IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

POWDER RIVER BASIN RESOURCE COUNCIL and WESTERN WATERSHEDS PROJECT, Plaintiffs, v. U.S. DEPARTMENT OF THE INTERIOR and U.S. BUREAU OF LAND MANAGEMENT, Defendants, and STATE OF WYOMING, et al., Defendant-Intervenors.	Case No. 1:22-cv-2696-TSC

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED AND SUPPLEMENTAL COMPLAINT (ECF 155)

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INTRODUCTION

BLM and Intervenors do not meet their heavy burden to overcome Rule 15's liberal standard favoring leave to amend pleadings. They oppose the proposed Second Amended and Supplemental Complaint, ECF No. 155-1 ("Second Amended Complaint") on essentially three grounds: (1) it is not sufficiently related to the original case; (2) it would prejudice Defendants and Intervenors; and (3) it would be futile. All three grounds lack merit.

First, the proposed Second Amended Complaint is a logical extension of the original case. It seeks to challenge BLM's supplemental groundwater Environmental Analysis (Groundwater EA) and Decision Record (Groundwater DR) for the Converse County Project—documents which BLM prepared in response to summary judgment in this case, which reaffirm the Converse County Project Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) at issue in the original complaint, and which opposing parties use to seek a dissolution of the interim injunction, *see* ECF Nos. 145–48.[1] It also seeks to challenge recent BLM decisions approving applications for permits to drill (APDs) new wells in the Converse County Project area (APD Decisions), in direct reliance on the same Groundwater EA and in circumvention of the interim injunction.

The supplemental claims belong here. They involve the same Converse County Project and significant overlapping facts, legal issues, and parties. Indeed, if brought in a new action, they would make their way to this Court as a related case under the Local Rules. Allowing those new claims to be asserted in the Second Amended Complaint would best conserve judicial and party resources, by avoiding "the cost, delay and waste of separate actions"—the central goal of Rule 15. *Keith v. Volpe,* 858 F.2d 467, 473 (9th Cir. 1988).

[1] All docket citations use the ECF pagination.

Second, no undue delay or prejudice will result. The Second Amended Complaint would not undo any progress or delay a resolution of the original claims against the ROD and FEIS, as is does not alter their substance. The Court may still decide those existing claims based on the completed summary judgment briefing. Neither would it stop the Court from addressing BLM's and Intervenors' motions to dissolve. The only "prejudice" BLM and Intervenors can identify is the burden of defending against the new claims. However, this is not cognizable prejudice in the context of Rule 15, which instead requires a party to "show that it [would be] unfairly disadvantaged" in its defense of claims, such as by a lost "opportunity to present facts or evidence." *Butler v. White*, 67 F. Supp. 3d 59, 68 (D.D.C. 2014). BLM and Intervenors also fail to explain how the alternative—a separate lawsuit—would impose a lesser burden.

Finally, no part of the Second Amended Complaint is futile. As for Article III standing, Intervenors utterly ignore Plaintiffs' new allegations which closely track the D.C. Circuit standard, specifying: (1) discrete areas of effect around each APD Decision; and (2) how members use lands within those particularized areas of effect for each APD Decision. Plaintiffs also state plausible violations of the National Environmental Policy Act (NEPA) and Federal Land Policy and Management Act (FLPMA), sufficient to withstand Rule 12(b)(6).

For all these reasons, and given the liberal standards of Rule 15, the Court should allow Plaintiffs to file their Second Amended Complaint. The Court should not delay its ruling on this Motion. The other pending matters have no bearing on the "necessity" of this relief, as Private Intervenors would have the Court believe, because BLM's new decisions must be litigated. Oil companies are proceeding with that permitted drilling already. An expeditious ruling will ensure Plaintiffs are not left in limbo and may begin forward progress on their new claims, here or by filing a new lawsuit.

ARGUMENT

I. Rule 15 Requires Leave to be Freely Granted.

It bears reiterating that leave to amend or supplement a pleading under Rule 15 should be "*freely granted* when doing so will promote the economic and speedy disposition of the entire controversy between the parties" without undue delay or prejudice to the other parties. *Hall v. CIA*, 437 F.3d 94, 101 (D.C. Cir. 2006) (quoting 6A Charles Alan Wright et al., Federal Practice and Procedure § 1504, at 186–87 (2d ed. 1990) (emphasis added)). It is a "generous" standard, *Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 344 (D.C. Cir. 1997), and "this mandate is to be heeded," *Foman v. Davis*, 371 U.S. 178, 182 (1962). "It is the opposing party's burden to demonstrate why leave should not be granted." *Lannan Found. v. Gingold*, 300 F. Supp. 3d 1, 12 (D.D.C. 2017).

II. The Supplemental Claims Are Closely Related to the Existing Case.

BLM and Intervenors say leave should be denied because the supplemental claims are not sufficiently related to the existing case. *See* Defs.' Resp. at 10–11; Private Intvs.' Resp. at 5–9; Wy. Resp. at 8–9. However, this is a basis for rejecting supplementation only where the new claims are "so unrelated to the original cause of action as to have *no substantive connection* to the [existing] claims" such that they "would radically alter the nature and scope of the case." *Miss. Ass'n of Coops. v. Farmers Home Admin*., 139 F.R.D. 542, 544 (D.D.C. 1991) (emphasis added); *see also Volpe*, 858 F. 2d 467 (new claims need only have "some relationship" to the original action). As explained below, the new claims here are closely related to the original action. They challenge decisions that are part of the same Converse County Project, respond to this Court's injunction, reaffirm the ROD and FEIS underlying this action, and overlap factually and legally with the existing case. The new claims are thus appropriately linked to this case. *See*

Aftergood v. CIA, 225 F. Supp. 2d 27, 30 (D.D.C. 2002) ("Leave to file a supplemental pleading should be freely permitted when the supplemental facts connect it to the original pleading.").

