Elizabeth H. Potter (OSB # 105482)
Laurence ("Laird") J. Lucas (ISB # 4733) *Pro Hac Vice*
Advocates for the West
P.O. Box 1682
Bend, OR 97709
(503) 954-2721
epotter@advocateswest.org
llucas@advocateswest.org

Peter M. ("Mac") Lacy (OSB # 013223)
Oregon Natural Desert Association
2009 NE Alberta St., Ste. 207
Portland, OR 97211
(503) 525-0193
lacy@onda.org

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

OREGON NATURAL DESERT ASSOCIATION, IDAHO CONSERVATION LEAGUE, and **FRIENDS OF NEVADA WILDERNESS,**

Plaintiffs,

v.

U.S. DEPARTMENT OF THE AIR FORCE,

Defendant.

Case No. 2:24-cv-00145-HL

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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GLOSSARY OF ACRONYMS

AGL	Above ground level
APA	Administrative Procedure Act
BLM	Bureau of Land Management
CDNL	C-weighted day-night average sound level
dB	Decibel
dBA	Decibels that account for the frequency and sensitivity of the human ear are considered "A-weighted"
DNL	Day-night average sound level
DoD	Department of Defense
DEIS	Draft Environmental Impact Statement
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FNW	Friends of Nevada Wilderness
FWS	U.S. Fish and Wildlife Service
ICL	Idaho Conservation League
Ldnmr	Onset rate-adjusted day-night average sound level
Lmax	Maximum sound level
LWC	Lands with wilderness characteristics
MHAFB	Mountain Home Air Force Base
MOA	Military operation areas
MTR	Military Training Routes
MSL	Mean sea level

NEPA	National Environmental Policy Act
NDOW	Nevada Department of Wildlife
NPS	National Park Service
ODFW	Oregon Department of Fish and Wildlife
ONDA	Oregon Natural Desert Association
ROD	Record of Decision
SEL	Sound exposure level
SIN	Supporting Information for Noise
SIBR	Supporting Information for Biological Resources
SUA	Special Use Airspace
USTRF	Upper Snake River Tribes Foundation
WSA	Wilderness Study Area

KEY TO ADMINISTRATIVE RECORD CITATIONS

The Air Force lodged its administrative record on September 6, 2024, ECF 24, a revised administrative record on December 5, 2024, ECF 28, and a second revised administrative record on December 10, 2025, ECF 46. This brief cites to the documents in the second revised administrative record by omitting all leading zeros from the Bates stamps for readability (e.g., AR 685 instead of AR_0000685). For the convenience of the Court and the parties, this brief also cites directly to the EIS and its appendices in addition to the AR citations (*e.g.*, "EIS 1-1 (AR 685)"). Furthermore, the following index lists some key record documents that are cited throughout this brief to assist the Court with locating those documents in the record:

Description of Document	AR Citation Range
Record of Decision (ROD)	AR 1 – AR 10
Environmental Impact Statement (EIS)	AR 665 – AR 1020
EIS Appendix B: Response to Comments	AR 1033 – AR 1323
EIS Appendix D: Noise Study and Sensitive Receptor Survey	AR 1367 – AR 1485
EIS Supporting Information re: Biological Resources	AR 1887 – AR 1906
EIS Supporting Information re: Noise	AR 2011 – AR 2088
Department of Defense (DoD) Guidance for Supplemental Metrics	AR 6524 – AR 6685
DoD Technical Bulletin for Supplemental Metrics	AR 6728 – AR 6748
Federal Aviation Administration (FAA) Fundamentals of Noise and Sound	AR 7232 – AR 7233
2020 FAA Report to Congress	AR 7234 – AR 7258
Air Force Integrated Natural Resources Management Plan for MHAFB 2017 – 2021	AR 26715 – AR 27002

Federal Aviation Administration 1050.1F Desk Guidance (2020)	AR 37081 – AR 37374
2003 Monitoring Report re: Aircraft Noise in the Owyhee and Jarbidge MOAs	AR 37713 – AR 37822
Air Force Notes from 2021 Consultation with the Fort McDermitt Paiute Shoshone Tribe	AR 49923 – 49929
Nevada Department of Transportation Comments on Draft EIS (DEIS)	AR 50562 – AR 50566
Letter from Oregon's Senators	AR 51541
Oregon Natural Desert Association (ONDA) Comments on Draft EIS	AR 51450 – AR 51631
Upper Snake River Tribes Foundation (USRTF) Comments on DEIS and Final EIS	AR 51632 – AR 51637 AR 54309 – AR 54317
Nevada Department of Wildlife (NDOW) Comments on Draft EIS	AR 52222 – AR 52249
Friends of Nevada Wilderness (FNW) Comments on DEIS	AR 52263 – AR 52283
Idaho Conservation League (ICL) Comments on DEIS	AR 52301 – AR 52330
Humboldt County Comments on DEIS and Final EIS	AR 52377 – AR 52387 AR 54247 – AR 54249
Oregon Department of Fish and Wildlife (ODFW) Comments on DEIS	AR 52337 – AR 52342
Idaho Fish and Game (IDFG) Comments on DEIS	AR 52344 – AR 52350
U.S. Fish and Wildlife Service (FWS) Comments on DEIS	AR 52455 – AR 52463
Environmental Protection Agency (EPA) Comments on DEIS	AR 52480 – AR 52489
EIS Public Comment Response: Additional Reference Studies Recommended for Biological Resources	AR 52812 – AR 52842

Comments by Members of the Shoshone-Paiute Tribes of the Duck Valley Reservation	AR 50495 – AR 50548 AR 50566 AR 52661 – AR 52728 AR 61317– AR 61318
June 2019 Final Description of Proposed Action and Alternatives	AR 60534 – AR 60607

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Local Rule 56-1, and 5 U.S.C. § 706(2), Plaintiffs Oregon Natural Desert Association (ONDA), Idaho Conservation League (ICL), and Friends of Nevada Wilderness (FNW) move the Court to grant summary judgment and relief on all of Plaintiffs' claims in their Complaint (ECF 1) that challenges the U.S. Air Force's July 2023 Record of Decision (ROD) and March 2023 Environmental Impact Statement (EIS) entitled "Airspace Optimization for Readiness, Mountain Home Air Force Base." Specifically, the Court should declare that the U.S. Air Force violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) by failing to take a "hard look" at the potential impacts of the Owyhee Airspace Optimization Decision and failing to analyze a reasonable range of alternatives to the proposed action. To remedy these violations of NEPA and the APA, the Court should vacate the Air Force's EIS and ROD. As required by Local Rule 7-1(a), Plaintiffs conferred with Defendant but were unable to resolve this dispute. This motion is accompanied and supported by the Declarations of Dr. Julie Weikel, Peter Bradley, Scott Bowler, John Robison, Craig Gehrke, Arnold Thomas, and Dr. Jesse Barber.[a]

[a] Plaintiffs' members' declarations establish that they have standing to bring suit, and this Court denied the Air Force's earlier motion to dismiss for lack of standing. *ONDA v. U.S. Dep't of the Air Force*, No. 2:24-cv-145-HL, 2024 WL 3925845 (D. Or. Aug. 23, 2024), *adopting* 2024 WL 3826134 (D. Or. Aug. 7, 2024); *see also Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 34–36 (9th Cir. 2025) (finding standing for similar injuries tied to NEPA claims). The Court may also consider these declarations, along with Dr. Barber's declaration, "to determine whether the [Air Force] has considered all relevant factors and explained its decision." *Hausrath v. U.S. Dep't of Air Force*, 491 F. Supp. 3d 770, 785–790, 794, 804 (D. Idaho 2020) (citing *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv*., 100 F.3d 1443, 1450 (9th Cir. 1996)) (relying on a declaration of Dr. Barber to find that an Air Force NEPA analysis was arbitrary and capricious).

INTRODUCTION

"All profound things and emotions of things are preceded and attended by Silence." Herman Melville (quoted in Report to Congress on the Effects of Aircraft Overflights). AR 11234. Silence has powerful benefits but is rare in our noisy world. This is why the wild and remote Owyhee country in Oregon, Nevada, and Idaho is so special: described by some as the "Big Quiet," it is one of few places in the Lower 48 where true quiet abounds.

