh. 17 (Conservation Strategy for the Pinyon Jay) at 28-35.  
10 Current resources on the topic, such as the “Conservation Strategy for the Pinyon Jay,” produced  
11 in collaboration with FWS, recommend against removing or thinning pinyon-juniper woodlands  
12 at pinyon jay nesting colony sites and foraging areas within the home ranges of pinyon jay flocks.  
13 *See id.* at 38-44. Knowledge of individual pinyon jay flocks, their home ranges, and habitats is  
14 thus necessary for designing effective site-specific management and mitigation actions for this  
15 imperiled species.

## 16                 **2. Bats**

17         Several species of bats forage and roost in pinyon-juniper woodlands, including the small-  
18 footed myotis, long-eared myotis, fringed myotis, long-legged myotis, and big brown bats. Exh. 2  
19 (Strickan Decl.) ¶¶ 47-48. Many of these species are known to roost beneath the bark of pinyon  
20 pine and juniper, especially long-legged myotis, and they are not readily apparent absent an effort  
21 to locate them. *Id.* ¶ 48. Bats are “apex-level” predators and thus play an important ecological role  
22 in pinyon-juniper forests and neighboring sagebrush habitats. *Id.*

## 23                 **E. Cultural Value of Pinyon-Juniper Woodlands**

24         Pinyon and juniper forests hold cultural, spiritual, and historical significance for the  
25 region’s Native American tribes, including the Western Shoshone. ECF 1 (Complaint) ¶ 67; Exh.  
26 6 (Delaine Spilsbury Decl.) ¶¶ 4-6, 8-9. Native Americans have used pinyon pine and juniper trees  
27 for food, medicine, and ceremonial purposes since time immemorial. ECF 1 (Complaint) ¶ 67;



1 Exh. 6 (Delaine Spilsbury Decl.) ¶ 4. Pinyon pine nuts are a traditional food source for area tribes  
2 and a focal point of traditional ways of life. *Id.* Tribes and their members today maintain ties to  
3 historical pine nut gathering locations, and hold ceremonies to coincide with the annual pine nut  
4 harvest. ECF 1 (Complaint) ¶ 67; Exh. 6 (Delaine Spilsbury Decl.) ¶ 4-6 The destruction of pinyon-  
5 juniper forests through chaining and other methods thus directly affects Native American cultural  
6 practices and recalls a traumatic history of violent displacement and cultural erasure for Native  
7 individuals like Center members Delaine and Rick Spilsbury. Exh. 6 (Delaine Spilsbury Decl.) ¶¶  
8 8-9; Exh. 5 (Rick Spilsbury Decl.) ¶¶ 10, 13.

### 9 **III. The Project**

10 Defendants approved the Project on September 28, 2022. *See* Exh. 18 (Decision Record).  
11 Although labeled a “Restoration Plan,” the Project is, in reality, a prescription for widespread  
12 deforestation and sagebrush eradication across a 384,414-acre area encompassing nearly all of the  
13 federal public land in South Spring and Hamlin Valleys. *See* Exh. 14 (EA) at 10-13. Approved  
14 activities include chaining to deforest established pinyon juniper woodlands, mechanical removal  
15 and shredding of low- to high-density pinyon-juniper woodlands, mowing and various other  
16 methods of destroying or removing sagebrush, and prescribed fire. *Id.* at 10-13, 95-104.

17 As discussed above, “chaining” involves “using the Ely Anchor Chain (Navy ship anchor  
18 chain with 40-120 pound links and 18-inch railroad iron welded perpendicular to the chain link)  
19 and/or smooth chain (chain with 40-120 pound links) pulled between two bulldozers.” *Id.* at 95.  
20 Chaining treatments “would consist of one or two-way (chaining the trees twice, once from one  
21 direction, then from a different direction) chaining.” *Id.* Chaining would occur in more mature or  
22 established pinyon-juniper stands, with greater than 10 percent tree cover. *Id.* at 95-96.

23 “Mastication,” according to the EA, involves “mechanical removal of pinyon and juniper”  
24 using logging equipment with a “cutting head” designed to either “chip . . . , cut and pile the tree”  
25 or “cut, lop, and scatter the tree.” *Id.* at 96. Mastication would be used “where tree densities fall  
26 below the threshold for chaining,” i.e. where there is less than 10 percent tree cover. *Id.*

27

1 The EA states that BLM may use a “dixie harrow” to remove and reduce sagebrush,  
2 including in “priority” sage-grouse habitat. *Id.* at 37, 97. A “dixie harrow” “consists of a large  
3 spike-tooth harrow (an industrial farming tool) pulled by a four-wheel drive rubber-tired tractor.”  
4 *Id.* at 97. In addition to direct treatment of sagebrush habitats, “[t]he Dixie harrow may be used as  
5 a secondary treatment within areas that have been treated for removal of pinyon and juniper to  
6 further reduce the shrub component.” *Id.*

7 Another proposed sagebrush removal method is the “roller chopper.” *Id.* at 98. “Roller  
8 chopper treatment involves the use of a large drum with paddles attached that is pulled behind a  
9 piece of machinery such as a tractor or bulldozer.” *Id.* The drum “crushes and chops brush and  
10 small trees.” *Id.* Like the dixie harrow, the roller chopper may be used as a secondary treatment to  
11 remove sagebrush from areas where pinyon and juniper trees have already been removed. *Id.*

12 A third proposed method to reduce or remove sagebrush is “mowing.” This method  
13 involves “use of a mowing deck pulled behind a tractor.” *Id.* Trees may be removed in treatment  
14 areas prior to mowing. *Id.* According to BLM, mowing could be used to reduce shrub height to  
15 anywhere “from ground level to 12-15 inches high,” and would result in 40-100 percent sagebrush  
16 mortality, depending on the mower deck height. *Id.* As with the dixie harrow and roller chopper,  
17 mowing may be used as a “secondary treatment” for sagebrush remaining in pinyon-juniper  
18 removal areas. *Id.*

19 Although BLM divided the Project area in 13 “restoration units,” the EA states that any of  
20 these so-called “treatments” could occur in any unit, and that some areas may be subject to multiple  
21 “treatments” at BLM’s discretion. *Id.* at 10, 13.