As this Court is already closely familiar, this suit involves the Converse County Project, a massive 5,000-well oil and natural gas development in Wyoming's Powder River Basin approved by Defendant BLM in 2020. Plaintiffs' initial case challenges the Converse County Project FEIS, ROD, and associated Casper Resource Management Plan (RMP) Amendment for violating various federal environmental laws, including NEPA, FLPMA, the Mineral Leasing Act (MLA), and the Administrative Procedure Act (APA). *See* Pls.' First Am. Compl. (ECF No. 44). It also challenged individual APD decisions in the Converse County Project area, *id.* ¶¶ 112–20, 127–158, though such claims were later dismissed, ECF No. 105.

The Court has already granted summary judgment on one of Plaintiffs' claims, finding that BLM's groundwater analysis violated NEPA. *See* ECF Nos. 130, 131. Plaintiffs have five other arguments still pending before the Court: that BLM's groundwater analysis violated NEPA in other ways; that BLM violated NEPA by failing to take a "hard look" at greenhouse gas emissions; that BLM violated NEPA by failing to consider reasonable alternatives; that BLM misapprehended its authority under FLPMA and the MLA to require air quality mitigation measures; and that BLM violated FLPMA by removing seasonal raptor protections without consideration of its unnecessary and undue degradation mandate. *See* ECF No. 116-1 at 14–52.

Critically, as Plaintiffs have already explained at length, these claims are not mooted by BLM's supplemental groundwater analysis, *see* Pls.' Mot. for Leave at 14 & n.4, as BLM alone continues to assert, Defs.' Resp. at 8. BLM's objection that Plaintiffs attempt to "breathe new life" into their earlier challenges to the ROD is simply wrong. *See* Defs.' Resp. at 8. Regardless, supplementation is appropriate to resolve or simplify a mootness assertion. *See In re Sunrise Sr.*

Living, Inc. Derivative Litig., 550 F. Supp. 2d 1, 6 (D.D.C. 2008) (allowing amendment to "simplify and possibly obviate" jurisdictional arguments); *Rochon v. Gonzales*, 438 F.3d 1211, 1215 (D.C. Cir. 2006) (amendment proper to resolve "whether . . . claim . . . is, in fact, . . . within the jurisdiction of the Court"); *cf. Cuffy v. Getty Ref. & Mktg. Co.*, 648 F. Supp. 802, 806 (D. Del. 1986) (noting that "an amendment, designed to strengthen the movant's legal position, will in some way harm the opponent" but that is not "unfair prejudice").

There is a close relationship between these original claims and Plaintiffs' proposed Second Amended Complaint. The first set of proposed new claims challenges BLM's June 2025 supplemental groundwater analysis for the Project: the Groundwater EA, Finding of No New Significant Impact (FONNSI), and DR. Second Am. Compl. ¶¶ 458–81. As explained previously, those documents expressly "incorporate[]" and reaffirm the original Project FEIS and ROD. *See* Pls.' Mot. for Leave at 6–7. They were also the direct result of this Court's summary judgment order. *Id.* at 6–7. Plaintiffs' legal challenges to them also directly overlap with issues already pending before the Court. For example, the proposed Eleventh Claim involves identical arguments against BLM's groundwater analysis as are currently pending in the First Claim. *Compare* Second Am. Compl. ¶¶ 458–64 *with id.* ¶¶ 380–85. And to ensure there is no mootness issue, Plaintiffs' proposed Twelfth Claim alleges that in reaffirming the Converse County ROD, the Groundwater DR is unlawful on the same FLPMA, MLA, and APA grounds presented in Plaintiffs' existing Second and Third Claims. *Compare id.* ¶¶ 465–70 *with id.* ¶¶ 386–99.

The second set of proposed new claims challenges BLM's new decisions authorizing APDs in the Converse County Project area under two recent EAs and 20 Categorical Exclusions. Second Am. Compl. ¶¶ 400–57. These concern the same Converse County Project and overlap legally and factually with the original action, including by asserting claims similar to Plaintiffs'

original APD challenges. *Compare id.* ¶¶ 400–11, 435–43 *with* ECF No. 44 ¶¶ 127–37, 144–50. Although the new APD Decisions avoid citing the Project FEIS to skirt the injunction, they expressly rely on BLM's supplemental groundwater analysis for the Project. Many approve drilling on existing well pads that were approved under the Converse County FEIS and ROD.[2] These decisions also involve the same resource impacts as the FEIS and ROD claims, including to migratory birds, groundwater, and air quality. Finally, Plaintiffs allege these decisions violated the same laws underlying the original case, including the MLA, NEPA, FLPMA, and APA, and those claims will require the Court to resolve overlapping legal issues. For instance, the proposed Seventh Claim will present identical questions as the existing First Claim as to the sufficiency of BLM's supplemental groundwater analysis, because the APD Decisions rely on that analysis. *See id.* ¶¶ 419–25. The proposed Fifth Claim asks the Court to decide the scope of BLM's authority over Fee/Fee/Fed wells, an issue which is already pending before the Court in the context of Plaintiffs' existing air quality mitigation claim. *See id.* ¶¶ 405–11; ECF No. 124 at 20–24. Familiarity with the FEIS and ROD is also necessary to resolve Plaintiffs' Sixth and Eighth Claims, which allege that BLM arbitrarily reversed course by using piecemeal NEPA, rather than an overarching EIS, to approve these recent wells. Second Am. Compl. ¶¶ 412–18, 426–34.[3]

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[2] *See, e.g.*, https://eplanning.blm.gov/public_projects/2012700/200481389/20037599/250043796/SDU Tillard Fed Sec 26 West Pad _ DNA.pdf (well pad for SDU Tillard Fed wells); https://eplanning.blm.gov/public_projects/2024947/200553785/20082764/250088946/Impact Kratos & Lynx 3774-8 SESE Final NEPA.pdf (well pad for Corvus wells); https://eplanning.blm.gov/public_projects/2003002/200390857/20028548/250034750/CWDU Stoddard Fed Sec 11 _ DNA 5.pdf (well pad for CWDU Stoddard Fed wells).

