IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel D. Domenico

Civil Action No. 1:24-cv-01608-DDD-NRN

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

DOUG MAYES, in his official capacity as Field Manager for the U.S. Bureau of Land Management's Royal Gorge Field Office, and BUREAU OF LAND MANAGEMENT,

Respondents,

and

BISON OIL & GAS IV, LLC and VERDAD RESOURCES, LLC,

Intervenor-Respondents.

ORDER GRANTING MOTION TO DISMISS

This case is about twenty-six permits to drill for federally owned oil and gas in Northeast Colorado. Bureau of Land Management claims that it lacks authority to require mitigation of certain environmental impacts from these wells because they are not on federal land. The Center for Biological Diversity sued, arguing that BLM *must* regulate these wells. The stark difference in the parties' conclusions stems from the unique Fee/Fee/Fed well ownership structure.

A Fee/Fee/Fed well is one where a non-federal entity owns the surface estate and the minerals directly beneath the surface, but through directional drilling, the well accesses federal minerals. This unique

ownership structure changes BLM's regulatory relationship with the well. In the fee simple scenario, where the government owns both the surface and the mineral rights, BLM exercises its full regulatory authority. In the split estate scenario, where the government owns the minerals below the well site but not the surface, BLM has limited, but still some, regulatory authority to regulate the surface effects. *See* Doc. 9 at 3 n.3. But parties disagree on BLM's authority when its relationship with the surface becomes even more attenuated.

In 2018, BLM issued Permanent Instruction Memorandum 2018-014, bureaucratically titled "Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations."[1] The Memorandum provides the policies and procedures for approving APDs for Fee/Fee/Fed wells. It lays out what BLM is required to do: comply with the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and National Historic Preservation Act (NHPA), and consider the cumulative effects of construction and operation of the well.[2] It also lays out what BLM cannot do: require a surface use plan, a surface bond, or mitigation of surface disturbances. *See generally* Memorandum 2018-014.

Consistent with this guidance, BLM approved twenty-six APDs for three different well pads with names of varying creativity: Boomhog,

[1] Bureau of Land Management, Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations (Jun. 12, 2018), https://www.blm.gov/policy/pim-2018-014 [hereinafter Memorandum 2018-014].

[2] This paragraph compels the court to apologize for the use of so many acronyms; it is an aspect of these sorts of cases that may be unavoidable but is still lamentable.

Speed Goat, and Dittmer.[3] These sites are all in northeastern Colorado, near, but not on, the Pawnee National Grassland.

Petitioner sued, alleging that Memorandum 2018-14 is based on a misinterpretation of law, and so violates the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). And because the related APD approvals relied on the Memorandum, they too violate the APA. Doc. 1. Defendants previously moved to dismiss the petition for lack of standing, and Bison Oil & Gas IV and Verdad Resources moved to intervene in the matter. I granted both motions. *See* Doc. 23.

Petitioner filed its First Amended Petition for Review, again alleging that the Memorandum and APDs violate the APA. Doc. 24. The government and intervenors each moved to dismiss the petition. The government argues that Petitioner still lacks standing and fails to state a claim. Doc. 27. Intervenors argue that Petitioner lacks standing, that Memorandum 2018-014 is not a final agency action, and that Petitioner's APD claim is moot. Doc. 28.

DISCUSSION

I. Standing

"Article III of the Constitution confines the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024). To keep the Court in its constitutional lane, the Plaintiff must show standing. Without standing, the Court lacks subject matter jurisdiction, and the case must be dismissed according to Federal Rule of Civil Procedure 12(b)(1). *See Colorado Env't Coal. v. Wenker*, 353 F.3d 1221, 1227 (10th Cir. 2004). That means a

[3] Boomhog, Speed Goat, and Dittmer are the names of the well pad sites. Multiple wells can be drilled from one well pad, but each well accessing federal minerals needs its own APD. As a result, twenty-six APDs require only three well pads.

"plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 338 (2016). The "plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.*

"Where, as here, a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element." *Id.* (citation modified).

Petitioner has shown the first prong. The Center plausibly pleaded harm to their members through reduced use and enjoyment of the Pawnee National Grassland. Doc. 24 at ¶¶ 29, 63; *see also* Doc. 23 at 9.[4] The law is clear that "[a]s a general rule . . . environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1155 (10th Cir. 2013) (quotations omitted).