The U.S. Air Force's Record of Decision (ROD) for its Owyhee Airspace Optimization dramatically expanded and intensified military overflights across 7.5 million acres in the Owyhee, thereby shattering this silence. The ROD lowered the airspace "floors" for fighter jet training at subsonic speeds to just 100' from the ground and at supersonic speeds to just 10,000' throughout four military operation areas (MOAs) within Oregon and Nevada. And it shifted the concentration of flights in Idaho to more sensitive areas. Lower-level overflights jeopardize the quiet and solitude of this wild landscape that is prized for its remoteness and quietude. These overflights also threaten iconic and imperiled wildlife, increase the risk of jet-caused wildfires, and disproportionately harm people who live on Native American Tribal Reservations in the area.

Before issuing the ROD, the Air Force prepared an Environmental Impact Statement (EIS) but failed to take a "hard look" at the impacts of its expanded training by relying on a deeply flawed noise analysis that improperly downplayed the magnitude of changes in expected noise levels that will harm humans and wildlife in the area. The Air Force also refused to consider an alternative with sensible flight restrictions to protect sensitive resources and people that was urged by a wide range of federal and state agencies, Tribal Nations, and stakeholders. These shortcomings render the EIS and ROD arbitrary and capricious and inconsistent with NEPA and the APA. The Court should hold unlawful and vacate the EIS and ROD.

FACTUAL BACKGROUND

I. The Owyhee Canyonlands.

The Owyhee Canyonlands are a vast and wild landscape of rolling sagebrush steppe and hundreds of miles of deep, rugged canyons punctuated by honeycomb-like spires, caldera rims, and mountain ranges. Spanning thousands of square miles where Oregon, Idaho, and Nevada converge, this high-desert landscape is anchored around the Owyhee River and its many tributaries that flow from Nevada into Oregon and Idaho, along with the Bruneau-Jarbidge Rivers to the east. EIS at 3-51 (AR 811); AR 30394 (map); *see also* Weikel Decl. ¶¶ 2–8 (portrait of this awe-inspiring place); Robison Decl. ¶ 12 (illustrating this stunning region).

Described by some as the "Big Quiet," *see* Robison Decl. ¶ 11, it includes vast stretches of quiet landscapes. This remarkable area contains millions of acres of wildlands, including 614,000 acres of Congressionally protected Wilderness Areas, nearly a million acres of other wilderness-quality lands, hundreds of miles of Wild and Scenic Rivers, and other special places. EIS 3-59 to -67 (AR 819–827). It also supports one of two remaining strongholds of contiguous sagebrush habitat in North America, the preservation of which is essential for the survival and recovery of the imperiled greater sage-grouse. *See* AR 51468–471 (Oregon Natural Desert Association (ONDA) comments). There is a "tremendous" effort between governments, scientists, ranchers, and other stakeholders to conserve the species. AR 52224 (Nevada Department of Wildlife (NDOW) comments). More than 200 other species, such as bighorn sheep, pronghorn, mule deer, elk, and eagles inhabit the area. EIS 3-97 to -99 (AR 857–859).

People prize the Owyhee for its remoteness and have been relying on this landscape for thousands of years. Native Americans have inhabited the area since time immemorial, and two Tribal Reservations are now located there: the Shoshone-Paiute Tribes of the Duck Valley

Reservation along the Idaho-Nevada border, and the Fort McDermitt Paiute Shoshone Tribal Reservation along the Oregon-Nevada border. EIS App. F-119 (AR 1845). The area contains a rich concentration of cultural resources, including "sacred religious spiritual areas" for the Tribes. AR 50504 (testimony from Tribal members). Within and beyond the Tribal Reservations, this area is inhabited by thousands of people. EIS 3-57, 3-188 (AR 817, 948) (map).

Recreation is a primary use of the vast public lands in the area with activities including hiking, rafting, wildlife-watching, fishing, hunting, camping, horseback riding, skiing, and climbing. EIS 3-66 to -67 (AR 826–827). A key portion of the spectacular 750-mile "Oregon Desert Trail," developed by ONDA, runs through the Owyhee. AR 61475–476, 485–702 (ONDA comments). Recreationists often pursue such activities specifically because of the area's quiet and remoteness. *E.g.*, AR 52327 (ICL stating this "*define[s]* the very essence of the Owyhee").

II. The Air Force's Existing Training in the Owyhee Canyonlands.

The Air Force uses about 12,000 square miles of the Owyhee as a "Special Use Airspace" (SUA), which is divided into six "military operations areas" (MOAs). EIS 1-2 (AR 686) (map), EIS 3-51 (AR 811). The MOAs are used for training by Air Force units at the Mountain Home Air Force Base (MHFAB) in Idaho, although units from other bases and foreign countries conduct about a third of all training there. EIS 2-2, 2-4 (AR 708, 710). Nearly 85% of the land under the MOAs is owned by the federal government, mostly managed by the Bureau of Land Management (BLM), with less than 10% owned by private or other entities. EIS 3-55 (AR 815).

Since 1989, the Air Force has made efforts to expand military training activities from MHAFB. This has spurred lawsuits and led to various agreements with BLM, conservation groups, and the Shoshone-Paiute Tribes of the Duck Valley to provide some mitigation, largely within Idaho. AR 52302–303 (ICL comments summarizing history). The Air Force eventually

succeeded in lowering the airspace "floors" for the two Idaho MOAs (Owyhee North and Jarbidge North) for subsonic operations to just 100' above ground level (AGL) and for supersonic operations to 10,000' AGL, subject to certain operational restraints to protect part of the Duck Valley reservation, certain Wilderness Areas, Wild and Scenic Rivers, and bighorn sheep habitat. EIS 1-5 to -9 (AR 689–693). The other four MOAs, in Oregon (Paradise North) and Nevada (Paradise South, Owyhee South, and Jarbidge South), have had operational floors for subsonic operations at 3,000' AGL (or 10,000' mean sea level (MSL)[1] and supersonic operations at 30,000' MSL.[2] EIS 1-3 to -4 (AR 687–688).

At these low altitudes, fighter jets practice combat maneuvers, such as defensive counter-air exercises with eight to ten aircraft in a 4v4 or 4v6 training engagement that normally lasts for 45 minutes and can reach supersonic speeds. EIS App. D-24 (AR 1392). Fighter jets also fly *within* canyons while people are above or beside them. Bowler Decl. ¶ 11 (describing looking "*down* [at] fighter jets flying inside the Owyhee River Canyon" and also startling as "three jets screamed by right at the canyon rim during sunset"); Robison Decl ¶ 22 (describing a jet flying "in between the canyon walls" while scrambling up a slope on the Bruneau River). During flights, pilots release nearly 19,000 chaff bundles (canisters with millions of glass fibers) and 18,000 flares (pyrotechnic devices that attract missiles) annually, amounting to dozens each day. EIS 2-5, 3-161 to -162 (AR 711, 921–922). About 15,600 annual "sorties" occur in the MOAs, with about two-thirds in Idaho and the rest split between Oregon and Nevada. EIS 2-4 (AR 710).

[1] Remaining references to altitude in feet are for AGL heights unless otherwise stated.

[2] Limited low-altitude flights, in one direction without "combat maneuvers," have been allowed in "military training routes" (MTRs) in Oregon and Nevada. EIS 1-4, 2-29 (AR 688, 735).

III. The NEPA Process.

In 2019, the Air Force announced its "Owyhee Airspace Optimization" proposal to expand low-altitude training opportunities for MHAFB and foreign nations, which kicked off an environmental review process under NEPA. EIS (AR 665); *see* AR 2091 (Air Force memo noting the need for the expansion included the training demands of the Republic of Singapore). After accepting public scoping comments, in 2021, the Air Force released a draft EIS that studied three alternatives for lowering the airspace floors within Oregon and Nevada to either 100, 300, or 500' for subsonic operations and two alternatives of either 5,000' in all three states or 10,000' for supersonic operations in Oregon and Nevada. DEIS S-1 to -3 (AR 15–17).