[3] Private Intervenors' argument that Plaintiffs' Fourth Claim is an attempt "to resurrect an abandoned claim" makes no sense. Private Intvs.' Resp. at 7. While they are correct that Plaintiffs did not pursue their FLPMA claim against the Project ROD, Plaintiffs' do not re-allege this same claim. Rather, they assert *new* violations of the Casper RMP sage grouse requirements as to BLM's recent APD Decisions. *See* Second Am. Compl. ¶¶ 400–04.

In sum, the proposed supplemental claims are closely related to the existing case. Even if they "might broaden the scope of the litigation," supplementation is still proper because "judicial economy and convenience would be served by adjudicating the additional claim[s], which [are] factually and procedurally related to the first." *Fritch v. U.S. Dep't of State*, No. 15-cv-430, 2015 WL 13711460, at *1 (D.D.C. Nov. 13, 2015); *Crespo v. 1215 CT LLC*, No. 22-cv-3801, 2024 WL 2295210, at *1–2 (D.D.C. Jan. 19, 2024) (finding supplementation appropriate, although it would "expand the case," because it would promote judicial efficiency).

Case law also confirms that the Second Amended Complaint is appropriate. Courts routinely allow parties to supplement complaints to challenge new agency decisions issued in response to existing litigation or that erode protections won in prior rulings, as is true here. *See, e.g.*, *Habitat Educ. Ctr., Inc. v. Kimbell*, 250 F.R.D. 397, 401–02 (E.D. Wis. 2008) (allowing supplemental complaint to challenge new NEPA analysis and decisions agency defendants issued in response to injunction of timber projects and that defendants used to seek dissolution of that injunction); *Pub. Emps. for Env't Resp. v. Nat'l Park Serv.*, No. 19-cv-3629, 2021 WL 1198047, at *6 (D.D.C. Mar. 30, 2021) (allowing a supplemental complaint to challenge a rule the National Park Service issued while the case was pending, superseding the policy underlying the original complaint); *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-cv-00896, 2015 WL 13034990, at *7 (S.D. Ohio Aug. 7, 2015), *as amended nunc pro tunc*, 2016 WL 8223066 (S.D. Ohio Mar. 17, 2016) (collecting cases permitting supplemental complaints to challenge actions "which threaten to undermine" relief obtained in case).

In contrast, opposing parties' cases dealt with unique circumstances absent here. For instance, *Mississippi Association of Cooperatives* involved an attempt to transform a straightforward FOIA lawsuit into a case raising substantive violations discovered in the FOIA

documents that were "not related, legally or factually" to the FOIA claims. 139 F.R.D. at 542–44. In denying leave to amend, the court expressed a policy concern that allowing this approach would mean "FOIA actions could routinely serve as springboards to other lawsuits based on the documents received in the FOIA case." *Id.* at 544. However, the court *granted* leave to expand the case to challenge a FOIA policy, noting that such claims satisfied D.D.C.'s related case standard. *Id.* at 545. To the extent it is relevant, this case supports Plaintiffs.

In *Center for Food Safety v. Vilsack,* No. 10-cv-04038, 2011 WL 672802 (N.D. Cal. Feb. 18, 2011), the court denied leave to add claims challenging NEPA decisions that were already the subject of a separate case pending in a different jurisdiction. *Id*. at *4–5. In *Clean Water Action v. Pruitt,* 315 F. Supp. 3d 72 (D.D.C. 2018), the court denied leave to supplement, after the EPA amended the rule being challenged, because the new claims were deemed futile, were "wholly different" from the existing ones, and would also have "prevented the Court from resolving the pending dispositive motions." *Id.* at 80, 84–85. And in *De Sousa v. Department of State*, 840 F. Supp. 2d 92 (D.D.C. 2012), the Court denied leave where the prior claims were dismissed for failure to state a claim and the proposed amendment would have "drastically alter[ed] the nature of [the suit] into a wide-ranging First Amendment litigation concerning the use of classified information." *Id.* at 114. These unique considerations are not present here.

In sum, contentions about the "tangential" relationship between the new claims and the existing case do not withstand scrutiny or provide a basis for denying Plaintiffs' motion.

III. Granting Leave Would Promote Judicial Efficiency.

Rule 15(d) is, at its core, "a tool of judicial economy and convenience" designed to avoid the "cost, delay and waste of separate actions." *Volpe*, 858 F.2d at 473. BLM and Intervenors wholly ignore these efficiency concerns, which are "[o]rdinarily the strongest argument in favor

of allowing leave to file a supplemental compliant." *Thorp v. District of Columbia*, 325 F.R.D. 510, 514 (D.D.C. 2018) (cleaned up).

The Second Amended Complaint would promote the most prompt, efficient, and full resolution of the parties' disputes over the Converse County Project. The alternative is for Plaintiffs to initiate a separate action, which would likely end up before this Court as a related case. *See* LCvR 40.5. That new case would involve needless expense, delay, and waste of judicial resources. Preliminary motions (like intervention) would have to be relitigated; overlapping issues would have to be separately briefed and decided; and Plaintiffs—two non-profit organizations—would face additional filing fees and other costs. Simply allowing the supplemental claims to be resolved here would be far more efficient for all involved. Further, given the overlap in administrative records, factual context, and legal claims, this Court will have familiarity with essential facts and law underlying both sets of claims, to more efficiently decide them. *See supra* § II.