As with the previous motion to dismiss, the closer question is whether the Center has adequately pleaded traceability and redressability.

The second factor, whether the injury is fairly traceable to the defendant's challenged action, turns on whether the plaintiff has shown a "substantial likelihood that the defendant's conduct caused the plaintiff's injury in fact." *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005). A plaintiff "bear[s] the burden of pleading and proving

[4] Intervenors seem to argue that the Center has not shown an injury in fact because it failed to meet the Tenth Circuit's test for injury in NEPA cases. *See* Doc. 28 at 9 (citing *Rocky Mountain Peace & Justice Ctr. v. U.S. Fish & Wildlife Serv.*, 40 F.4th 1133, 1153 (10th Cir. 2022)). But as the Intervenors recognize, the Center does not raise NEPA claims, so this test is inapplicable here.

concrete facts showing that the defendant's actual action has caused the substantial risk of harm." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013). In environmental cases, a plaintiff often must show "either its geographic nexus to, or actual use of the site where the agency will take or has taken action such that it may be expected to suffer the environmental consequences of the challenged action." *Dine Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 841 (10th Cir. 2019) (citation modified).

In its initial petition for review, the Center alleged only that its members used "areas in proximity to the drilling sites of the Colorado APD decisions." Doc. 1 at ¶ 24. I found that this conclusory statement was insufficient. Doc. 23 at 10. The Pawnee National Grassland is not one solid block, but a "300-square-mile landscape of interspersed federal public and private lands," and the federal portion of the patchwork includes "193,060 acres of public lands spread out across two administrative units." Doc. 24 at ¶ 124. But in its amended petition, Petitioner has included additional factual allegations and in response to the motions to dismiss, has included declarations from its members that explain exactly what portion of the grassland they use to show nexus.

For the Speed Goat site, Petitioners alleged that their members frequent two sections of the grassland within a quarter mile of the site. Doc. 24 at ¶ 65. Center members stated that the Speed Goat project would negatively impact views, bird watching, wildlife habitat, and the roadways used to travel there. *See* Doc. 31-1 at ¶ 51; Doc. 31-4 at ¶¶ 32, 34–35. One member stated that the sections are only a square mile each, so the project affects the entirety of both sections. Doc. 31-4 at ¶ 33.

Similarly, the Boomhog site sits within a half mile of two units that Center members use. Doc. 24 at ¶ 64. Members further state that Boomhog development will affect wildlife and bird viewing in the area,

including burrowing owls, nighthawks, deer and pronghorn. Doc. 31-4 at ¶ 28. They further claim that Boomhog will affect much of these units because they are each only four or five miles across at their widest. Doc. 31-4 at ¶ 26.

Petitioner has shown that its members have used and intend to use again "the area affected by the challenged activity." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). Petitioners also confirm that their members intend to continue using these locations. Doc. 24 at ¶¶ 19–20. It has shown both "geographic nexus to the affected areas," *Dine Citizens*, 923 F.3d at 841, and "plan to make use of the specific sites," *Summers*, 555 U.S. at 499.

Petitioner's additional facts clarify what specific parts of the Grassland its members use and what harms they face, but still it "bear[s] the burden of pleading and proving concrete facts showing that *the defendant's actual action* has caused the substantial risk of harm." *Clapper*, 568 U.S. at 414 n.5 (emphasis added). This question reveals a disconnect—the harms come from drilling, but the actual action Petitioner challenges is the approving the APDs. But do the APDs actually cause the drilling? I am not so sure.

For the typical fee simple well, the answer is easily yes. There, a producer cannot drill on federal land without an APD. Petitioner argues that, here too, "vacating the APDs would prohibit their operations entirely, providing complete redress." Doc. 32 at 4. But this is not so for Fee/Fee/Fed wells, which "pass through and are capable of producing minerals from multiple non-federal mineral estates." Doc. 27 at 11. An APD is necessary for access to the federal minerals in this scenario, but not for all drilling. BLM has no control over the production of non-federal minerals from these non-federal well pads. Because the wells can

produce non-federal minerals, it is unclear whether the federal permits cause the alleged harm. Put simply, I cannot trace it.