The Air Force received thousands of public comments. A wide range of stakeholders expressed serious concerns about the proposal and the draft EIS's inadequate analysis of impacts related to noise, wildlife, wildlands, recreation, jet-ignited wildfires, the economy, mitigation, and other issues. *See, e.g.*, AR 51450–507, AR 52301–330, AR 52263–283 (Plaintiffs and other conservation groups). Tribal Nations and members raised serious concerns about impacts on their people and natural resources and wildlife within their ancestral homelands. AR 51632–637 (Upper Snake River Tribes Foundation (USRTF)); AR 52661–810 (Shoshone-Paiute Tribal members testifying about the profound effects of existing training); AR 49923–925 (Fort McDermitt Tribal member concerns about impacts to school children, tribal elders, ranchers, and hunters). Federal, state, and local representatives likewise raised serious concerns and requested mitigation for wildlife, fire, and people. *E.g.*, AR 52222–249 (NDOW); AR 52337–343 (Oregon Department of Fish and Wildlife (ODFW)); AR 52377–387 (Humboldt County, Nevada commissioners); AR 52455–463 (FWS); AR 52534–535 (BLM); AR 52480–489 (U.S. EPA).

Despite widespread public interest and concern by stakeholders in Oregon and Nevada,

which would bear the brunt of the impacts, the Air Force focused public hearings in Idaho, where impacts would change the least. EIS 1-19 (AR 703); *see* AR 51541 (Oregon's U.S. Senators requesting hearings in Oregon). The Air Force released its final EIS in 2023, EIS (AR 665), which was very similar to the draft. *See* AR 54247–248 (Humboldt County asserting "the Final EIS does not appear to have taken [its] concerns seriously" and that "very few substantive updates to the Final EIS were made").

IV. The Air Force's ROD and Resulting Impacts.

In 2023, the Air Force issued its ROD, relying on the final EIS, to lower the airspace floor to 100' for subsonic operations and to 10,000' for supersonic operations in Oregon and Nevada. AR 1–4, 9–10. In these states, fighter jets may now train 30 times closer to the ground, lower than the top of a tall tree, and reach supersonic speeds (causing sonic booms) 20,000' closer to the ground. In Oregon, supersonic overflights will increase by 313% compared to the baseline—with approximately 6,838 supersonic operations and sonic booms occurring annually, or nearly 19 every day. EIS 2-25 (AR 731). In Nevada, overall training exercises will increase by more than 80% compared to the baseline, while nighttime operations will increase by more than 136%. *Id.*; EIS 2-10 (AR 716). Although airspace floors will not change in Idaho, flight activities will shift there, worsening supersonic impacts in more ecologically sensitive areas. *E.g.*, EIS 3-87 to -88 (AR 847–48) (showing shift in Wilderness and Wild and Scenic Rivers exposed to supersonic impacts (blue circles) than under the baseline (pink circles)). The decision also allows foreign governments and non-MHAFB-based units to expand their training by 5%. EIS 2-8 (AR 714). But the Air Force expects a "potential overall 79% increase in flight events" from MHAFB as a result of other expansion plans that are also in the works. EIS App. D-50 (AR 1418).

The most profound impact of the Air Force's ROD is the major change in noise levels

that will occur, particularly within Oregon and Nevada. Fighter jets will "permanently alter" the soundscape throughout these rural and wildlands. EIS 2-44 to -45 (AR 750–51). Resulting noise levels and visual intrusions will disturb and harm people who live, work, and recreate in the Owyhee, along with imperiled species like sage-grouse and bighorn sheep. EIS 2-45 to 2-47 (AR 751–753). Noise levels will be loud enough to startle people, cause physical pain, and interfere with activities like sleeping or working; cause structural damage to buildings from increasing sonic boom intensity; disturb people seeking solitude and quietness in remote wildlands; stress wildlife and interfere with their life history needs; and lead to disproportionately adverse impacts on minority and low-income populations, particularly within Tribal Reservations. EIS 2-49, 3-45, 3-49 to -50, 3-74 to -76, 3-121 to -122 (AR 755, 805, 809–810, 834–836, 881–882); *see also* AR 52484 (EPA summarizing research that confirms "the potential health effects of noise pollution are numerous, pervasive, persistent, and medically and socially significant"). Expanded operations will also eject chaff and flares and threaten jet-caused wildfires across roughly 12,000 square miles in this arid area. EIS 3-161 to -162 (AR 921–922); *see* AR 52224–225 (NDOW).

Despite these serious issues, the Air Force refused to extend comparable mitigation measures for Tribal Reservations, bighorn sheep habitat, and wilderness-quality lands in Idaho to similar places in Oregon and Nevada. *Compare* EIS 1-5 to -9 (AR 689–693) (no-fly zone for part of Duck Valley Reservation and limited seasonal restrictions for bighorn sheep habitat and Wilderness areas in Idaho) *with* AR 8–9 (ROD) (some restrictions but not a no-fly zone for the Fort McDermitt Reservation and no mitigation for bighorn sheep habitat or most wilderness-quality lands in Oregon and Nevada). The Air Force also refused to consider new mitigation that would address existing problems or address other sensitive resources, particularly sage-grouse.

V. Plaintiffs' Lawsuit.

Plaintiffs are nonprofit organizations devoted to protecting the natural resources, wildlife, and people within the Owyhee. AR 51450–451 (ONDA and FNW); AR 52301–302 (ICL). They are suing on behalf of their members, who have extraordinary connections to the Owyhee. Dr. Julie Weikel, a large animal veterinarian who devoted fifty years to serving ranchers and communities in southeast Oregon, has spent decades exploring the region on horseback, raft, and foot and still takes her grandkids there. Weikel Decl. ¶¶ 2–13. Pete Bradley took his first hunting trip there at four and then spent more than 30 years studying wildlife in the region as a biologist with NDOW. Bradley Decl. ¶¶ 3–12. Arnold Thomas, the Vice Chairman of the Shoshone-Paiute Tribes of the Duck Valley Reservation and a member of ONDA, lives on his Tribal Reservation and is deeply connected to his Tribe's ancestral homelands in the Owyhee. Thomas Decl. ¶¶ 2–7.

But Plaintiffs' members have been and will be harmed by the Air Force's existing and expanded training exercises under the EIS and ROD. ICL members have been harmed by low-level fighter jets despite the limited mitigation the Air Force has applied in certain areas in Idaho. Gehrke Decl. ¶¶ 14–24 (stating intense sonic booms and "the incessant drone" of fighter jets "completely destroys any sense of wilderness natural sights and sounds and solitude"); Robison ¶¶ 22–29 (describing limitations of existing mitigation and his fear at finding Air Force flares in sagebrush). Scott Bowler describes the pain and "downright terrifying" experience of "being 'assaulted' by the ear-splitting noise of jet engines." Bowler Decl. ¶¶ 8–14. Vice Chairman Thomas explains he is "absolutely concerned about noise impacts" of overflights on him, his family, and his Tribal members. Thomas ¶¶ 8–14. Dr. Weikel fears what would happen if a fighter jet caused her horse to buck while riding through the Owyhee. Weikel Decl. ¶ 16. These and other injuries would be redressable by a Court order that vacates the EIS and ROD.

LEGAL FRAMEWORK AND STANDARD OF REVIEW

NEPA "declares a broad national commitment to protecting and promoting environmental quality." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). Its "action-forcing" procedures serve two goals: meaningful public participation and informed agency decisionmaking. *Id.* at 349. The obligation to disclose accurate information about environmental impacts underpins NEPA's core principle of "democratic decisionmaking." *ONDA v. BLM*, 625 F.3d 1092, 1099–1100 (9th Cir. 2010). Courts review an EIS under the APA to "ensure that [the agency] obeyed general principles of administrative law." *Ctr. for Biological Diversity v. BLM*, 141 F.4th 976, 998 (9th Cir. 2025) ("*CBD v. BLM*"). Under the APA, a "court shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency's decision is "arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem" or "offered an explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Agencies must articulate a "rational connection between the facts found and the choice made." *Id*. at 43, 52 (internal quotation marks and citation omitted).

ARGUMENT

I. The Air Force Failed to Take a Hard Look at the Environmental Impacts of the Increased Noise Levels of Expanded and Intensified Overflights.

NEPA requires federal agencies to prepare a "detailed" study of the "environmental effects" of proposed actions. 42 U.S.C. § 4332(2)(C)(i). This requires agencies to take a "hard look" at "every significant aspect of the environmental impact of a proposed action." *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 553 (1978). Agencies must also "ensure the professional integrity, including scientific integrity, of the discussion and analysis in

an environmental document" and "make use of reliable data and resources." 42 U.S.C. § 4332(2)(D), (E). Here, the Air Force failed to take a "hard look" at the noise impacts of its expanded training by relying on misleadingly high baseline noise levels and failing to accurately disclose noise levels from individual training exercises. These two flaws led the Air Force to greatly underestimate how its decision will increase noise levels, which was a serious error that undermined its analysis of the impacts to the people and wildlife who depend on the Owyhee. The Air Force made those two errors, in part, as a result of the approach that it took to estimating and disclosing changes in noise levels, which is first described as background below.