## 22 STANDARD OF REVIEW

23 A plaintiff seeking a preliminary injunction generally must show that: (1) they are likely  
24 to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary  
25 relief; (3) the balance of equities tips in their favor; and (4) that an injunction is in the public  
26 interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The Supreme Court’s *Winter* decision held  
27 that a plaintiff seeking a preliminary injunction must show that irreparable harm is “likely” as

1 opposed to merely “probable.” *Id.* at 22. However, it did not disturb the Ninth Circuit’s alternative  
2 “serious questions” test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir.  
3 2011). Under this test, “‘serious questions going to the merits’ and a hardship balance that tips  
4 sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements  
5 of the *Winter* test are also met.” *Id.* at 1132. Thus, a preliminary injunction may be granted “if  
6 there is a likelihood of irreparable injury to plaintiff; there are serious questions going to the merits;  
7 the balance of hardships tips sharply in favor of the plaintiff; and the injunction is in the public  
8 interest.” *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012). As explained below, Plaintiffs meet  
9 their burden here under either the basic *Winter* standard or the alternative “serious questions” test.

## 10 ARGUMENT

### 11 I. Plaintiffs are Likely to Succeed on the Merits

12 Plaintiffs are likely to succeed on the merits of their claims because BLM violated NEPA,  
13 FLPMA, and the APA in approving the Project. Specifically, BLM violated NEPA by producing  
14 a general, programmatic environmental assessment (EA) that does not consider site-specific  
15 environmental conditions or impacts, and, as a result, fails to take the NEPA-required “hard look”  
16 at the Project’s impacts to a range of resources, including the sensitive wildlife species and their  
17 habitats discussed above. BLM also violated FLPMA by failing to ensure that the Project is  
18 consistent with management direction in the applicable RMP, as amended by the 2015 ARMPA.  
19 Because of these violations of law, BLM’s approval of the project was “arbitrary, capricious, an  
20 abuse of discretion, or otherwise not in accordance with law” under the APA. 5 U.S.C. § 706(2).<sup>2</sup>  
21  
22  
23

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24 <sup>2</sup> Western Watersheds and the Center have demonstrated in the materials cited herein that each  
25 entity and its members have suffered procedural and concrete injuries caused by BLM’s  
26 authorization of the Project, and that these injuries are redressable by this Court. Exh. 3 (Decl. of  
27 Patrick Donnelly); Exh. 4 (Declaration of Paul Ruprecht); Exh. 5 (Declaration of Rick Spilsbury);  
Exh. 6 (Declaration of Delaine Spilsbury). Plaintiffs thus have Article III standing. *See Summers*  
*v. Earth Island Inst.*, 555 U.S. 488, 494 (2009); *W. Watersheds Project v. Kraayenbrink*, 632 F.3d  
472, 485-86 (9th Cir. 2011).

1           **A. The Environmental Assessment Violates NEPA**

2                   **1. BLM Failed to Take a “Hard Look” at Site- and Project-Specific Impacts**

3           Under NEPA, an agency must analyze the direct, indirect, and cumulative environmental  
4 impacts of a proposed action. 40 C.F.R. §§ 1508.8, 1508.7. These analyses underpin NEPA’s “hard  
5 look” requirement—a “thoughtful and probing reflection of the possible impacts associated with  
6 the proposed project.” *Silverton Snowmobile Club v. U.S. Forest Serv.*, 433 F.3d 772, 781 (10th  
7 Cir. 2006). “General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard  
8 look’ absent a justification regarding why more definitive information could not be provided.”  
9 *Neighbors of Cuddy Mountain U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998);  
10 *Conservation Cong. v. Finley*, 774 F.3d 611, 621 (9th Cir. 2014).

11           NEPA permits an agency to forecast broad cumulative impacts of related actions in a  
12 programmatic NEPA document before it knows the actual direct and indirect effects of site-  
13 specific implementation decisions on particular project areas. *See, e.g., Nat’l Wildlife Fed’n v.*  
14 *Appalachian Reg’l Comm’n*, 677 F.2d 883, 888 (D.C. Cir. 1981) (examining programmatic EIS  
15 and requirement to perform site-specific NEPA analysis); *New Mexico ex rel. Richardson v. BLM*,  
16 565 F.3d 683, 717-18 (10th Cir. 2009). However, once the site-specific effects of a proposed action  
17 become reasonably foreseeable, an agency must analyze the particular direct and indirect effects  
18 of that proposed action. At the “implementation stage”—where the agency’s analysis represents  
19 the “last word” on environmental impacts before ground-level implementation—NEPA review  
20 must be more tailored and detailed because the agency is confronting “individual site specific  
21 projects.” *Friends of Yosemite Valley v. Norton*, 348 F.3d 789, 800-01 (9th Cir. 2003); *California*  
22 *v. Block*, 690 F.2d 753, 761 (9th Cir. 1982); *see also SE Alaska Conservation Council v. US Forest*  
23 *Serv.*, 443 F. Supp. 3d 995, 1010-1014 (D. Alaska 2020); *Forest Ecology Ctr., Inc. v. U.S. Forest*  
24 *Serv.*, 192 F.3d 922, 923 n.2 (9th Cir. 1999).