The problem is clearer when considering that "causation and redressability, are usually 'flip sides of the same coin.'" *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 606 U.S. 100, 111 (2025). The harms in this case stem from drilling—the looks, the noise, and the trucks. Petitioner has not alleged specific facts that show the APDs caused the looks, noise, and trucks. And it has not alleged any facts that allow me to conclude that if I vacated the APDs the looks, noise, and trucks would change. It is possible that these well pads rely primarily, or even exclusively, on federal APDs, and vacating the APDs would solve the members' problems. But Petitioner has not produced any evidence this is the case other than assumptions and speculation. It is also possible that the well pads would produce in largely the same way and none of the members harms would be redressed.[5]

In cases like this, where causation and redressability "hinge on the response of the regulated (or regulable) third party," it is "the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). Petitioner has not done so here.

[5] Petitioner argues that it has shown redressability because vacating the APDs would redress the harms attributable to the federal minerals, and that it is enough that harm would be reduced "to some extent." Doc. 32 at 5 (quoting *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 902 (10th Cir. 2012)). Even if this were true, it does not solve the causation problem. The question is whether the causal link is "too speculative or too attenuated" and the link is too speculative "where it is not sufficiently predictable how third parties would react to government action." *All. for Hippocratic Med.*, 602 U.S. at 383.

Petitioner also claims standing based on the theory that the APDs contribute to air pollution injuries within the Denver/Front Range ozone nonattainment area. Doc. 32 at 4. It cites to *Utah Physicians for a Healthy Env't v. Diesel Power Gear, LLC* for the proposition that plaintiffs in a nonattainment area have standing against a "defendant that emits the injurious pollutant" in that nonattainment area." 21 F.4th 1229, 1245 (10th Cir. 2021). Unlike *Utah Physicians*, however, this is not a Clean Air Act case. *Utah Physicians* bases its analysis in no small part on what kind of suits can be brought under the Clean Air Act's citizen suit provision. *Id.* at 1244–45 ("Our view also appears to be in keeping with the view of courts in other circuits that, except in one circumstance, a person injured by air or water pollution has standing *under the CAA or the Clean Water Act*." (emphasis added)).

Because this case is not brought under the Clean Air Act, harms from air pollution are not traceable to the BLM APDs, nor is it likely that they can be redressed in this case. BLM is not the government entity primarily responsible for air pollution, so even if BLM were to redo the APDs, it could not justify altering its outcome on purely air pollution grounds. *See Wyoming v. United States Dep't of the Interior*, 493 F. Supp. 3d 1046, 1067 (D. Wyo. 2020) ("It is not a reasonable interpretation of BLM's general authority under the MLA to 'safeguard[ ] the public welfare' as empowering the agency to regulate air emissions, particularly when Congress expressly delegated such authority to the EPA under the CAA."), *opinion vacated upon repeal of regulation*, No. 20-8072, 2024 WL 3791170 (10th Cir. Aug. 13, 2024).

II. Failure to State a Claim

Even if Petitioners are right that they could trace their injuries to the APDs and could receive some relief, their claim would fail on the merits.[6]

A motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) requires a court to "determine whether the complaint sufficiently alleges facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed." *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007). In doing so, the court "must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Alvarado v. KOB-TV, LLC*, 493 F.3d 1210, 1215 (10th Cir. 2007). "The burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he or she is entitled to relief." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "Mere 'labels and conclusions' and 'a formulaic recitation of the elements of a cause of action' will not suffice." *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012) (quoting *Twombly*, 550 U.S. at 555). A court will "disregard

[6] Intervenors argue that the challenge to the APDs is moot because the wells have been built, drilled, and started producing. Mootness is a high bar; the defendant must show that it is impossible for the court to provide relief. *Petrella v. Brownback*, 787 F.3d 1242, 1255 (10th Cir. 2015). "The crucial question is whether granting a present determination of the issues offered will have some effect in the real world." *Id.* (quoting *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir.2010)). As explained above, it is unclear what effect vacating the APDs would have. But now that cuts against the Intervenors. Because of that uncertainty, they have not met the high standard to show mootness.

conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable." *Id.* At this stage, the well-pleaded facts underlying a plaintiff's allegations must articulate a viable legal claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Twombly*, 550 U.S. at 555.