A. The EIS's Approach to Evaluating Noise Impacts of the Alternatives.

To estimate the noise levels of the alternatives, the EIS relied on a Noise Study that modeled the results of noise levels under each alternative. EIS App. D-1 to -117 (AR 1369–485). The EIS's modeling and general information about noise was disclosed in a document entitled "Supporting Information for Noise" (SIN). AR 2011–088. Those documents describe noise using decibels (dB) on a scale that runs from 0 dB (threshold of human hearing), to 60 dB (normal speech), to 120 dB (discomfort), to 130 dB and above (pain).[3] AR 2016–017 (SIN). Decibel increases are not linear, so a 10 dB increase is perceived as *a doubling* of the sound's loudness. *Id*. To calculate the expected decibel levels under the alternatives, the EIS and Noise Study focused on three "metrics" that describe the *cumulative effects* of a series of noise events over a period of time. EIS 3-20 to -21 (AR 780–781).

First, the yearly day-night average sound level (DNL) measures the annual average daily aircraft operations by accounting for all noise events in a 24-hour period. AR 2025–026 (SIN).

[3] Decibels that account for the frequency and sensitivity of the human ear are considered "A-weighted" and reported as dBA. EIS 3-20 (AR 780).

Second, the onset rate-adjusted monthly day-night average sound level (Ldnmr), which is equivalent to DNL but adds a 10 dB penalty to account for the "surprise" effect of sudden onset noises, like aircraft. EIS 3-20 (AR 780). Third, for supersonic operations, which generate "sonic booms," the C-weighted DNL (CDNL) is "the same" as DNL but emphasizes lower frequencies that are "felt" rather than heard. EIS at 3-21, -23–24 (AR 781, 783–784). Sonic booms are very loud, can be felt, and can cause secondary effects like shaking of a structure or rattling of windows. AR 2017 (SIN). To capture the noise level of an *individual* overflight, the EIS used only one "single event" metric: the maximum sound level (Lmax), which measures the peak noise level, during a fraction of a second, from *one* aircraft. EIS 3-30 (AR 790); AR 2022 (SIN).

Relying on these metrics, the EIS purported to describe the baseline noise levels and to disclose the expected changes in noise levels under each alternative. *See* EIS 3-25 to -34 (AR 785–794) (baseline); EIS 3-40 to -51 (AR 800–811) (explaining results of noise modeling). This revealed staggeringly high noise level increases under the ROD's chosen alternative, 1B (100' subsonic and 10,000' supersonic floors). Using the cumulative metric Ldnmr, the noise increases in Oregon and Nevada will range from 8.5–13.5 dBA. EIS 3-41 to -42 (AR 801–802). This will largely push noise levels throughout the Oregon and Nevada portions of the area above EPA's 55 DNL threshold for protecting public health and welfare. EIS 3-35, 3-43 (AR 795, 803).

When factoring in the potential 79% increase in flights from other MHAFB expansion plans, noise levels may increase even more, for a total of 11.5–16 dBA (Ldnmr) in Oregon and Nevada, and a small overall increase in Idaho. EIS 4-9 (AR 983); EIS App. D-50 (AR 1418).[4]

With the new 100' floors, maximum noise levels (at least for a fraction of a second) will

[4] These noise increases were buried at the end of the EIS in the "cumulative effects" section, even though they are MHAFB's planned training actions for this airspace.

reach 139 dBA. EIS 3-30 (AR 790). This exceeds the threshold for pain (130 dB), AR 2016 (SIN), and may cause potential hearing damage, AR 9383 (study of military flights finding that noise above 114 dBA—particularly "at a rapidly increasing level"—can damage the ear).

Relying on these calculations, the EIS attempted to explain what those changes would mean for people, wildlife, wilderness values, and other sensitive resources. *See* EIS 3-69 to -94 (AR 829–854) (land uses like wilderness); EIS 3-94 to -158 (AR 854–918) (wildlife and biological and cultural resources). As part of this analysis, the EIS relied on a 65 DNL standard to assess the significance of the noise impacts. *E.g.*, EIS App. B-50 (AR 1084) (asserting that noise increases below 65 DNL are not "significant").[5] Although the 65 DNL standard is "widely used" as a threshold for general land use compatibility *in cities*, EIS 3-35 (AR 795), it is not helpful for assessing noise impacts from sporadic overflights in quiet natural areas, like the Owyhee, particularly for wildlife. *See* AR 37230 (FAA Desk Reference explaining that the DNL metric is inadequate for areas with very low background levels where quiet is an attribute); *see also* AR 52224, 52234 (NDOW comments explaining shortcomings of DNL standard and that a different metric is needed to evaluate impacts to sage-grouse). The 65 DNL standard is also well above EPA's standard for public health and welfare (55 DNL). EIS 3-35 (AR 795).

B. The EIS Used and Presented Misleadingly High Baseline Noise Levels.

An EIS must "assess, in some reasonable way, the actual baseline conditions" of the affected environment. *ONDA v. Jewell*, 840 F.3d 562, 569 (9th Cir. 2016). Without doing so, "there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA." *Great Basin Res. Watch v. BLM*, 844 F.3d 1095,

[5] The Air Force provides, as an example in the Supporting Information for Noise document, that in an area with a baseline noise level of 50 dB, one overflight a day with a sound level of 100 dB for 30 seconds would raise the DNL to 65.9 dB. AR 2027.

1101 (9th Cir. 2016) (quotation omitted). An EIS's baseline "must be based on accurate information and defensible reasoning.'" *Id.* (quotation omitted).

Here, the EIS relied on baseline noise levels that largely ranged from 47–62.5 dBA (DNL). EIS 3-26 (AR 786). Those levels "are grossly misleading estimates" that are "more akin to a noisy suburban area—not rural and wilderness areas that make up the vast majority of the MOAs," as Dr. Barber explains. Barber Decl. ¶¶ 14–15. The record does not support the EIS's baseline levels, but instead includes monitoring data, estimates from other NEPA documents, and studies that all show baseline levels in the Owyhee are much lower.

Most notably, the Air Force itself documented much lower background noise levels during noise monitoring in Idaho, ranging from about 25 to 40 dB (DNL), with most areas below 35 dB (DNL). AR 37777 ("2003 Noise Report"). The EIS admitted that this 2003 Noise Report remained "relevant" for other purposes but ignored its baseline data, mistakenly claiming that "[n]o measured ambient sound data are available for the area of interest." EIS 3-31 (AR 791). In a different NEPA document for MHAFB, the Air Force cited that 2003 Noise Report to state that noise levels are "commonly less than 40 dB" in the area and then reported baseline noise levels for the Oregon and Nevada MOAs as <45 dBA Ldnmr. AR 19782–784; *see also* AR 35295–296 (other MHAFB NEPA documents using baseline noise levels of less than 45 dBA Ldnmr for Oregon and Nevada MOAs). By ignoring conflicting evidence and failing to "provide support for its use of estimated DNL baseline values," the Air Force failed to take "the requisite hard look required by NEPA." *Hausrath*, 491 F. Supp. 3d at 788–790.

Studies of remote areas confirm that substantially lower baseline noise levels, around 15 dB, are typical in a sagebrush landscape like the Owyhee that is sparsely populated but teeming with wildlife. *See* AR 51347, 51461 (comments from NDOW and other stakeholders citing

studies by Ambrose and others). The EIS cited Ambrose, along with a National Park Service study that found baseline levels in "lightly populated regions" are about 35 dBA, but dismissed them as based on other metrics that are not "directly comparable" to DNL. EIS 3-31 (AR 791). Despite these differences, as Dr. Barber explains, "it is easy to understand that estimating the background noise levels in sage grouse habitat to be near 65 dB (DNL) is wildly different" and "DNL levels listed [in the EIS] are unrealistically high." Barber Decl. ¶¶ 16–17. The EIS's use of DNL does not justify unfairly skewing the noise analysis presented to the public by using grossly higher baseline noise levels in these remote and quiet areas. *See, e.g.*, *ONDA v. Jewell*, 840 F.3d at 568–70 (without accurate baseline conditions, it is "not possible to begin to assess" impacts).