25           The Project here purports to be an implementation-level decision but the Project EA lacks  
26 any site-specific analysis. Rather, the Project adopts an integrated, broad-scale vegetation removal  
27 program over a 384,414-acre area while deferring critical decisions about siting and treatment

1 methods to the future with no additional NEPA review. The EA’s description of the proposed  
2 action states: “[v]egetative community restoration *could* take place across 13 restoration units  
3 covering up to approximately 123,969 acres over a total of 384,414 acres within the project area,”  
4 and further states that “*any treatment could be implemented in any unit[.]*” Exh. 14 (EA) at 10  
5 (emphasis added); *see also id.* at 13, 18. Consequently, the EA provides no specific or detailed  
6 information on where, how, or when treatments will be conducted.

7 The EA’s description of the affected environment is similarly vague, lacking critical details  
8 necessary for evaluating the project’s site-specific environmental impacts. Some sections simply  
9 recite general characteristics common to valleys throughout Nevada and the Great Basin. *See, e.g.,*  
10 *id.* at 21 (soils); *id.* at 24 (vegetation). For soils, BLM states “effects would vary depending on the  
11 type of vegetation restoration treatments being implemented,” and discusses some impacts which  
12 “may” occur without any indication as to their likelihood or severity. *Id.* at 21. And for biological  
13 soil crusts—a unique and important component of the ecosystem—BLM simply asserts that they  
14 “could be impacted in treatment areas where they occur” and refers the reader to an even broader  
15 programmatic analysis—the 2020 Programmatic Environmental Impact Statement for Fuels  
16 Reduction and Rangeland Restoration—which covers a 223-million acre analysis area extending  
17 across six states and includes no specific details about the Project area whatsoever. *Id.* at 22.

18 BLM’s wildlife analysis, meanwhile, concludes that “effects to wildlife would range from  
19 negligible to major depending on the species and their habitat.” *Id.* at 33. But apart from a  
20 discussion about the purported benefits of treatments generally, the EA offers no habitat- or  
21 species-specific analysis of the Project’s likely impacts. *See id.* at 33-34. For example, the  
22 “affected environment” description for migratory birds consists of a single sentence: “Migratory  
23 bird habitats are located throughout the planning area.” *Id.* at 35. And the EA’s impacts analysis  
24 for migratory birds consists of three sentences concluding that the Project’s effects on all migratory  
25 bird species will be “negligible” because “most birds would be able to disperse from treatment  
26 areas” and then “return once activities are completed.” *Id.* at 35-36. And despite the applicable  
27 RMP requiring BLM to “consider the habitat needs of obligate bat species in restoration

1 treatments” (see *infra* Section B), the EA contains only a single sentence on tree-roosting bats,  
2 which fails to consider any specific species or its habitat needs. *Id.* at 39; *see also* Exh. 2 (Strickan  
3 Decl.) ¶¶ 46-49.

4 The EA is similarly deficient regarding special-status species, including the pygmy rabbit  
5 and pinyon jay. Although BLM’s goals for this project call for the widespread elimination of these  
6 species’ habitats (namely pinyon-juniper woodland and dense sagebrush), the EA entirely fails to  
7 consider Project- or site-specific impacts to these species. BLM’s analysis of impacts to the pinyon  
8 jay consists of a short, general description of how pinyon-juniper removal “could” affect the  
9 species generally, with no discussion of pinyon jay occurrence in the Project area or impacts to  
10 specific areas within the Project area that might provide pinyon jay nesting or foraging habitat. *Id.*  
11 at 40. Regarding pygmy rabbits, the EA simply states: “[e]xpanded sagebrush vegetation would  
12 increase breeding, nesting, and foraging habitat for sagebrush obligate species such as ... pygmy  
13 rabbit[,]” *Id.* at 39, overlooking the fact that one of the Project’s main objectives is to reduce  
14 sagebrush through mechanical treatments and prescribed fire. *See id.* at 95-100 (describing  
15 sagebrush removal techniques).

16 Courts have not hesitated to vacate federal agency decisions lacking site-specific NEPA  
17 analysis, such as the decision at issue here. For example, in *Southeast Alaska Conservation*  
18 *Council*, the Forest Service attempted to authorize a 15-year timber harvest program across 1.8  
19 million acres through a single programmatic environmental impact statement (EIS). 443 F. Supp.  
20 3d at 1000-01. Like the EA at issue here, the EIS in that case did not provide specific locations or  
21 proposed activity methods within the affected area. “Instead, the Project EIS provide[d] that ‘site-  
22 specific locations and methods’ for activities such as timber harvest ‘[would] be determined during  
23 implementation’ over the 15-year lifespan of the Project” without additional NEPA review. *Id.* at  
24 1002-03. Like BLM here, the Forest Service in *Southeast Alaska Conservation Council*  
25 “maintain[ed] that its ‘landscape-scale NEPA analysis’ enable[ed] informed decision-making  
26 about integrated resource management at the programmatic level and contain[ed] sufficient site-  
27

1 specific information and analysis to proceed with individual timber sales over the 15-year Project  
2 period without additional NEPA review.” *Id.* at 1006-07.

3 The court determined that this approach was contrary to NEPA. Observing that the EIS  
4 “reserve[d] actual siting decisions for the future, as individual timber sales are offered,” the court  
5 found that the EIS did not “allow the public to identify where specific . . . activities will occur in  
6 relation to various cognizable [environmental] values.” *Id.* at 1010. The court thus found that by  
7 “authorizing an integrated resource management plan but deferring siting decisions to the future  
8 with no additional NEPA review, the Project EIS violate[d] NEPA,” because the Forest Service  
9 had not, and would not, “take[] the requisite hard look at the environmental impact of site specific”  
10 activities over the project’s 15-year period. *Id.* at 1014. *See also WildEarth Guardians v. Montana*  
11 *Snowmobile Association*, 790 F.3d 920, 927 (9th Cir. 2015) (finding the “paltry information”  
12 provided by the Forest Service “stymied the public’s ability to challenge agency action.”), *Tillett*  
13 *v. Bureau of Land Mgmt.*, No. CV 16-148, 2017 WL 6625111, at \*11 (D. Mont. Dec. 5, 2017),  
14 *report and recommendation adopted Tillet v. Bureau of Land Mgmt.*, No. CV 16-148, 2017 WL  
15 6625039 (D. Mont. Dec. 28, 2017) (finding a similarly cursory analysis, with no baseline data and  
16 no analysis of the possible impacts of the project, violated NEPA by failing to take a “hard look”  
17 at the project’s impacts on a special status species).