Given the strong federal policy against the multiplicity of suits, these circumstances heavily favor allowing Plaintiffs to file their Second Amended Complaint. *See Fund For Animals v. Hall*, 246 F.R.D. 53, 55 (D.D.C. 2007) ("The interests of judicial economy and convenience would be served where, as here, the plaintiffs' motion to supplement their complaint raises similar legal issues to those already before the court, thereby averting a separate, redundant lawsuit"); *Pub. Emps. for Env't Resp*, 2021 WL 1198047, at *6 (allowing supplementation when "having to file a new related case . . . would cause unnecessary delay and filing fees to be borne by [non-profit] Plaintiffs"); *Nat. Res. Def. Council v. Kempthorne*, No. 1:05-cv-01207, 2016 WL 8678051, at *15 (E.D. Cal. Apr. 22, 2016) ("The interests of judicial economy and convenience are served" given overlap in legal issues and fact that "any separate lawsuit based upon the

additional claims is likely to end up litigated before the undersigned as a related case."); *Hall v. CIA*, 437 F.3d at 101 (motions to supplement should be "freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties" (quoting 6A Charles Alan Wright et al., Federal Practice & Procedure § 1504, at 186–87)).

IV. Granting Leave Would Not Cause Undue Delay or Prejudice.

BLM's and Intervenors' arguments about undue delay and prejudice fall flat. As for delay, supplementation will not undo any progress in this case or delay a resolution of the existing claims. If the Court grants Plaintiffs' Motion, this case can proceed in a straightforward manor with two distinct phases. First, the Court can proceed immediately to resolve the existing claims, by ruling on the remainder of Plaintiffs' motion for summary judgment (ECF No. 116-1), as well as BLM's and Intervenors' motions to dissolve (ECF Nos. 145, 148). The Second Amended Complaint leaves the substance of the original claims intact, so new briefing is not needed. Contrary to Wyoming's suggestion, Wy. Resp. at 7, the amendments to the existing claims are not "substantive modifications" but clarifying edits to remove dismissed claims, adjust the prayer for relief based on new claims, and update legal citations based on recent changes to NEPA rules. As this Court has recognized, Plaintiffs' choice to "simultaneously 'fine-tune' other aspects of their claims" is allowable given their "legitimate cause to amend certain aspects" based on new decisions. *Radtke v. U.S. Bureau of Customs & Border Prot.,* No. 17-cv-2412 (TSC), 2022 WL 16948607, at *5 (D.D.C. Nov. 15, 2022).

Meanwhile, the parties can prepare the administrative records and litigation schedule for a future round of summary judgment briefing as to the new claims challenging the APD Decisions and Groundwater EA, FONNSI, and DR. Accordingly, this is not a case where granting leave would "unduly delay" the existing case. To the contrary, it would expedite the

resolution of further litigation over the Project by avoiding inefficient piecemeal litigation. *See supra* § III. In any event, "delay alone is an insufficient ground to deny the motion [to leave] unless it prejudices the opposing party." *Djourabchi v. Self,* 240 F.R.D. 5, 13 (D.D.C. 2006).

As for prejudice, BLM and Intervenors misunderstand the standard. In looking at prejudice to opposing parties, it is "not simply an adverse result, but an adverse result that would not occur but for the . . . allowance of the amendment." *Radtke*, 2022 WL 16948607, at *5. Courts thus readily reject claims of prejudice if the alternative—a new action—would entail a similar burden. *Id.* Moreover, simply having to expend time or resources litigating new claims is not cognizable "prejudice" in the context of Rule 15. The opposing party must instead "show that it [would be] unfairly disadvantaged" in its defense of claims, such as through a lost "opportunity to present facts or evidence." *Butler*, 67 F. Supp. at 68; *see also Fund For Animals*, 246 F.R.D. at 55 ("[U]ndue prejudice is not mere harm to the nonmovant but a denial of the opportunity to present facts or evidence") (cleaned up).

BLM and Intervenors have not shown undue prejudice. They make two points on this prong. First, they suggest the supplemental claims will somehow prevent the Court from ruling on the pending merits and remedies issues, including "dissolution of the injunction." *See* Defs.' Resp. at 8. But again, that is not true. The Court may still immediately rule on those motions, as they are unaffected by the Second Amended Complaint. BLM's fear that the new claims would have to be "fully" litigated before those existing motions are decided, Defs.' Resp. at 9, is illogical and unfounded.[4] Second, they object to having to prepare administrative records and

[4] BLM's contention that Plaintiffs' new claims would "effectively pre-enjoin[] BLM from approving APDs under its new 2025 Decision Record" is also unfounded. *See* Defs.' Resp. at 10. It is unclear what BLM even means by this, and Plaintiffs have not made this argument. In any event, the Court's imminent ruling on the motions to dissolve would clarify the issue.

briefing for these claims, but that is not cognizable prejudice in the Rule 15 context, *see Butler*, 67 F. Supp. at 68, particularly as these same steps will be required regardless of whether the claims are litigated here or in a new case. If anything, granting leave will streamline resolution of these claims and therefore lessen any burden on the Court and parties. *See supra* § III.

Case law also refutes opposing parties' prejudice arguments. In *Radtke*, this Court rejected defendants' arguments that a supplemental complaint would prejudice them, by requiring "yet another round of briefing based on a different administrative record," because the alternative was a new case, which would entail equal or greater burden. 2022 WL 16948607, at *5. Accordingly, this Court found that "[g]ranting leave to file will therefore not result in prejudice or judicial inefficiency constituting undue delay. It may even simplify and possibly obviate rather than complicate or prolong further litigation of these issues." *Id.* (cleaned up). Similarly, in *Crespo*, defendants' claim that a supplemental complaint would "severely prejudice" them because it would "significantly delay and expand the case" failed to persuade, because the supplement raised "similar legal issues to those already before the court" so allowing it to be heard in the existing case would "prove far speedier and more efficient for all involved." 2024 WL 2295210, at *1–*2 (cleaned up). So too here: granting leave would only simplify further litigation over the Converse County Project.