Moreover, NDOW explained other metrics (like L90, which measure ambient noise levels during the quietest 10% of the day to exclude anthropocentric sounds), are necessary to evaluate the impacts of sound on wildlife, particularly sage-grouse. AR 52234; *see* AR 37228 (FAA Desk Reference recommending use of ambient data when "pertinent" to understanding the environment and assessing impacts); *see also* Barber Decl. ¶ 23 (also stating that L90 or similar metrics should have been used to estimate baseline noise levels). By reporting baseline levels using the human-centric DNL standard and not metrics like L90, the EIS failed to include the baseline needed to evaluate impacts on wildlife. *Great Basin Res. Watch*, 844 F.3d at 1104.

By overestimating baseline levels, the EIS underestimated the magnitude of noise increases and the resulting impacts on people and wildlife in the Owyhee. *See* Barber Decl. ¶¶ 19–20 (describing this as a "serious error"). For example, accurate baseline noise levels would have revealed that noise increases in more locations will exceed levels known to be harmful for

sage-grouse.[6] By using an inaccurate baseline that skewed and thus downplayed estimated noise levels, and ignoring critical evidence in the record, the Air Force failed to take the required "hard look." *See ONDA v. Jewell*, 840 F.3d at 569–70 (finding EIS's faulty assumption about baseline conditions that was at odds with the record "materially impeded informed decisionmaking").

C. The EIS Failed to Accurately Disclose Noise Levels from Training Exercises.

The Noise Study calculated, and the EIS disclosed, only two types of noise: cumulative noise levels that dilute overflight noise across a day or month and instantaneous maximum levels from a single aircraft. This limited information failed to convey the magnitude, intensity, and duration of sound levels that a person or animal will actually experience during training exercises, which typically involve multiple jets and can be heard for several minutes or even longer. As a result, the EIS underestimated noise level increases under the alternatives and failed to disclose critical information for accurately assessing impacts on people and wildlife. Without such information, the EIS "failed to consider an important aspect of the problem." *City of Los Angeles v. FAA*, 63 F.4th 835, 850–53 (9th Cir. 2023) (calculating noise from a single piece of construction equipment, rather than overlapping pieces, did not constitute a "hard look" at noise impacts from airport construction). In turn, this hindered the agency's obligation to consider and disclose impacts to the public. *ONDA v. BLM*, 625 F.3d at 1121 n.24, 1122.

The EIS admitted that DNL does "not communicate details of a complex noise environment such as the intensity of individual overflight noise levels." EIS 3-35 (AR 795). Department of Defense (DoD) guidance likewise states that DNL does not convey the intensity,

[6] If the EIS used a <45 dBA baseline as in other NEPA documents, AR 35295–296, instead of a 51 dBA baseline for Oregon, EIS 3-26 (AR 786), the EIS would have reported a noise increase of at least 16 dBA instead of 9 dBA. EIS 3-42 (AR 802). This increase would greatly exceed the 10 dB threshold for harm to sage-grouse. *See infra* pp. 21–22 (describing threshold); AR 52223.

frequency, or impact of individual noise events, which are "critically important" aspects of understanding noise. AR 6531. EPA explained this problem to the Air Force in more plain terms: "the DNL metric . . . dilutes the impact of very loud sporadic flights." AR 52486. Indeed, by using DNL (and Ldnmr), the EIS reported that extremely loud overflights under the alternatives would average out to about the level of a normal conversation over the course of a day. *Compare* EIS 3-41 to -43 (AR 801–803) (expected noise levels in the mid-50s and low 60s dBA) *with* EIS 3-20 (AR 780) (stating a conversation from 3 feet away is 63 to 65 dBA). This is a misleading and unhelpful way to disclose how a painfully loud overflight would be felt by person accustomed to the rare quiet of the Owyhee. *See* Barber Decl. ¶ 21 (confirming the EIS's use of these metrics "diluted the extremely loud noise of military aircraft through averaging").

Due to the limitations of DNL, DoD and the FAA recommend supplemental metrics to help the public better understand noise impacts. AR 6553 (DoD Guidance); AR 7248, 254–255 (2020 FAA Report to Congress on noise metrics). Despite identifying other helpful supplemental noise metrics in the Supplemental Information for Noise Document, AR 2024–025, 2028–029, the Air Force chose just one to estimate noise levels from *individual training exercises*: Lmax, the single-aircraft, fraction-of-a-second level. *See* 3-21, 3-30 (AR 781, 790); AR 2022 (SIN). This metric is certainly important: it revealed that the maximum noise levels of overflights below 500' would reach 139 dB, EIS 3-30 (AR 790), which exceeds thresholds for "concern" about hearing loss (115 dB), discomfort (120 dB), and pain (130 dB). AR 2016, 2027 (SIN). Yet, the Air Force admitted that Lmax fails to "fully describe the noise, because it does not account for how long the sound is heard." AR 2022–023 (SIN); *see also* AR 6557 (DoD Guidance explaining that Lmax is "not a complete[] measure of the intrusiveness of [an] event").

This was a serious flaw. By using Lmax as the only "single event" metric, the EIS failed

to disclose just how loud, long, and intense individual training exercises can be. Training exercises can involve up to ten jets at once going in opposite directions, reversing direction, and reaching supersonic speeds. *E.g.*, EIS App. D-24, D-27 (AR 1392, 1395). The EIS admitted that "[m]ultiple aircraft are sometimes audible at the same time, adding to the overall noise level," and that jets can be heard for "several minutes" EIS 3-44, App. B-47 (AR 804, 1081); *see also* Gehrke Decl. ¶¶ 19, 22 (describing elevated jet noises for about 30 and 90 minutes during two wilderness visits). But then the EIS wholly failed to account for expected noise levels during the several minutes (or longer) that multiple jets may be heard during each training exercise. *See also* Barber Decl. ¶ 9 (explaining how multiple sound sources increase noise levels). The EIS compounded this oversight by estimating maximum sound levels when aircraft are 100' *directly overhead*, EIS 3-30 (AR 790), which "would produce a lower sound level than measuring the sound level at an angle from the plane." Barber Decl. ¶ 22; *see also* Bowler Decl. ¶ 11, Robison Decl ¶ 22 (describing planes in canyons and not directly overhead). As a result, the EIS disclosed "only sound produced by [a single plane] in isolation" and thus—fatally—lacked "a reasonably thorough discussion of [aircraft] noise." *City of Los Angeles*, 63 F.4th at 852 (citation omitted).

Other supplemental metrics were available to fill in these gaps. At a minimum, the EIS could have used the Sound Exposure Level (SEL) metric that, according to the Air Force, is a "much better measure of aircraft flyover noise exposure than Lmax alone.[7] AR 2024 (SIN); *see also* AR 6735 (DoD Technical Bulletin stating this metric represents "the total noise exposure of an individual aircraft overflight"). The Air Force described it as one of the "most common metrics," AR 15153, and has used it to analyze noise from overflights *at MHAFB* and other bases

[7] The Supporting Information for Noise Document provides basic information about SEL for flights down to 500' but not the alternatives, which allow flights down to 100'. AR 2024.

during other NEPA processes, contrary to the EIS's assertion. *Compare* EIS App. B-50 (AR 1084) (claiming metrics used "follow[ed] precedent set by previous NEPA documentation") *with* AR 14339, AR 19782, 19784, AR 46674 (previous Air Force NEPA documents).

Because SEL calculates noise levels for a slightly longer period of time than Lmax, it is typically about 10 dB louder than Lmax (which is heard as a doubling of sound). AR 2017, 2024 (SIN); AR 6557 (DoD Guidance); *see* AR 7232 (FAA Fundamentals of Noise and Sound document illustrating difference between Lmax and SEL). Thus, had the Air Force used SEL, the maximum sound level would likely have exceeded the EIS's estimated 139 dB. Barber Decl. ¶ 24. Even a 1 dB increase would have been significant, because the EIS identified 140 dB as the threshold for risking "physiological damage to unprotected human ears and structural damage" and hearing damage in wildlife. EIS 3-22 (AR 782); AR 1896 (EIS Supporting Information for Biological Resources). So if the EIS had used SEL to report maximum sound levels in excess of 140 dB, it could not have justified its conclusions that the potential for physical damage to human and wildlife hearing is unlikely.[8] *See* EIS 3-121 (AR 881) (claiming hearing damage to animals is "unlikely"), EIS 3-22 to 3-23 (AR 782–783) (dismissing potential human hearing loss as an issue for study). As a result, the EIS "failed to present complete and accurate information" as NEPA requires. *Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005).