18 Under NEPA, BLM must consider all potential impacts of a proposed action, including  
19 negative impacts to specific species and habitats that could occur if healthy vegetation  
20 communities are destroyed by chaining, mowing, burning, or other approved treatments. *See* 40  
21 C.F.R. § 1508.27(b)(1) (in determining whether a proposal will have significant effects on the  
22 environment, the agency should consider both beneficial and adverse impacts). But BLM  
23 performed no such analysis here, depriving both decisionmakers and the public of crucial  
24 information about the Project’s site-specific parameters and the likely site-specific environmental  
25 impacts. Thus, BLM violated NEPA because it did not take the required “hard look” at the  
26 Project’s impacts, and Plaintiffs are likely to succeed on the merits of their NEPA claim.

27

## 2. BLM Failed to Analyze the Cumulative Impacts of Livestock Grazing

1  
2 BLM also violated NEPA because it failed to consider the cumulative impacts of BLM-  
3 authorized livestock grazing in the Project area. An EA must evaluate “the environmental impacts  
4 of the proposed action,” 40 C.F.R. § 1508.9(b). “Cumulative impact is the impact on the  
5 environment which results from the incremental impact of the action when added to other past,  
6 present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7. BLM’s cumulative  
7 impacts analysis must include more than general statements about possible effects or risks; the  
8 agency must take a “hard look” at cumulative impacts or at least explain why it cannot. *Te-Moak*  
9 *Tribe of Western Shoshone v. United States DOI*, 608 F.3d 592, 603 (9th Cir. 2010). “[S]ome  
10 quantified or detailed information is required. Without such information, neither the courts nor the  
11 public . . . can be assured that the [agency] provided the hard look that it is required to provide.”  
12 *Id.* (quoting *Neighbors of Cuddy Mountain*, 137 F.3d at 1379) (internal quotation marks omitted)  
13 (alterations in original); *see also Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846  
14 868 (9th Cir. 2005) (holding the cumulative impacts analysis “must be more than perfunctory; it  
15 must provide a useful analysis of the cumulative impacts of past, present, and future projects.”).

16 The EA here fails to consider the cumulative impacts of BLM-authorized livestock grazing.  
17 As the EA acknowledges, the Project area currently exhibits livestock grazing impacts, including  
18 low cover of perennial bunchgrasses and the presence of exotic, invasive species such as  
19 cheatgrass. Exh. 14 (EA) at 5, 24. But while the EA analyzes the economic and logistical effects  
20 of the Project on livestock grazing *operations*, *id.* at 48-50, it entirely fails to analyze the  
21 cumulative impacts of BLM-authorized livestock grazing *on natural resources in the Project area*.  
22 Despite the significant influence of BLM-authorized livestock grazing on baseline ecological  
23 conditions within the Project area, *see id.* at 5, 24, there is no analysis anywhere in the EA on the  
24 past, present, and reasonably foreseeable impacts of BLM-authorized livestock grazing. BLM’s  
25 discussion of cumulative impacts simply lists past projects and activities that “could occur” within  
26 10 years, and offers general speculation about these “past and future actions” collectively, with no  
27 specific discussion of particular activities such as grazing. *See id.* at 53-60. Consequently, BLM’s



1 brief and perfunctory cumulative impacts analysis violates NEPA, and Plaintiffs' NEPA claims  
2 are likely to succeed. *See Neighbors of Cuddy Mountain*, 137 F.3d at 1380.

3 **B. The Environmental Assessment and Decision Violate the Ely RMP and FLPMA**

4 FLPMA governs BLM's management of public lands and requires BLM to "protect the  
5 quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water  
6 resource, and archeological values" of the public's land. 43 U.S.C. §1701(a)(8). Under FLPMA,  
7 BLM must "develop, maintain, and, when appropriate, revise land use plans." 43 U.S.C. § 1712(a).  
8 These plans govern BLM management of the public lands at the programmatic level. *See generally*  
9 *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 69 (2004). All BLM resource management  
10 decisions, such as the Project at issue here, must "conform with the approved [land use] plan." 43  
11 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a); *see also W. Watersheds Project v. Bennett*, 392  
12 F.Supp.2d 1217, 1227 (D. Idaho 2005). If a proposed action is not consistent with the land use  
13 plan, BLM must deny the proposed action or propose and adopt an amendment to the plan. 43  
14 C.F.R. §§ 1610.5-3, 1610.5-5.

15 The approved land use plan here is the Ely RMP, as amended by the 2015 ARMPA. The  
16 amended Ely RMP contains three special-status species requirements specifically applicable to  
17 this Project. First, BLM must "[m]itigate all discretionary permitted activities that result in the loss  
18 of special status species habitats on a ratio of 2 acres of comparable habitat for every 1 acre of lost  
19 habitat[.]" Exh. 13 (Ely RMP) at 40 (Management Action SS-10). The Project EA and Decision  
20 Record make no mention whatsoever of this requirement for two-to-one mitigation, and do not  
21 discuss mitigation for the Project's adverse impacts at all. *See Center for Biological Diversity v.*  
22 *United States Bureau of Land Management*, No. 214-cv-226-APG-VCF, 2017 WL 3667700, at  
23 \*16 (D. Nev. Aug. 23, 2017) (vacating BLM decision because BLM failed to "impose obligations  
24 [] to comply with the 2-to-1 mitigation requirement for all the special status species habitats [as  
25 required by the Ely RMP]").