In contrast, opposing parties' cases found prejudice under unique circumstances not present here, such as addition of new defendants, amendments to claims that were on the eve of trial, or unjustified delay by plaintiffs. In *Thorp*, the court found prejudice because the proposed supplemental claims sought to bring unrelated claims against new defendants, which "belong[ed] in different suits" and would delay a resolution of the existing claims against different defendants. 325 F.R.D. at 514. In *City of Williams v. Dombeck*, 203 F.R.D. 10 (D.D.C. 2001), the

court found prejudice because the new claims were "largely unrelated" and "involve[d] different actions, taken at different times, by different agencies." *Id.* at 13. Finally, in *Sai v. TSA,* 155 F. Supp. 3d 1 (D.D.C. 2016), the court rejected a pro se plaintiff's request to add fourteen additional claims in a FOIA case based on undue delay, where the plaintiff failed to explain how joining them would promote judicial efficiency. *Id.* at 7–8. Such concerns are absent here.

In sum, BLM and Intervenors fail show undue prejudice or delay, or that such factors outweigh the efficiencies that would be gained by allowing supplementation.

V. The Supplemental Claims Are Not Futile.

Intervenors also claim leave should be denied as futile. Review of the futility of a motion for leave to amend a complaint is, functionally, "identical to review of a Rule 12(b)(6) dismissal based on the allegations in the amended complaint." *In re Interbank Funding Corp. Sec. Litig.*, 629 F.3d 213, 215–16 (D.C. Cir. 2010). Here, Intervenors allege that portions of the Second Amended Complaint would not withstand a motion to dismiss because: (1) Plaintiffs fail to plausibly allege standing to challenge any APD Decisions or BLM's groundwater analysis; and (2) Plaintiffs fail to plausibly allege any violation of NEPA or the RMP requirements for sage-grouse. For the reasons explained below, Intervenors do not show the proposed Second Amended Complaint is "clearly futile." 6 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1487 (3d Ed.) ("If a proposed amendment is not *clearly futile*, then denial of leave to amend is improper.") (emphasis added).

A. Plaintiffs Adequately Plead Standing.

1. Standing Must Be Alleged for Each Agency Decision, Not Each Well.

Plaintiffs "must demonstrate standing for each claim [they] seek[] to press and for each form of relief that is sought." *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 434 (2017).

For an APA claim, this requires plaintiffs to "prove separate standing as to each agency action challenged." *Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, No. 22-cv-01716 (TSC), 2023 WL 7182041, at *3 (D.D.C. Nov. 1, 2023) (quoting *Sec. Indus. & Fin. Mkts. Ass'n v. U.S. Commodity Futures Trading Comm'n*, 67 F. Supp. 3d 373, 400 (D.D.C. 2014)).

Plaintiffs' proposed new claims challenge 22 agency actions that collectively approved 255 APDs. *See* Second Am. Compl. ¶ 354 and Appendix A. Specifically, these agency actions include: (i) an August 27, 2025 Decision Record and corresponding Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) approving 134 of the subject APDs; (ii) a September 26, 2025 Decision Record and corresponding EA and FONSI approving 58 of the subject APDs; (iii) twenty other BLM Decision Records, issued between August 7, 2025 and October 22, 2025, approving the remaining 60 APDs.

Wyoming suggests that Plaintiffs must prove standing not just for each of those 22 agency decisions but for each individual well they approve. That slices the salami too thin. In *Center for Biological Diversity v. U.S. Department of the Interior* ("*CBD*"), 144 F.4th 296 (D.C. Cir. 2025), plaintiffs were required to establish standing as to each APD because the complaint challenged no overarching decisions or NEPA analysis used to approve multiple APDs. *Id.* at 309–10. However, the D.C. Circuit recognized that were there a "broader agency action . . . that underlies development of a large number of individual wells," a wholesale challenge to that action could be mounted. *Id.* at 312.[5]

[5] This is consistent with standing decisions in related contexts. *See, e.g.*, *Dakota Res. Council v. U.S. Dep't of Interior*, No. 22-cv-1853, 2024 WL 1239698, at *6 (D.D.C. Mar. 22, 2024) (requiring plaintiff to establish standing as to each BLM leasing "decision," as opposed to individual leases approved in each decision); *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1155 (10th Cir. 2013) (holding that district court "misapplied the law" when it required plaintiffs to show standing as to each lease approved in an overarching agency decision).

Here, Plaintiffs do challenge "broader agency action[s] . . . that underlie[] development of a large number of individual wells." *CBD*, 144 F.4th at 310. As *CBD* confirms, Plaintiffs may therefore challenge each of those 22 APD Decisions "wholesale"—that is, without proving standing as to every constituent well. A well-by-well approach would also lead to illogical results: how would the Court "dismiss" claims against individual wells that are subsumed within an overarching Decision Record and EA? However, this dispute is largely academic, as Plaintiffs abundantly prove standing as to each of the 255 wells permitted in those decisions, for reasons explained below.

2. Standing to Challenge APD Decisions

Plaintiffs adequately plead standing to challenge the APD Decisions. Article III standing requires Plaintiffs to show that at least one member has "(1) a concrete and particularized and actual or imminent injury-in-fact that is (2) fairly traceable to the challenged action of the defendant . . . and (3) likely to be redressed by a favorable decision." *In re Idaho Conservation League*, 811 F.3d 502, 508 (D.C. Cir. 2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). At the pleading stage, Plaintiffs need only allege sufficient facts to make their Article III standing "plausible." *Humane Soc'y of the U.S. v. Vilsack*, 797 F.3d 4, 8 (D.C. Cir. 2015). Courts "may consider materials outside the pleadings" but "must still accept all of the factual allegations in the complaint as true." *Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253–54 (D.C. Cir. 2005) (cleaned up). Courts must also "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Defs. of Wildlife*, 504 U.S. at 561 (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)) (alteration in original)).