While SEL would have provided minimal additional information, other supplemental metrics were needed to fully and accurately describe expected noise levels. *See* Barber Decl. ¶ 23 (describing such metrics). The Air Force, FAA, and DoD all recognize the value of other metrics, particularly in sensitive settings. *See* AR 2025, 2028–029 (SIN); AR 37232 (FAA Desk

[8] That threshold for hearing damage to wildlife drops to 125 dBA for "multiple instantaneous exposures such as two jets following each other." Barber Decl. ¶ 26. So the EIS further underestimated this risk of hearing damage by failing to account for noise from multiple jets.

Reference); AR 6559–573 (DoD guidance); AR 7247 (2020 FAA Report to Congress); For example, the "Time Above" metric can be useful "for noise-sensitive areas," as it describes the total time noise levels exceed a certain threshold, AR 2028 (SIN), illustrating how people and wildlife experience extremely loud noise levels: critical information to evaluate noise in a quiet place like the Owyhee. To justify its omission of other helpful metrics, the Air Force claimed that the FAA Desk Reference gave it "discretion" to ignore them. EIS App. B-50 (AR 1084).

But *NEPA* required the Air Force to disclose the "reasonably foreseeable environmental effects" of its proposed action, to ensure the scientific integrity of its analysis, and to make use of reliable data and resources. 42 U.S.C. § 4332(2)(D), (E). The Air Force fell short of its duties by taking an "unsupported and irrational" approach to its noise analysis. *City of Los Angeles v. FAA*, 63 F.4th at 850. Its omission of critical information about noise levels from individual training exercises was "not an inconsequential[] technical deficienc[y]" but rather "a fundamental error in the agency's noise analysis" that was inconsistent with NEPA. *Id*. at 851–852 (citation omitted).

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Each of these errors—the overestimation of baseline noise levels, and the failure to fully and accurately account for multiple aircraft when estimating noise increases—are serious enough on their own to "subvert[] NEPA's purpose of providing decision makers and the public with an accurate assessment of the information relevant to evaluate" the Air Force's proposal. *Nat. Res. Def. Council*, 421 F.3d at 812. Taken together, these errors are even more severe. Had the Air Force truly taken a "hard look" at the effects of its proposal on the "Big Quiet," it could have imposed mitigation or otherwise tweaked its proposal to avoid or ameliorate such effects. *See ONDA v. BLM*, 625 F.3d at 1124 ("NEPA is not a paper exercise, and new analyses may point in new directions."). The Air Force and the public were ill served by a deeply flawed noise analysis

that dramatically understated, both quantitatively and qualitatively, the noise effects of the Air Force's expanded training plan. For that reason, the EIS violated NEPA and the APA.

II. The Air Force Failed to Take a Hard Look at Noise Impacts on Wildlife.

The Owyhee includes vast swaths of undisturbed sagebrush habitat and remote river canyons that support a wide range of uniquely important and iconic species. *See* AR 1894–896 (listing some species in the EIS's "Supporting Information for Biological Resources" document (SIBR)). The EIS recognized the profound ways that noise can affect wildlife, including physical changes to hearing; secondary effects like stress and interference with breeding, feeding, or sheltering; and population decline and habitat loss. EIS 3-111 (AR 871). The EIS admitted that different species "exhibit a wide variety of responses to aircraft" that make it "difficult to generalize or to draw conclusions across species." *Id*. But this is exactly what the EIS did: drew general conclusions for varied species to support a cursory analysis of the impacts of its chosen alternatives on *all wildlife*, providing just a bit more information about sensitive species like sage-grouse. EIS 3-121 to -130, 3-133 to -136 (AR 881–890, 893–896); *see* AR 1896–897 (SIBR listing general conclusions). The EIS concluded that impacts would be insignificant, which it used to reject mitigation measures urged by federal, state, Tribal, and other wildlife experts. EIS 3-135 to -136 (AR 895–896). Combined with the flawed noise analysis discussed above, this prevented the Air Force from taking a hard look at wildlife impacts in key ways.

Greater sage-grouse

Despite a chorus of concerns from governments experts and stakeholders, the EIS arbitrarily concluded that impacts to greater sage-grouse would be insignificant even though noise will reach levels known to substantially harm these imperiled birds. *See ONDA v. Raby*, 780 F. Supp.3d 1085, 1094 (D. Or. 2025) (noting the species has "rapidly declined in recent

years"). The MOAs contain 50% of the most concentrated breeding areas for the Northern Great Basin meta-population, which is a "critical core population" for greater sage-grouse as a whole. AR 51901–902 (comments and maps by Dr. Amy Haak).[9]

Sage-grouse are "highly sensitive" to anthropogenic noise, with scientists using sound level increases of more than 10 dBA above baseline as a management threshold, because higher increases have caused a "significant" decline in sage-grouse lek counts.[10] AR 52223 (NDOW comments); *see also* AR 51633 (USTRF experts further explaining issue). The EIS disclosed that sound increases under the ROD will exceed or nearly exceed this 10 dBA threshold in Oregon and Nevada. EIS 3-41 to -42 (AR 801–802) (table of noise changes). When factoring in other potential MHAFB training expansions, the EIS estimated noise increases throughout Oregon and Nevada will exceed the threshold, often by several decibels. EIS 4-9 (AR 983) (table with noise changes up to 16 dBA).[11] Despite admitting "[t]his level of increase has been identified as a level of concern," the EIS dismissed the 10 dB threshold as applicable to ground-based activities and not its "intermittent" and "infrequent" overflights. EIS 3-125, 3-127 (AR 885, 887).

But the study the EIS cited for this proposition, Patricelli *et al*. 2013, noted that traffic noise, which is "typically intermittent" and "produces short periods of loud noise," still "has a significant impact" on sage-grouse, and did not recommend limiting the 10 dB threshold to ground-based activities. AR 25874, 876. Other studies in the record further undercut the EIS's

[9] Dr. Haak's analysis was relied on in a court's injunction of federal sage-grouse management plans. *W. Watersheds Proj. v. Schneider*, 417 F. Supp.3d 1319, 1330–31 (D. Idaho 2019).

[10] Every spring, sage-grouse return to open areas called "leks" where they engage in spectacular courtship displays. Lek surveys are used to monitor population trends. AR 20902 (BLM report).

[11] Noise increases are likely much larger given that the EIS overestimated baseline noise levels, underestimated noise increases, and used human-centric metrics. *See* supra pp 12–20.

conclusion, including one the Air Force itself characterized as showing "that intermittent noise has a greater effect on [sage-grouse lek] attendance than continuous noise," AR 52819; *see also* AR 52829 (finding that infrequent military aircraft "elicited the strongest responses" in other birds when compared to "regular, predictable" aircraft). Instead of addressing this contrary evidence, the EIS overstated the significance of a 2013 sage-grouse survey in Idaho, claiming it showed that grouse "have not been negatively affected" by low-level overflights for over two decades. EIS 3-126 (AR 886). But that basic lek survey reached no such conclusion and covered just five years, not two decades; it shows, at most, that overflights have *not yet extirpated* sage-grouse there. AR 39556–557. By ignoring contradictory evidence, the EIS arbitrarily minimized the impact of the expected noise increases on sage-grouse. *See ONDA v. Jewell*, 840 F.3d at 569–70 (finding an agency's conclusion that conflicted with record evidence was arbitrary).

Most egregiously, the EIS brushed aside critical comments from state, federal, Tribal, and other wildlife experts who urged the Air Force to apply the 10 dBA threshold and to avoid or reduce impacts with mitigation. NDOW "strongly disagree[d]" with the EIS's "conclusion that population or community level impacts will not occur," asserted that the lack of mitigation was "a significant oversight," and urged the Air Force to join its study, being conducted with the U.S. Navy, of impacts from military overflights on sage-grouse. AR 52224. Tribal experts described the EIS's conclusions, including that sage-grouse would habituate to noise, as "misleading" and contradicted by science. AR 51632–633 (USTRF comments). FWS, ODFW, and others raised similar concerns and urged flight restrictions during breeding and nesting season, when sage-grouse are most sensitive to noise. AR 52457 (FWS); AR 52338 (ODFW); AR 52385 (Humboldt County); AR 52349 (Idaho Department of Fish and Game (IDFG) (requesting mitigation).