26 Second, BLM must "consider the habitat needs of obligate bat species in restoration  
27 treatments" Exh. 13 (Ely RMP) at 40 (Management Action SS-8). The Project EA contains no

1 such analysis. It does not identify bat species occurring in the Project area, does not discuss habitat  
2 requirements for tree-roosting bats, and does not analyze how the authorized treatments would  
3 impact these habitat requirements. Instead, it provides only a cursory assertion that bat habitat  
4 “may” be adversely impacted, and that suitable habitat exists in other locations outside the Project  
5 area. *See* Exh. 14 (EA) at 39.

6 Finally, the 2015 ARMPA prohibits prescribed burning in sagebrush, except where BLM  
7 prepares a “burn plan” and NEPA analysis addressing: “why alternative techniques were not  
8 selected as a viable option; how [sage-grouse] goals and objectives will be met by its use; how the  
9 COT report objectives will be addressed and met; and . . . how potential threats to [sage-grouse]  
10 habitat will be minimized.” Exh. 12 (ARMPA Record of Decision) at I-27 (Management Direction  
11 FM-23). The Project is not consistent with this management direction because it authorizes  
12 prescribed fire in sage-grouse habitat without any analysis of why alternative techniques were not  
13 selected, or how sage-grouse goals and objectives will be met. The EA fails to even acknowledge  
14 the COT report objectives, and does not include a risk assessment to address potential threats to  
15 sage-grouse habitat. In fact, the EA fails to acknowledge any potential for adverse impacts to sage-  
16 grouse from prescribed fire treatments. *Compare Native Ecosystems Council v. Mehlhoff*, No. CV  
17 18-157-BLG-SPW, 2020 WL 2060354 (D. Mont. Apr. 29, 2020) (upholding BLM decision where  
18 the applicable EA included risk assessment and analysis that “directly align[ed] with the COT  
19 Report objectives”).

20 Because the Project EA and decision record are not consistent with Management Actions  
21 SS-10 or SS-8, or Management Direction FM-23, BLM’s authorization of the Project violates the  
22 amended Ely RMP and FLPMA. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a). Plaintiffs are  
23 therefore likely to succeed on the merits of their FLPMA claim.

## 24 **II. Injunctive Relief is Needed to Prevent Irreparable Harm**

### 25 **A. Irreparable Harm from Chaining**

26 “[T]he Supreme Court has instructed . . . that ‘[e]nvironmental injury, by its nature, can  
27 seldom be adequately remedied by money damages and is often permanent or at least of long

1 duration, i.e., irreparable.” *Lands Council v. McNair*, 537 F.3d 981, 1004 (9th Cir. 2008) (quoting  
2 *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987)). “If such injury is sufficiently  
3 likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect  
4 the environment.” *Id.*; see also *Southeast Alaska Conservation Council v. U.S. Army Corps of*  
5 *Eng’rs*, 472 F.3d 1097, 1100 (9th Cir. 2006) (“Ongoing harm to the environment constitutes  
6 irreparable harm warranting an injunction. When a project may significantly degrade some human  
7 environmental factor, injunctive relief is appropriate.”) (internal quotes and citations omitted).

8         The Ninth Circuit has held that loss of the ability to view, experience, and use a forested  
9 area in its undisturbed state suffices to allege irreparable harm for a preliminary injunction. *All.*  
10 *for the Wild Rockies*, 632 F.3d at 1135. In *Alliance for the Wild Rockies*, the plaintiff organization,  
11 whose members used the affected area “for work and recreational purposes, such as hunting,  
12 fishing, hiking, horseback riding, and cross-country skiing,” sought a preliminary injunction to  
13 stop a 1,652 acre timber sale. *Id.* The plaintiff alleged that the timber sale would irreparably harm  
14 its members’ ability to “view, experience, and utilize” the affected areas “in their undisturbed  
15 state.” *Id.* The Ninth Circuit observed that the threatened destruction of 1,652 acres of forest was  
16 “hardly a de minimus injury” and held that the “actual and irreparable injury” from the proposed  
17 project satisfied “the ‘likelihood of irreparable injury’ requirement articulated in *Winter*.” *Id.*

18         Indeed, as courts in Ninth Circuit have frequently found, “the logging of mature trees . . .  
19 cannot be easily remedied” and thus constitutes “irreparable” harm “for the purposes of [a]  
20 preliminary injunction analysis.” *League of Wilderness Defs./Blue Mts. Biodiversity Project v.*  
21 *Connaughton*, 752 F.3d 755, 764 (9th Cir. 2014); see also *Envtl. Prot. Info. Ctr. v. Carlson*, 968  
22 F.3d 985, 991 (9th Cir. 2020) (granting preliminary injunction where proposed logging project  
23 would “diminish[]” plaintiffs’ enjoyment of a National Forest); *Se. Alaska Conservation Council*,  
24 413 F. Supp. 3d at 979-980 (enjoining logging projects where plaintiffs used the affected areas for  
25 “hunting, fishing, gathering, and recreation,” and the projects would cause long-term impacts to  
26 the landscape).

27

1 Courts in the Ninth Circuit have similarly found that damage to arid shrublands constitutes  
2 irreparable harm because these areas can take decades or even centuries to fully recover. *See, e.g.,*  
3 *Western Watersheds Project v. Bernhardt*, 392 F. Supp. 3d 1225, 1254-55 (D. Or. 2019)  
4 (“Although sagebrush may recover within 50 to 100 years . . . that does not mean that harm to this  
5 habitat is not irreparable.”); *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1124 (9th Cir.  
6 2005) (“[O]nce the desert is disturbed, it can never be restored.”).