In their responses, Private Intervenors and Wyoming contest the sufficiency of Plaintiffs' standing allegations, each on different grounds. Private Intervenors argue that Plaintiffs have failed to plead a sufficient causal link between the APD Decisions and their alleged injuries. They claim Plaintiffs simply "draw[] a circle around the entire Project area" and fail to "link" members' alleged harms to specific wells. *See* Private Intvs.' Resp. at 18–19. That argument utterly ignores the contents of the Second Amended Complaint.

Plaintiffs include a 48-page standing section linking members' injuries to the APD Decisions, closely tracking the D.C. Circuit's guidance in *CBD*. There, the court explained that plaintiffs establish a sufficient causal link for APD decisions by establishing: (1) the "geographic reach" of alleged effects for each decision, such as through allegations of the distance at which air emissions "typically extend," and (2) that at least one member uses an area within reach of those effects, such that they would likely experience harm. *CBD*, 144 F.4th at 309–10.

Plaintiffs do just that here. *See* Second Am. Compl. ¶¶ 28–255. The Second Amended Complaint first establishes the nature and geographic reach of various impacts that will flow from the APD Decisions—harms such as noxious air emissions, *id.* ¶¶ 35–60; noise pollution, *id.* ¶¶ 61–69; scenic impairment, *id.* ¶¶ 70–80; light pollution, ¶¶ 81–89; wildlife impacts, ¶¶ 90–113; and heavy vehicle traffic, ¶¶ 114–21. Then it shows member use of affected areas for all 255 permitted wells, by specifying the distances of the wells and their access roads to members' residences; to areas members recreate; to key roads on which members often drive; and to habitat for wildlife members enjoy viewing. *Id.* at ¶¶ 123–255 and Figure 1 (Map). Plaintiffs specify the effects (such as exposure to air or noise pollution, scenic disturbance, and reduced wildlife viewing) members will experience in those areas. *See id.* To help structure this section, Plaintiffs divide the wells into geographic regions, such as the "Ross Road APDs." *See id.* ¶ 123. This

allows Plaintiffs to identify overlapping areas of impact common to many wells without unnecessary duplication. *See, e.g.*, *id.* ¶¶ 154–56 (noting that heavy truck traffic serving each Ross Road APD must pass within 2 miles of Katherman's home, worsening pollution and truck noise there); *id.* ¶¶ 79, 145, 173 (noting that BLM's own viewshed analysis shows each Ross Road and Highway 59 APD will be visible from those roads, deteriorating the scenic enjoyment of members who regularly drive them). The D.C. Circuit endorsed this use of "common allegations" to avoid "separate, duplicative allegations for each of the . . . challenged wells." *CBD*, 144 F.4th at 310. For impacts that differ by APD, Plaintiffs provide allegations specific to individually numbered APDs. *See, e.g.*, Second Am. Compl. ¶ 194 ("flaring at APDs 45–47, 231–34, and 255 are likely to be visible and/or audible from Katherman's home," given proximity); *id.* ¶¶ 187–90 (noting that APDs 45–47, 50–54, 56–58, 98, 99, 231–34, and 255 are all 5 to 10 miles from Katherman's home, such that they will expose her to harmful pollutants).

Even a cursory review of the Second Amended Complaint is sufficient to refute Private Intervenors' claim that Plaintiffs have simply "drawn a circle around the entire Project area" and fail to "link Plaintiffs' members' alleged harms to the areas supposedly impacted by each challenged APD." Private Intvs.' Resp. at 18–19. For example, based on the geographic range of the wells' impacts, the Second Amended Complaint draws these concrete links:

- Individually identified wells will contribute to truck noise, light pollution, and/or air pollution at the homes of member Maria Katherman, Second Am. Compl. ¶¶ 128, 155–58, 187–96, 198–99, 221–22, and member Leland Turner, *id.* ¶ 206.

- Individually identified wells will be visible in areas members routinely recreate, such as the Pumpkin Buttes, *id.* ¶ 205, Ross Road, *id.* ¶¶ 125, 144–45, and the Cow Creek and Downs Roadless Area and their scenic access roads, *id.* ¶¶ 226–38, 247–50.

- Individually identified wells will expose members to additional air pollution at these same recreation areas, *id.* ¶¶ 138–43, 177, 214, 220, 239–40, 244, 254.

- The construction, drilling, flaring, operations, and traffic noise from individually identified wells will be audible and disruptive to members in specified locations, *id.* ¶¶ 63–69, 129–37, 146, 155, 194, 198, 214, 220, 244, 254.

- As shown in BLM's own viewshed analysis, every permitted well will be visible to Plaintiffs' members from roads they frequent, like WY-59, WY-93, and Ross Road, deteriorating their enjoyment, *id.* ¶¶ 70, 73–88, 145, 173, 181–86, 219, 238, 250–51 and Figure 2.

- Every permitted well will diminish members' ability to view wildlife on those same roads or in recreation areas, *id.* ¶¶ 90–91, 95–97, 99–104, 109–11, 147–52, 174–75, 179–80, 201–03, 208–10, 216–18, 241–43, 252–53 and Figures 3–5.

- Every permitted well will expose members to additional traffic hazards, pollution, dust, and noise on roads they travel in the Project area, *id.* ¶¶ 35–38, 48–50, 53, 60–69, 114–20, 137–43, 146, 154–56, 176–77, 196–99, 204–05, 214, 220, 239–40, 244–45, 254.

These are precisely the sorts of allegations *CBD* found would be sufficient to trace members' harms to permitted wells. 144 F.4d at 309 (confirming injury may be shown by establishing that the well site will be "visible to at least one of the Plaintiffs from the roads or other locations where they travel," or that a member is within the typical geographic reach of effects such as "haze, noxious emissions, . . . noise and light pollution, increased heavy vehicle traffic"). In short, Plaintiffs amply meet their burden as to causation.