The Air Force summarily rejected these expert requests for mitigation and did not engage

meaningfully to address their concerns. *See* AR 52228 (NDOW noting that the DEIS's assertion that NDOW was consulted was "not accurate and a misrepresentation"); AR 54247 (Humboldt County stating "the EIS process was flawed from the start" because the Air Force excluded key agencies with "authority" and "specialized knowledge of [multiple impacted] resources and land uses"); AR 54309 (USRTF's "significant concerns" about impacts to sage-grouse, and wildlife in general, were not "adequately addressed" in the EIS). By giving "short shrift to a deluge of concerns" from government wildlife experts that undermined the EIS's conclusions about sage-grouse, the EIS fell short of NEPA's "hard look" standard. *W. Watersheds Proj. v. Kraayenbrink*, 632 F.3d 472, 492–93 (9th Cir. 2011); *see also W. Watersheds Proj. v. USDA APHIS Wildlife Servs*., 320 F. Supp.3d 1137, 1149–50 (D. Idaho 2018) (providing "unconvincing responses to the serious concerns of agencies with long experience" who provided a "rare . . . unanimity of critical comments" was inconsistent with NEPA).

Other general flaws

The EIS also inaccurately assumed that overflights would be infrequent and brief, thus dismissing and downplaying impacts to a wide range of species, including sage-grouse. EIS 3-122, 3-127 (AR 882, 887).[12] But that assumption is undermined by the 2003 Noise Report, which documented that "[s]ome portions of the MOA were much more frequently overflown than others." AR 37797, 37740 (map showing varying density of flights in MOAs). It also concluded that overflights "reliably elevated" noise levels "at *most* sites for a *few hours a day,*" with one site reaching a total of 664 events in excess of 107 dB (which is "very loud") over 196 days—

[12] These assumptions that any given location would be overflown infrequently and briefly, and that flights would be uniformly distributed within the MOAs, were made throughout the EIS, undermining its analysis of impacts in general. *See* EIS 3-25 (AR 785) (noise analysis assumed "all areas within the individual MOAs are overflown with approximately equal frequency"). But this issue is presented here given its centrality to the EIS's analysis of impacts to wildlife.

more than 3 times per day on average. AR 37797 (emphasis added), 37742. Such concentrated flight activity and repeated "very loud" noise events in a single location are not "infrequent" or "brief" under any common understanding of those terms. By incorrectly assuming that flights would be "infrequent," the Air Force "acted arbitrarily and capriciously by offering an analysis that ran counter to the evidence." *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt*., 36 F.4th 850, 874 (9th Cir. 2022) ("*EDC v. BOEM*") (internal quotation marks and citation omitted).

Other evidence confirms that flights are not infrequent everywhere, but rather can concentrate in certain areas. *See, e.g.,* AR 4329 (Air Force report that flights enter the MOAs in three main places, indicating flights will concentrate there); AR 2091 (Air Force report noting desire to *target* mountainous areas in Oregon and Nevada); *see* AR 61024 (EIS meeting notes that "pilots might find favored valleys for more frequent use"). By assuming flights would be evenly distributed and "infrequent," the EIS failed to analyze noise impacts where flights are likely to concentrate, which was inconsistent with NEPA. *WildEarth Guardians v. U.S. Dep't of Agric. Animal & Plant Health Insp. Serv. Wildlife Servs.,* 135 F.4th 717, 730–732 (9th Cir. 2025)

More broadly, the EIS failed to provide a site-specific analysis of impacts to key wildlife habitat. The EIS identified designated habitat for important and sensitive species, including "crucial ranges and migration corridors" for mule deer, elk, and pronghorn, EIS 3-100 (AR 860); priority habitat for sage-grouse, EIS 3-104 (AR 864); and management units for bighorn sheep, EIS 3-107 (AR 867). But the EIS then failed to calculate and compare how much of that habitat would be exposed to specific noise levels under the *subsonic* alternatives.

In contrast, for *supersonic* operations, the EIS provided *some* site-specific information, mapping and analyzing how many acres of key sage-grouse and bighorn sheep habitat would be affected by different supersonic noise levels. *See* AR 1899–903 (SIBR chart showing a net

increase of about 100,000 acres in "total core breeding habitat" for sage-grouse, and over 120,000 acres of bighorn sheep habitat within Oregon and Idaho, that would be exposed to sonic booms and specific supersonic noise levels). By excluding a similar comparison for *subsonic* noise, the Air Force and the public could not understand expected noise level increases in different wildlife habitat under each alternative. Given the cultural and ecological importance of these iconic and big-game species, the EIS's oversight was serious. *See, e.g.,* AR 52349–350 (IDFG requesting the Air Force "directly analyze" impacts to such culturally important species). This lack of a site-specific analysis fell short of NEPA's "hard look" standard. *See Cascadia Wildlands v. Adcock*, 779 F. Supp.3d 1213, 1226–227 (D. Or. 2025) (holding a "landscape-level analysis" of a 13,225-acre area violated NEPA and that mitigation could not cure this problem).

Instead, the EIS relied on the fact that some wildlife habitat would be protected by existing restrictions in Idaho. *See* EIS 3-115 to -119 (AR 875–879) (relying on map to assert that existing flight restrictions "would protect" bighorn and sage-grouse in Idaho, even though they would still be exposed to very loud noise levels (116 dB Lmax)). But the EIS did not grapple with what IDFG pointed out—that "significant portions" of bighorn sheep habitat and "much of the sage-grouse habitat" in Idaho still lack "protective measures"—and instead rejected IDFG's request for more protective measures for these "declining" populations. AR 52347–349. The Air Force likewise failed to provide a rational explanation for its decision to stop mitigation for bighorn lambing at the state line, rejecting similar protections for bighorn sheep (and any wildlife) in Oregon and Nevada. EIS 2-52 (AR 758) (mitigation table); *see* AR 52228 (NDOW stating "it is confusing and concerning that Nevada based resources are not afforded similar protections"). Overall, the EIS's generic analysis of, and conclusions about, impacts to wildlife were based on unsupported assumptions, lacked a site-specific analysis, and ignored requests

from wildlife experts for mitigation, in violation of NEPA's "hard look" requirement. *See ONDA v. Jewell*, 840 F.3d at 569–70 (finding an agency's conclusion that conflicted with record evidence was arbitrary); *see also WildEarth Guardians v. U.S. Forest Serv.*, 137 F.4th 1068, 1087 (10th Cir. 2025) (holding that an agency conclusion that "relies on no science or data, and in fact contradicts the data in the record" violated NEPA).

III. The Air Force Failed to Take a Hard Look at the Risks of Flare-Caused Fires.

Fire is a major threat to the Owyhee sagebrush country, which has experienced serious and devastating fires in recent years. EIS 3-167 (AR 927) (illustrating fires since 1990). This area is already one of the fastest warming areas in the lower United States, AR 51524 (map showing hotspot), and the EIS admitted that wildfire frequency may increase due to climate change. EIS App. B-55 (AR 1089). Despite this serious risk of wildfire, the Air Force plans to drop more than 17,000 pyrotechnic flares each year across this vast area. EIS 2-10 (AR 716).

The EIS asserted that the potential any of these thousands of flares could start a wildfire was "extremely low," EIS 3-168 (AR 928), citing a lack of "documented wildfires due to flares" at MHAFB outside of Juniper Butte and Saylor Creek (exclusive-use ranges for bombing and other training). EIS 3-166 (AR 926). This conclusion it at odds with the Air Force's recent finding, in the MHAFB Natural Resources Management Plan, that "[f]lare use is *likely* to cause fires." AR 26926 (emphasis added). It is also undermined by record evidence that the Air Force's flares, and flares from other military overflights, have caused multiple fires in Oregon, Nevada, and elsewhere. For example, FWS stated that law enforcement determined the Air Force's flares caused *seven* separate fires in Oregon during one week just a few years prior to the EIS process. AR 52457. FWS offered the Air Force a copy of the report about those fires, *id*., but the record does not show the Air Force obtained it. NDOW highlighted "multiple instances" where military

flares started wildfires in central Nevada despite "similar" mitigation, which the EIS also overlooked. AR 52224–225, 52229; *see also* AR 51807 (public comments with other examples).