The APA gives courts authority to review "final agency action[s]," 5 U.S.C. § 704, and hold unlawful those that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 706(2)(A). This includes an agency action where the agency has "misconceived the law." *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 94 (1943); *see also Maez v. Mountain States Tel. & Tel., Inc.*, 54 F.3d 1488, 1505 (10th Cir. 1995) ("An administrator's action is arbitrary and capricious if it is based on a lack of substantial evidence, mistake of law, bad faith, or conflict of interest." (citation modified)).

Petitioner says that Memorandum 2018-014 disclaims BLM's authority to regulate Fee/Fee/Fed wells and this disclaimer is not in accordance with the Mineral Leasing Act, Federal Land Policy and Management Act, and Mineral Leasing Act for Acquired Lands. It further claims that because the APDs are based on Memorandum 2018-014, they too are based on a mistake of law.

In response, Intervenors argue that Memorandum 2018-104 is not a final agency action, and the government argues that it is consistent with the law.

A. Final Agency Action

An agency action is final if it both "mark[s] the consummation of the agency's decisionmaking process" and is an action by which "rights or obligations have been determined, or from which legal consequences will

flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal quotations omitted).

Intervenors first argue that the Memorandum is not final because it is only BLM's legal interpretation of its procedures and is not legally binding. They argue that, because the Memorandum is a document focused on process, it is inherently "tentative and interlocutory." Doc. 28 at 8.

But I am persuaded by Petitioner's argument that the Memorandum resolves BLM's legal position as to its authority over surface activities. As the D.C. Circuit has held, an agency action can be practically binding, even if it is not legally binding. *See Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1020–21 (D.C. Cir. 2000). In *Appalachian Power Co.*, the D.C. Circuit found that an EPA guidance was binding because it was "the agency's settled position, a position it plans to follow in reviewing State-issued permits, a position it will insist State and local authorities comply with in setting the terms and conditions of permits issued to petitioners, a position EPA officials in the field are bound to apply." *Id.* at 1022.

The Memorandum here is much the same. As Intervenors recognize, instruction memoranda are "controlling on the agency" even if they do not have the force of law. Doc. 28 at 8 (citing *Lassen Motorcycle Club*, 133 IBLA 104, 108 (1995)). The Memorandum here is the agency's settled position that it follows in issuing APDs and that BLM field officials are bound by. Under *Appalachian Power Co.* and the cases that cite it, an agency document that "provides firm guidance to enforcement officials about how to handle permitting decisions" is final. *Nat'l Env't Dev. Assoc.'s Clean Air Project v. E.P.A.*, 752 F.3d 999, 1007 (D.C. Cir. 2014). The Memorandum here meets the two-prong test from *Bennett* because

it is a binding change in policy and affects the rights and obligations of APD applicants.

B. Otherwise Contrary to Law

The only remaining question is whether Memorandum 2018-014 is contrary to law. The Center argues that the Memorandum disclaims BLM's authority over surface regulation and that this is contrary to the MLA and FLPMA which "not only authorize but *require* BLM to regulate Fee/Fee/Fed wells." Doc. 24 at ¶ 6. The government responds that there is no such power, let alone affirmative mandate in the statutes.

I begin with what Memorandum 2018-014 actually says. The Memorandum concludes that "BLM's regulatory jurisdiction is limited to Federal lands (including minerals)," so "BLM's jurisdiction extends to surface facilities on entirely non-Federal lands solely to the extent of assuring production accountability for royalties from Federal and Indian oil and gas (including prevention of theft, loss, waste, and assuring proper measurement)." Memorandum 2018-014.

From this conclusion, BLM claims it has no authority to regulate the non-federal surface in the ways it usually does: (1) " BLM has no jurisdiction to require an APD before an operator may begin pad and road construction or drilling on the non-Federal land," (2) "BLM does not have authority to require a bond to protect non-Federal surface owner interests," (3) "Neither the Federal Land Policy and Management Act (FLPMA) nor the MLA provide the BLM with authority to require mitigation of surface disturbances on non-Federal lands," and (4) "BLM's inspection and enforcement authority is generally limited to downhole and production accountability operations." *Id.*

The Memorandum does not wholly disclaim BLM's environmental responsibilities. BLM concluded that it must comply with NEPA, the

ESA, and the NHPA and may (1) "request that the operator submit additional information regarding surface operations when this information is necessary to analyze the proposed operations under NEPA, the ESA, and the NHPA;" (2) require a bond for downhole concerns; (3) "deny the APD if the inability to access the surface prevents the BLM from meeting its obligations under NEPA, ESA, or NHPA;" and (4) "propose measures that would mitigate significant impacts" to facilitate NEPA compliance. *Id.*

Petitioners argue that BLM has more authority than the Memorandum concludes. It argues that BLM focuses too much on its regulatory authority over non-federal land, and misses its authority over the federal minerals. Its argument is that the Property Clause, U.S. Const. Art. IV § 3, cl. 2, gives Congress plenary authority, that Congress delegated those powers to the Secretary of the Interior, and that the MLA and FLPMA confirm these powers.