Wyoming in turn contests redressability. First, it posits that for the subset of wells that will be drilled on existing well pads,[6] the Court cannot provide any redress, analogizing these to "completed projects." Wy. Resp. at 11 (citing *Nat'l Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 170 F. Supp. 3d 6, 14 (D.D.C. 2016)). This argument fails for the obvious reason that such wells are not "completed projects." Many injuries will flow from the drilling, fracking, operation, and maintenance of these wells—such as air pollution, noise and light pollution, heavy truck traffic,

[6] According to BLM's decision documents, roughly half of the permitted wells require a new well pad or other surface disturbance.

and wildlife disruption. *See, e.g.*, Second Am. Compl. ¶¶ 37, 48–49, 62, 92, 104, 111, 114. A favorable decision vacating or enjoining the APD Decisions would redress those harms, even if the well pad itself would remain.

Second, Wyoming claims that existing development has already altered the aesthetic character of the landscape, such that new development will not cause Plaintiffs any "aesthetic" harm. *See* Wy. Resp. at 13. Particularly at this pleading stage, Wyoming's cherry-picked Google maps screenshots do not carry its burden to refute Plaintiffs' credible allegations of aesthetic impacts. Although portions of the Project area have existing development, photographs in the Second Amended Complaint, *id.* at 18–20, 38, 40, and existing member declarations, ECF Nos. 64-3 to 64-7, confirm that much of the Project area retains a rural and natural feel. Even in areas with pre-existing development, the addition of new industrial infrastructure will further detract from the landscape's aesthetic character, harming Plaintiffs' members.

Wyoming makes a similar argument as to traffic, noise, and wildlife impacts, noting that existing development has already resulted in such impacts. That does not defeat standing, as the APD Decisions will nonetheless worsen such impacts. Standing does not require the challenged action to be the sole cause of the injury, so long as it "will cause [plaintiff] to suffer an additional quantum of that harm." *Sierra Club v. FERC*, 827 F.3d 59, 67 (D.C. Cir. 2016); *see also Conservation Law Found., Inc. v. Academy Express, LLC*, 129 F.4th 78, 90 (1st Cir. 2025) ("A plaintiff can satisfy traceability by showing that the defendant's conduct is one among multiple causes of the alleged injury.") (cleaned up). The Second Amended Complaint establishes that the APD Decisions will add "an additional quantum" of air pollution, noise and light pollution, traffic, wildlife disturbance, and scenic disruption to areas in which members live and recreate. *Sierra Club*, 827 F.3d at 67. For redressability, it is sufficient that the Court can redress *those*

effects, even if this is a "partial remedy." *Glob. Health Council v. Trump*, 153 F.4th 1, 12 (D.C. Cir. 2025) (prospect of even a "partial remedy" satisfies redressability) (quoting *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021)); *Massachusetts v. EPA*, 549 U.S. 497, 526 (2007) (redressability satisfied if injury "would be reduced to some extent").

Third, Wyoming argues that redressability is lacking because "nothing this Court orders can stop development from occurring in the area." Wy. Resp. at 22. It suggests the Casper RMP and underlying leases make some development inevitable, such that the Court has "only a limited ability to address any remaining injury." But again, a limited remedy is sufficient. *See Glob. Health Council*, 153 F.4th at 12; *Massachusetts v. EPA*, 549 U.S. at 526. As Wyoming seems to acknowledge, a favorable decision would subject any APDs that are reapproved to greater protections, or at least the prospect of them, satisfying the relaxed redressability standard for procedural violations. *See CBD*, 144 F.4th at 304 (describing standard).[7]

In sum, Plaintiffs plausibly allege standing to challenge the APD Decisions.

3. Standing to Challenge Groundwater Analysis

Rehashing an argument this Court already rejected, *see* ECF No. 130 at 9, Wyoming also claims Plaintiffs lack standing to challenge BLM's groundwater analysis because they assert no groundwater-based injury, Wy. Resp. at 26. D.C. Circuit precedent still squarely forecloses that argument. A plaintiff's injury must be causally connected to the agency decision, but it need not concern the same issue as the NEPA defect. *See WildEarth Guardians v. Jewell*, 738 F.3d 298,

[7] Wyoming argues that the prospect of only "limited" relief is insufficient, relying on *Sierra Club v. Salazar*, 894 F. Supp. 2d 97 (D.D.C. 2012). However, that decision was *overturned* on the redressability issue in a decision directly refuting Wyoming's position. *Sierra Club v. Jewell*, 764 F.3d 1, 8 (D.C. Cir. 2014) (finding redressability satisfied, though mining would continue, because a favorable decision would impose greater protections on such development).

307 (D.C. Cir. 2013); *Sierra Club v. FERC*, 867 F.3d 1357, 1366 (D.C. Cir. 2017) *abrogated on other grounds by Sierra Club v. FERC*, 153 F.4th 1295 (D.C. Cir. 2025).

B. Failure to State a Claim

Intervenors also argue that some of Plaintiffs' supplemental claims are futile because they would not withstand a Rule 12(b)(6) motion to dismiss for failure to state a claim. To survive a motion to dismiss, a plaintiff need only provide "a short and plain statement of the claim," Fed. R. Civ. P. 8(a)(2), that "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up). The complaint need only set forth facts which, if true, would state a facially plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiffs state facially plausible claims.