7 Here, the chaining scheduled for October of this year would eliminate up to 2,000 acres  
8 of previously undisturbed pinyon and juniper woodlands, irreparably harming Plaintiffs’  
9 members’ interests in these woodlands and the wildlife species that depend on them. For instance,  
10 Patrick Donnelly, a member of both Western Watersheds and the Center, regularly visits Spring  
11 and Hamlin Valleys to survey for rare plants, view wildlife, take photographs, and enjoy the  
12 remote, rugged, and undisturbed character of the area. Exh. 3 (Donnelly Decl.) ¶¶ 16-20, 26-29.  
13 The area’s importance to Mr. Donnelly cannot be overstated. *See id.* ¶ 32 (“Spring Valley is one  
14 of the centers of my universe in the Great Basin—my work takes me there, I visit there in my  
15 spare time, and it is truly one of the most special places in the whole world to me.”). If the  
16 proposed chaining is allowed to go forward, Mr. Donnelly would be irreparably harmed because  
17 he would “no longer be able to enjoy a pristine and undeveloped landscape”; he would no longer  
18 “be able to view wildlife and biodiversity in its undisturbed state”; he would “no longer be able  
19 to seek spiritual renewal and quiet contemplation” in the affected areas; and he would “be harmed  
20 by the knowledge that one of the most special places in the world to me was now the site of  
21 unimaginable destruction and deforestation.” *Id.* ¶¶ 32-33.

22 Similarly, Western Watersheds member Paul Ruprecht visits Spring and Hamlin Valleys  
23 to hike, camp, take photographs, observe wildlife, stargaze, and enjoy the scenery which includes  
24 native pinyon-juniper and sagebrush vegetation. Exh. 4 (Ruprecht Decl.) ¶ 21-25. Mr. Ruprecht  
25 specifically enjoys viewing species that utilize pinyon and juniper habitats, including mule deer,  
26 elk, pinyon jay, and several species of bats. *Id.* ¶ 12-14. Mr. Ruprecht has observed the aftermath  
27 of other BLM pinyon-juniper removal projects in eastern Nevada and describes the results as

1 “disturbing.” *Id.* ¶ 29. He has also observed that the impacted areas are often invaded with exotic  
2 species where they are not completely barren. *Id.* ¶ 27-29. The proposed chaining treatments  
3 would irreparably harm Mr. Ruprecht’s interests by destroying the habitats he enjoys viewing,  
4 displacing or killing the wildlife species he looks for and photographs when he visits the area,  
5 and increasing both invasive species and fire risk. *Id.* ¶¶ 31-38.

6 Center members Rick and Delaine Spilsbury will also be irreparably harmed if BLM is  
7 permitted to raze 2,000 acres of pinyon and juniper forest. The Spilsburys are members of the  
8 Western Shoshone Tribe who live within their ancestral homelands near Ely, Nevada, and  
9 frequently visit Spring Valley. Exh. 5 (Rick Spilsbury Decl.) ¶ 4-6; Exh. 6 (Delaine Spilsbury  
10 Decl.) ¶¶ 4-6. Both have visited Spring Valley more times than they can count in order to hike,  
11 camp, hunt, cycle, seek spiritual renewal, and connect with their Western Shoshone heritage. Exh.  
12 5 (Rick Spilsbury Decl.) ¶ 6-9; Exh. 6 (Delaine Spilsbury Decl.) ¶ 4-7. Pinyon and juniper  
13 woodlands are sacred to the Spilsburys, having helped sustain their ancestors in the Great Basin  
14 for tens of thousands of years. Exh. 6 (Delaine Spilsbury Decl.) ¶¶ 4, 8-9. Additionally, the pinyon  
15 and juniper woodlands and sagebrush shrublands in Spring and Hamlin valleys are a part of a  
16 natural, unaltered landscape that the Spilsburys value and frequently enjoy. Exh. 5 (Rick  
17 Spilsbury Decl.) ¶¶ 6-10, 13-14; Exh. 6 (Delaine Spilsbury Decl.) ¶¶ 5-9. Removing these  
18 woodlands and shrublands would harm the Spilsburys personally, spiritually, aesthetically, and  
19 professionally. Exh. 5 (Rick Spilsbury Decl.) ¶¶ 9-14; Exh. 6 (Delaine Spilsbury Decl.) ¶ 8-9. As  
20 Delaine Spilsbury explains, the ongoing destruction of pinyon and juniper trees on BLM lands in  
21 eastern Nevada, including in Spring and Hamlin valleys, connects with a deeply felt tragic and  
22 traumatic history for her people:

23 I see the destruction of pinyon and juniper forests in the Great Basin as theft of our  
24 Native spirituality and heritage. When will the U.S. Government stop stealing from  
25 us former inhabitants of this great land of ours? There is almost nothing left to  
26 take. It would severely and irreparably harm me to see the pinyon-juniper forests  
and sagebrush in Spring Valley destroyed on my next visit to the area. It would be  
like seeing a cemetery desecrated or destroyed.

27 Exh. 6 (Delaine Spilsbury Decl.) ¶ 9.

1 The impacts from the Project will be long-term, and in some cases permanent. The  
2 proposed 2,000 acres of chaining will immediately eliminate tree and shrub cover in the affected  
3 areas. *See* Exh. 14 (EA) at 95 (description of chaining). This will completely destroy the areas’  
4 value as wildlife habitat. *See* Exh. 2 (Stricklan Decl.) ¶¶ 20, 40-45; Exh. 1 (Rosentreter Decl.) ¶¶  
5 18-20. Once the trees and shrubs are uprooted, they will likely take decades, if not longer, to fully  
6 recover. Exh. 1 (Rosentreter Decl.) ¶¶ 19-20. Soil components and biological soil crusts may take  
7 even longer. *Id.* ¶¶ 15-16; Exh. 2 (Stricklan Decl.) ¶ 59.