In general, the Center is right that the Property Clause grants plenary powers to Congress to regulate federal property. *See* U.S. Const. art. IV, § 3, cl. 2 ("Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."); *Kleppe v. New Mexico*, 426 U.S. 529, 530 (1976) (describing Congress's Property Clause powers as "without limitations"). And federal minerals are federal property to which the clause's power attaches.

The Center next claims that Congress delegated this plenary power to BLM through the Secretary of the Interior, and then that this plenary power gives BLM the authority to require environmental mitigation for non-federal land. It cites to several cases which it claims confirms this plenary delegation. Doc. 32 at 9 (citing *Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 336-37 (1963); *Cameron v. United States*, 252 U.S.

450, 461 (1920); and *Cosmos Expl. Co. v. Gray Eagle Oil Co.*, 190 U.S. 301, 309 (1903)). But these cases all address the government's authority to make decisions about the disposal of government property. BLM may have been delegated the government's prerogatives as landowner, but it is quite a different argument that it this also gives it plenary regulatory authority over non-federal lands. Such a claim is one step too far.

When considering BLM's power as regulator, the Tenth Circuit has held that "as a mere grant of power 'to make all needful Rules and Regulations,' the Property Clause's plain language is not self-executing." *Utah Native Plant Soc'y v. United States Forest Serv.*, 923 F.3d 860, 866–67 (10th Cir. 2019). Without further legislation, the Property Clause does not "itself grant the [BLM] authority over [non-federal] lands adjacent to the [federal lands]." *Id.* at 867.

The Center claims it has such legislation: FLPMA and the MLA. It points to FLPMA's direction to "regulate . . . the use, occupancy, and development of the public lands," 43 U.S.C. § 1732(b) and that "the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values," § 1701(a)(8).[7] To this end, the Center argues that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." § 1732(b). Similarly, the MLA requires that BLM "shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of surface resources." 30 U.S.C. § 226(g).

[7] The statutory definition of public lands includes "any land and interest in land owned by the United States," 43 U.S.C.A. § 1702(e), including mineral rights.

No doubt FLPMA and the MLA determine how federal lands are to be managed. But the only federal land being managed by the APDs is the federal minerals. The Memorandum recognizes this and confirms that BLM has regulatory jurisdiction over downhole interests and over surface interests "solely to the extent of assuring production accountability for royalties." Memorandum 2018-014. It confirms BLM's authority to use Federal oil and gas bonds "to address downhole concerns." *Id.* This includes plugging the well and addressing issues in case of an orphaned well. The Memorandum also recognizes that BLM will need access to the non-federal surface areas to monitor federal rights, and without this access, BLM "may order or cause the federally approved operations to be halted and the Federal well or wells shut-in." *Id.* BLM also recognizes its requirements under NEPA and that they expand depending on whether the federal minerals are accessed from a pre-existing, expanded, or new well.

The Center does not argue that the APDs improperly manage the federal minerals. Instead, its reading is that BLM must regulate non-federal property to maintain the National Grassland—even through mineral leasing decisions that are not about the grassland. The APDs do not "manage" the grassland, and the plain language of the statute does not support regulatory authority beyond what is being directly managed.

The MLA authority to regulate surface-disturbing activities is limited to surface activities "pursuant to the lease." 30 U.S.C. § 226(g). But surface activities on non-federal land are not "pursuant to the lease" when the lease is only for federal minerals. Activities "pursuant to the lease" more plainly means activities permitted by the lease. On a Fee/Fee/Fed well, drillers can begin surface-disturbing activities

without BLM approval—meaning these activities are not "pursuant" to any federal lease.