1. Plaintiffs Allege a Plausible FLPMA Violation.

Wyoming argues that Plaintiffs' proposed Fourth Claim does not identify a plausible violation of any sage-grouse protection requirements in the Casper RMP. Wy. Resp. at 23–26. FLPMA requires BLM decisions to adhere to the governing RMP. *See* 43 U.S.C. § 1732(a); *see also* 43 C.F.R. § 1610.5-3(a). The Fourth Claim alleges that the APD Decisions violated this FLPMA requirement by disregarding one or more "Required Design Features" that the Casper RMP mandates for projects in sage-grouse habitat. Second Am. Compl. ¶ 403. The Second Amended Complaint earlier specifies that, among other problems, BLM failed to require "clustering," *id.* ¶ 317, which is the requirement to "[c]luster disturbances, operations (hydraulic fracture stimulation, liquids gathering, etc.), and facilities" in sage-grouse habitat. WY_00125. These allegations, taken as true, establish a plausible violation of FLPMA. Wyoming considers it "unlikely" that BLM did not mandate clustering, simply because the wells look to be "clustered"

on Plaintiffs' map, but this type of factual dispute is not a basis for Rule 12(b)(6) dismissal. [8] The Court must accept as true Plaintiffs' allegation that the APD Decisions did not implement clustering, which sufficiently states a FLPMA violation.

2. Plaintiffs Allege Plausible NEPA Violations.

Private Intervenors are wrong that Plaintiffs' NEPA claims are futile in light of the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025), or recent changes to NEPA regulations.

First, they argue that the NEPA claims related to groundwater fail because *Seven County* held that agencies are "not required to analyze the effects of projects over which they do not exercise regulatory authority" and "BLM does not have the authority to regulate groundwater use." Private Intvs.' Resp. at 12 (quoting *Seven Cnty.*, 605 U.S. at 188). That twists the holding of *Seven County*, which only excused agencies from considering effects of "*separate projects*" over which they lack jurisdiction. 605 U.S. at 187–88 (emphasis added). Here, the groundwater impacts result from the Converse County Project itself, not separate projects. In any event, BLM does have authority to address groundwater impacts, such as by: (1) requiring operators to use recycled water; (2) slowing groundwater extraction through phased development; (3) requiring operators to monitor existing wells for water level declines; or (4) imposing setbacks. *See* ECF No. 124 at 36; ECF No. 142 at 6–7 (Plaintiffs' prior briefing on this issue).

Second, they say Plaintiffs' NEPA claims concerning cumulative impacts are futile because the "NEPA regulations mandating cumulative-impacts analyses have been rescinded."

[8] Wyoming also misunderstands this Required Design Feature. That some well locations appear grouped at the map's broad scale does not show BLM required operators to cluster disturbances as those sites (such as by co-locating roads, powerlines, pipelines) or to cluster facilities and operations across wells (such as by using centralized liquids gathering or production facilities), as this Required Design Feature intends.

Private Intvs.' Resp. at 13. However, case law confirms that the statute itself requires agencies to consider the cumulative impacts of their actions. *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 97, 106–07 (1983) ("[W]e agree with the Court of Appeals that NEPA requires an EIS to disclose cumulative consequences[.]"); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) ("[W]hen several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together."). Indeed, although a case about indirect effects, *Seven County* itself confirms that agencies may be required to comprehensively address the effects from other projects that are "interrelated and close in time and place," 605 U.S. at 190, as is the case here.

Third, Private Intervenors suggest the NEPA "hard look" claim as to the APD Decisions is futile because BLM analyzed their impacts in the Converse County Project FEIS. Private Intvs.' Resp. at 14–15. That argument is irreconcilable with Intervenors' position that the APD Decisions do not rely on that FEIS. *See id.* at 8 ("those [APD approvals] are unrelated to the Project's FEIS"); *id.* at 9 ("Plaintiffs' proposed new claims will not involve analysis of the Project's ROD or FEIS"); *see also* Defs.' Resp. at 4. Indeed, if they did, BLM plainly violated this Court's injunction of "[f]urther APD approvals based on the deficient EIS." ECF No. 131.

Fourth, Private Intervenors broadly assert that all other NEPA claims "succumb to" *Seven County*, but do not explain why. Private Intvs.' Resp. at 16. They are wrong. For example, the NEPA claim alleging misuse of categorical exclusions, Second Am. Compl. ¶¶ 435–43, turns largely on the statutory interpretation of those exclusions, a question on which BLM receives no deference. And while the Court must defer to BLM choices about the "depth and breadth" of its NEPA analysis, those choices must still fall "within a broad zone of reasonableness." *Seven*

Cnty., 605 U.S. at 183. Whether BLM exceeded the bounds of reasonableness here involves fact-bound questions the Court cannot resolve on a Rule 12(b)(6) motion.

Finally, *Seven County* has no bearing on the non-NEPA claims Plaintiffs bring against the APD Decisions; the Groundwater EA, FONNSI, and DR; or Converse County FEIS and ROD. For example, Plaintiffs allege that the Groundwater DR is invalid because the BLM official who signed it lacked authority to reapprove an RMP amendment. Second Am. Compl. ¶¶ 472–81. Plaintiffs also allege that the APD Decisions must be set aside under the APA because they rest on a legal error. *Id.* ¶¶ 405–11. *Seven County* has no bearing on these claims.

In sum, Intervenors identify no deficiency sufficiently clear to reject any portion of the Second Amended Complaint as futile.

CONCLUSION

For the foregoing reasons and those in Plaintiffs' motion, ECF No. 155, the Court should permit Plaintiffs to file their proposed Second Amended and Supplemental Complaint.

Respectfully submitted this 19th day of December 2025.

/s/ *Sarah Stellberg*
Sarah Stellberg (ID Bar # 10538)*
Hannah A. Goldblatt (OR Bar # 205324)*
Todd C. Tucci (D.C. Bar # ID0001)
**admitted pro hac vice*
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83702
(208) 342-7024
sstellberg@advocateswest.org
hgoldblatt@advocateswest.org
ttucci@advocateswest.org

Attorneys for Plaintiffs