8 And because cheatgrass is already present in the area, there is a high likelihood that  
9 chaining will result in *permanent* environmental degradation. Chaining, by its nature, destroys  
10 both vegetation and biological soil crusts, leaving behind large areas of bare ground. Exh. 2  
11 (Stricklan Decl.) ¶¶ 20, 31, 33, 53, 60; Exh 1 (Rosentreter Decl.) ¶¶ 15-16. Cheatgrass readily  
12 invades such areas. Exh. 2 (Stricklan Decl.) ¶¶ 28, 31-32; Exh 1 (Rosentreter Decl.) ¶¶ 15-17.  
13 Once established, cheatgrass outcompetes native vegetation and can take over a site within a  
14 single growing season. Exh. 2 (Stricklan Decl.) ¶ 32. Cheatgrass invasion following soil  
15 disturbance is effectively irreversible, and results in an ecologically depauperate community that  
16 is prone to frequent, unnaturally large wildfires. *Id.* ¶ 32-33, 41; Exh. 1 (Rosentreter Decl.) ¶ 19-  
17 20. And because cheatgrass burns more frequently than native vegetation, the invasion of  
18 cheatgrass and resulting “cheatgrass-fire” cycle permanently eliminate native trees and shrubs on  
19 the affected sites. Exh. 2 (Stricklan Decl.) ¶¶ 35, 42; Exh 1 (Rosentreter Decl.) ¶¶ 20. Thus, the  
20 environmental harm from the proposed chaining, like the logging of mature trees, is “irreparable,”  
21 and warrants a preliminary injunction. *Lands Council*, 537 F.3d at 1004; *Connaughton*, 752 F.3d  
22 at 764.

### 23 **B. Irreparable Harm from NEPA Violation**

24 When a court finds a likelihood of success on the merits of a NEPA claim coupled with  
25 likely environmental harm, the NEPA violation generally is found to rise to the level of irreparable  
26 harm supporting preliminary injunctive relief. *See, e.g., Brady Campaign to Prevent Gun Violence*  
27 *v. Salazar*, 612 F. Supp. 2d 1, 24 (D.D.C. 2009) (“When a procedural violation of NEPA is

1 combined with a showing of environmental or aesthetic injury, courts have not hesitated to find a  
2 likelihood of irreparable injury.”) (citing cases).

3 This is because “[t]he NEPA duty is more than a technicality; it is an extremely important  
4 statutory requirement to serve the public and the agency *before* major federal actions occur. If  
5 plaintiffs succeed on the merits, then the lack of an adequate environmental consideration looms  
6 as a serious, immediate, and irreparable injury.” *Found. on Econ. Trends v. Heckler*, 756 F.2d  
7 143, 157 (D.C. Cir. 1985) (emphasis in original) (citations omitted); *see also Sierra Club v.*  
8 *Marsh*, 872 F.2d 497, 500 (1st Cir. 1989) (“[W]hen a decision to which NEPA obligations attach  
9 is made without the informed environmental consideration that NEPA requires, the harm that  
10 NEPA intends to prevent has been suffered.”). Here, Plaintiffs have shown that (1) BLM violated  
11 NEPA by failing to take the required “hard look” at the Project’s effects on wildlife species and  
12 their habitats; and (2) environmental harm is likely, if not certain, from the destruction of up to  
13 2,000 acres of woodland. Defendants’ violation of NEPA, coupled with the strong likelihood of  
14 environmental injury, thus supports the issuance of a preliminary injunction here.

### 15 **III. The Balance of Equities Tips Sharply in Favor of Plaintiffs**

16 In the face of irreparable harm to the environment, courts will withhold or limit injunctive  
17 relief only in “unusual circumstances.” *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d  
18 722, 738 n.18 (9th Cir. 2001); *see also All. for the Wild Rockies*, 632 F.3d at 1137 (9th Cir. 2011)  
19 (finding that irreparable environmental harm from 1,652 acres of logging tipped balance of equities  
20 in favor of plaintiffs); *Se. Alaska Conservation Council*, 413 F. Supp. 3d at 984 (balance of equities  
21 favored plaintiffs where 1,156.34 acres of logging would irreparably harm plaintiffs’ enjoyment  
22 of the affected area). Here, the injuries that the Project threatens to inflict on the environment and  
23 Plaintiffs’ interests are irreversible or at least of many years’ duration, while the only foreseeable  
24 hardship to BLM is temporary delay. *See League of Wilderness Defs./Blue Mountains Biodiversity*  
25 *Project v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014) (finding that the balance of equities  
26 tipped toward the plaintiffs, “because the harms they face are permanent, while the intervenors  
27 face temporary delay.”). Accordingly, the balance of equities tips sharply in Plaintiffs’ favor.

#### 1 **IV. The Public Interest Favors an Injunction**

2 When the alleged action by the government violates federal law, the public interest factor  
3 generally weighs in favor of the plaintiff. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029  
4 (9th Cir. 2013); *see also Inland Empire - Immigrant Youth Collective v. Nielsen*, 2018 U.S. Dist.  
5 LEXIS 34871, 2018 WL 1061408, at \*21 (C.D. Cal. Feb. 26, 2018) (acknowledging “the public  
6 interest that exists in ensuring that the government complies with its obligations under the law and  
7 follows its own procedures.” (quotation marks omitted)). And, there is a “well-established ‘public  
8 interest in preserving nature and avoiding irreparable environmental injury.’” *All. for the Wild*  
9 *Rockies v.*, 632 F.3d at 1138 (9th Cir. 2011) (quoting *Lands Council*, 537 F.3d at 1005).

10 Further, in NEPA cases, courts have recognized “the public interest in careful  
11 consideration of environmental impacts before major federal projects go forward,” and have held  
12 that “suspending such projects until that consideration occurs ‘comports with the public interest.’”  
13 *All. for the Wild Rockies*, 632 F.3d at 1138 (quoting *S. Fork Band Council of W. Shoshone v.*  
14 *United States DOI*, 588 F.3d 718, 728 (2009)).