Likewise, FLPMA authorizes the Secretary of the Interior to "regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands." 43 U.S.C. § 1732(b). And requires that "[i]n managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." *Id.* The most natural reading of that sentence is that "the lands" that are to be protected are those same "public lands" being managed. The Center's proposed reading would require BLM to consider all other federal interest in land when making even the smallest management decisions. It is a basic principle of statutory interpretation that courts should not find such onerous requirement hiding in vague language. *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). The "lands" being managed by the APDs are the minerals, and BLM has taken appropriate actions to make sure the minerals are not unduly degraded. FLPMA does not speak to downstream consequences to different federal lands.

The plain language of the MLA and FLPMA do not support the broad regulatory authority that the Center argues BLM can exercise. These statutes are best read to allow the government to manage the federal lands at issue in the individual decision. They cannot be read to allow one management decision to address all other federal lands.

The Center seems to try to boost the reach of these statutes by arguing that they "confirm" the general delegations of Congress's Property

Clause powers. But I cannot endorse a broader statutory reading simply because it identifies a more robust Congressional power. In fact, I must be even more circumspect.

The Petitioner's reading results in "broad, expansive power on an uncertain statutory basis." *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 639 (2026) (opinion of Roberts, C.J.). In cases like this "separation of powers principles and a practical understanding of legislative intent make [courts] reluctant to read into ambiguous statutory text the delegation claimed to be lurking there." *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (internal quotation omitted). So, even though the Center's interpretation of the statutes might be feasible "[a]s a matter of 'definitional possibilities,'" this interpretation requires "clear congressional authorization." *Id.* at 732.

Recognizing that standard, this case is similar to *Utah Native Plant Society*. There, a group sued the United States Forest Service, arguing that it should have prevented the state of Utah from releasing goats in the Manti-La Sal National Forest. *Utah Native Plant Society*, 923 F.3d at 866. It too argued that the property clause and other statues required the government to act. But the Tenth Circuit held that the Property Clause was, alone, insufficient and the statute's "broad directive that the Secretary 'make provisions for the protection against destruction by ... depredations upon the ... national forests,' hardly evidences a 'clear and manifest' purpose to encroach upon State sovereignty and override

Utah's traditional management of wildlife within its borders *outside* the Manti-La Sal National Forest." *Id.* (emphasis in original).[8]

Petitioner tries to make a similar argument here. The core of its argument is that the government's interest in land gives BLM not only plenary power over that property, but also expansive regulatory power over everything that affects *any* land that the BLM might have. The Center would read BLM's authority over federal minerals to enable it to regulate not only the property being disposed of (the minerals) and any nearby public land (the Grassland), but also activities related to the former that may impact the latter but that take place on entirely non-public land. It thus asks the court to interpret the statute to require BLM to encroach on traditional state territory. *See Virginia Uranium, Inc. v. Warren*, 848 F.3d 590, 596 (4th Cir. 2017) ("the power to regulate mining . . . has traditionally been reserved to the states"), aff'd, 587 U.S. 761 (2019).

And it does so relying only on broad statutory directives regarding "public lands" and a passing reference to the Property Clause. I do not think that "take any action necessary" is a clear statement of regulatory authority over non-federal lands. Neither does the MLA's requirement that BLM "regulate all surface-disturbing activities," clearly authorize BLM to regulate private lands merely because they are nearby. This kind of expansion of power is not something courts endorse lightly.

---

[8] Because plaintiff argued that Utah's traditional police powers were preempted, the Tenth Circuit required a "clear and manifest purpose of Congress" to preempt state power. *Utah Native Plant Soc'*, 923 F.3d 860, 867 (10th Cir. 2019). This standard is not quite the same as "clear congressional authorization," but the heightened standards are analogous.

I cannot conclude that BLM has this expansive new power to regulate non-federal surface activities without a "clear congressional authorization," and the statutes Petitioner cites do not contain one. BLM's conclusion in Memorandum 2018-014 is consistent with that holding, so it is not contrary to law. Because the Memorandum is not based on a mistake of law, the APDs are not either. Petitioner's claim fails.

CONCLUSION

It is ORDERED that:

Both the government's Motion to Dismiss, **Doc. 27**, and the Intervenors' Motion to Dismiss, **Doc. 28**, are **GRANTED**; and

The Amended Petition, **Doc. 24,** is **DISMISSED without prejudice**.

DATED: March 23, 2026

BY THE COURT:

Daniel D. Domenico
Chief United States District Judge