15 The Project’s purported goal of reducing wildfire risk does not alter the public interest  
16 analysis. First, the proposed chaining is actually more likely to *increase* wildfire risk through the  
17 proliferation of highly invasive and flammable cheatgrass. Exh. 2 (Stricklan Decl.) ¶ 35; Exh 1  
18 (Rosentreter Decl.) ¶¶ 17, 19-21; *see also W. Watersheds Project v. Dyer*, No. CV-04-181-S-  
19 BLW, 2009 U.S. Dist. LEXIS 15419, at \*7, \*11 (D. Idaho Feb. 26, 2009) (finding that “[t]he  
20 increased flammability of cheatgrass causes increased fire intensity and frequency,” and “[t]he  
21 proliferation of annual invasive grasses (notably cheatgrass) is one of the leading causes of the  
22 heightened fire danger.”). Courts have not hesitated to enjoin federal agency projects that  
23 threatened to increase fire danger in the affected areas. *See, e.g., id.*; *Western Watersheds Project*  
24 *v. Bernhardt*, 392 F. Supp. 3d 1225, 1263 (D. Or. 2019) (finding that the public interest supported  
25 enjoining livestock grazing due to increased fire risk from cheatgrass invasion); *Sierra Club v.*  
26 *Eubanks*, 335 F. Supp. 2d 1070, 1083-84 (E.D. Cal. 2004) (“To the extent Plaintiffs have  
27



1 demonstrated that implementation of the . . . Project may increase the likelihood of severe fire,  
2 such an increased risk is clearly not in the public interest.”).

3 Moreover, where the threat of wildfire has been found to tip the public interest factor  
4 toward the agency, it is only where that risk is “imminent or the danger has begun.” *Connaughton*,  
5 752 F.3d at 766 (explaining that without evidence of an “imminent” fire threat, “the inability to  
6 mitigate such risks for a temporary period” did not outweigh the public’s interest in maintaining  
7 wildlife habitat and mature forests); *see also Alliance for the Wild Rockies v. Marten*, 253 F. Supp.  
8 3d 1108, 1112 (D. Mont. 2017) (granting injunction because defendant agency could show only  
9 that there was a “possibility of serious fire activity within the boundaries of the Project” and did  
10 not demonstrate an “imminent” threat).

11 Here, BLM has not shown an imminent fire risk sufficient to tip the public interest in its  
12 favor. According to the Project EA, there exists a “potential for high severity and high intensity  
13 wildfire” in the Project area, Exh. 14 (EA) at 28, but such a potential is normal and natural for  
14 many of the native vegetation types found there. Exh 1 (Rosentreter Decl.) ¶ 21, 23-24. At the  
15 same time, the EA reveals that BLM fire suppression efforts in the Project area have been  
16 “increasingly effective” throughout the past century, and have “limited” the role of fire in the  
17 Project area. Exh. 14 (EA) at 5, 29. According to BLM, the Project area generally exhibits  
18 “moderate changes in fire and vegetation attributes,” with only two percent of the 384,414-acre  
19 Project area at “high” risk of “losing key ecosystem components” to fire. *Id.* at 30 (emphasis  
20 added). The Project’s goals in relation to wildfire, moreover, are not to respond to an imminent  
21 danger, but rather to “reduce potential for large wildfires,” “slow potential fire progression,” and  
22 “aid in fire suppression.” *Id.* at 6. And the EA states that if the Project does not go forward, “[f]ire  
23 management within the [Project area] would continue as prescribed within the Ely District [fire  
24 management plan].” *Id.* at 32 Thus, as in *Connaughton*, BLM has not established that there is an  
25 “imminent” danger of catastrophic fire, and the public interest supports an injunction.

## 26 CONCLUSION

27 For all of the reasons discussed herein, this court should grant a preliminary injunction.

1 Dated August 23, 2023

Respectfully submitted,

2 */s/ Scott Lake*

3 Scott Lake

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## TABLE OF EXHIBITS

### Exhibit No. Description

- 1 Declaration of Roger Rosentreter, Ph.D.
- 2 Declaration of Dave Stricklan, Ph.D.
- 3 Declaration of Patrick Donnelly
- 4 Declaration of Paul Ruprecht
- 5 Declaration of Rick Spilsbury
- 6 Declaration of Delaine Spilsbury
- 7 Petition to List the Pinyon Jay as Threatened or Endangered
- 8 Petition to List the Pygmy Rabbit as Threatened or Endangered
- 9 U.S. Fish and Wildlife Service, 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13910 (March 23, 2010).
- 10 Sage-grouse National Technical Team, A Report on National Greater Sage-Grouse Conservation Measures (Dec. 21, 2011)
- 11 U.S. Fish and Wildlife Service, Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report (Feb. 2013).
- 12 U.S. Bureau of Land Management, Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region (Sept. 2015).
- 13 U.S. Bureau of Land Management, Ely District Record of Decision and Approved Resource Management Plan (Aug. 2008)
- 14 U.S. Bureau of Land Management, South Spring and Hamlin Valley Watersheds Restoration Plan, Final Environmental Assessment (Sept. 2022)
- 15 Center for Biological Diversity Comment Letter re: South Spring and Hamlin Valley Watersheds Restoration Plan (June 2017)
- 16 U.S. Fish and Wildlife Service, Endangered and Threatened Wildlife and Plants; 90-Day Findings for Five Species, 88 Fed. Reg. 55991 (August 17, 2023).
- 17 Somershoe et al., Conservation Strategy for the Pinyon Jay (*Gymnorhinus cyanocephalus*) (Feb. 2020).
- 18 U.S. Bureau of Land Management, South Spring and Hamlin Valley Watersheds Restoration Plan Decision Record (Sept. 28, 2022).
- 19 Email exchange between Daniel Luecke, U.S. Department of Justice, and Scott Lake, Center for Biological Diversity (June 13 2023-August 18, 2023).

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Center for Biological Diversity, and that on this 23rd day of August, 2023 I served a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such upon all attorneys of record.

Dated August 23, 2023

Respectfully submitted,

*/s/ Scott Lake*

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