Rather than being up front about the serious risk of flare fires, the EIS touted 2,000' release restrictions on flares, which expand to 5,000' during fire season, and include a prohibition during "extreme" and "very high" fire conditions. EIS 3-168, 2-52 (AR 928, 758). But the EIS neither justified why flares are not similarly prohibited when fire danger is "high" nor addressed that pilot error can cause flares to be released below altitude floors, which has caused fires in the past at MHAFB. *See* AR 26926 (MHAFB Natural Resources Management Plan admitting previous fires "were caused by pilot error and release of flares much lower" than 2,000'); AR 54248 (Humboldt County stating flare use under "high" fire danger" is "completely unacceptable"); AR 52457 (FWS requesting that flare use occur only when fire danger is "low"). The EIS's irrational underestimation of the risk of fires, and its failure to address evidence in the record that undercut it reliance on mitigation, was a serious oversight. *See Cascadia Wildlands*, 779 F. Supp. 3d at 1230 (finding agency "must provide analytical data supporting mitigation").

The EIS also mistakenly claimed that the impacts of any flare-caused fires would be insignificant, because "appropriate fire response and rehabilitation would ensure impacts to habitats and species would not reach significant levels." EIS App. B-96 (AR 1130). This is just plain wrong. Once fires start in this remote and rugged landscape, fire response is extremely difficult. *See* AR 50564 (the Nevada Department of Transportation explaining that fires in the area may not be extinguished by other fire fighting agencies). Indeed, one of the concerns identified in the MHAFB Natural Resources Management Plan is a "lack of availability of firefighting personnel" and "difficulty accessing remote portions" of the area." AR 26951.

Plus, rehabilitation of sagebrush takes decades to recover—if they recover at all. *See* AR

2109 (Air Force report noting NDOW's work over decades to restore 40,000 acres of the 1.6 million acres of crucial sagebrush habitat that burned during a "devastating fire cycle in 1999–2000"); AR 52832 (Air Force "takeaway" from a study was that "negative impacts to sage grouse nesting habitat may last over 20 years postburn due to the slow recovery rate of the sagebrush canopy"). A flare-caused fire in the MOAs could be catastrophic for people and wildlife species, particularly sage-grouse, given that the EIS admitted wildfire is one of the "two greatest risks to [the imperiled] population" in the Owyhee. EIS 3-105 (AR 865). The Air Force has admitted that fires from flares are likely to "degrade habitat over time" and result in a "decrease in sagebrush." AR 26926 (Natural Resources Management Plan). But the EIS neglected to analyze such harm. *Compare* EIS App. B-100 (AR 1134) (asserting that the EIS's SIBR included a section about this issue) *with* AR 1887–1906 (SIBR lacking such a section).

By failing to address contradictory evidence and overlooking key aspects of the problem, the EIS failed to take a "hard look" at the potential for, and the impacts of, a flare-caused fire. In turn, this incomplete analysis undermined the EIS's conclusion that additional mitigation, urged by stakeholders, was unnecessary. EIS App. B-81 (AR 1115); *e.g.,* AR 52225 (NDOW urging the Air Force to use higher flare floors); *cf.,* AR 46465 (Air Force restriction on flare use below 18,000' MSL under "high" fire danger conditions in airspace in New Mexico); *see ONDA v. Jewell*, 840 F.3d at 570 (holding that an incorrect assumption about sage-grouse, which lead an agency to reject mitigation, "materially affected the outcome of environmental review"). NEPA is supposed to "ensure[] that the agency will not act on incomplete information, only to regret its decision after it is too late to correct." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). The Air Force's failure to take a "hard look" with respect to fire risk led it to make a decision that it—and everyone who lives or recreates in the Owyhee—may very well end up regretting.

IV. The Air Force Failed to Take a Hard Look at Impacts to Wilderness Values.

Public lands with "statutorily-defined wilderness characteristics are of particular importance" in the American West, and "Congress identified the conservation of such lands as a national priority in the Wilderness Act of 1964." *ONDA v. BLM*, 625 F.3d at 1097. These large roadless areas provide exceptional opportunities for solitude and quiet recreation and encompass some of the most biologically significant ecosystems remaining. The Owyhee includes nearly 1.6 million acres of irreplaceable wildlands. *See* EIS 3-59 to -60, -63 (AR 819–820, 823–825) (tables and maps of Wilderness Areas, WSAs, and LWCs). In the Wilderness Act, Congress defined the three factors that comprise a "wilderness": (1) size (roadless areas of 5,000 acres or more); (2) naturalness; and (3) outstanding opportunities for either solitude or primitive and unconfined recreation. 16 U.S.C. § 1131(c); *see also ONDA v. BLM*, 625 F.3d at 1097–98 (discussing same).

Instead of recognizing that wilderness requires all three of these congressionally defined factors—making the loss or impairment of *any single factor* significant—the Air Force made up its own definition of wilderness based on five "wilderness qualities" ("untrammeled, natural, undeveloped, solitude or primitive and unconfined recreation, and other features of value") and claimed impacts could only be "significant" if "three or more wilderness qualities are degraded." EIS 3-69 (AR 829). Although the Air Force recognized that the "most vulnerable land resource in the region is wilderness," EIS 4-14 (AR 988), and disclosed that its expanded jet training would have serious adverse impacts to certain of these "wilderness qualities," the EIS's diluted definition, and its arbitrary three-fifths degradation threshold, allowed the agency to conclude that "significant impacts to [wilderness values] would not occur." *Id*. 3-76 (AR 836); *see id*. 3-76, -91, App. G-1 (AR 836, 851, 1879) (admitting that overflights would "permanently alter the overall soundscape"; that people could perceive "substantial" noise increases as "significant" to

solitude and quietness; that sonic booms would create "significant" "startle effects" for people and that "repeated" exposure "would degrade the solitude or primitive and unconfined recreation quality" there). Indeed, the EIS admitted that "[v]isual experience of very-low-level overflights *is incompatible with* wilderness characteristics and values." *Id*. 3-214 (AR 974) (emphasis added). But because overflights would not disturb "three or more" elements of its contrived test for impairment, the EIS concluded that "the overall wilderness character would not be degraded" given the lack of ground disturbance, and that there would be no significant impacts to wilderness-quality lands. *Id*. 3-69, 3-76, 3-90 to -91, 4-14 (AR 829, 836, 850–51, 988).

The problem with the Air Force's analysis is that, regardless of how many defined (or even newly contrived) factors or "qualities" of wilderness are impacted, loss of *any one* of the factors that define a "wilderness" results, by definition, in that area no longer qualifying as wilderness under the statutory definition. Indeed, impacts from activities that generate noise "may greatly disturb users seeking quiet and solitude" and have "potentially significant impacts on the opportunities for solitude," regardless of whether there are changes to an area's "*physical* features." *Mont. Wilderness Ass'n v. McAllister*, 666 F.3d 549, 558 (9th Cir. 2011). By brushing aside "permanent" changes to the soundscape of wilderness-quality lands as non-significant due to the lack of physical impacts, the EIS "ignore[d] an important aspect of the problem before it." *Id*. at 560. Even though physical impacts are not necessary for impacts to be significant, the EIS also ignored that overflights *will* physically disturb these areas by dumping chaff and flare trash there. *See* Robison Decl. ¶ 25 (describing flare trash in wilderness areas).

Critically, this arbitrary approach was the basis for the Air Force's decision to reject additional mitigation measures to avoid permanently destroying what is a finite, irreplaceable, and nationally significant public resource. *See* EIS 3-93 (AR 853) (only considering "mitigation

measures to address potentially *significant* impacts to solitude and quiet outdoor recreation") (emphasis added); *see also* EIS 3-38 (AR 798) (acknowledging FAA guidance to avoid flying in noise-sensitive areas like wilderness-quality lands below 2,000'). Thus, the EIS's flawed analysis of impacts to wilderness-quality lands was a serious error. *See EDC v. BOEM*, 36 F.4th at 874 (finding that flawed assumption prevented agency from taking the requisite "hard look").

V. The Air Force Failed to Take a Hard Look at Environmental Justice Issues.

Despite receiving ample input that existing and proposed overflights would have profound adverse effects on Tribal Reservations and people, the EIS largely overlooked such impacts and irrationally assumed that mitigation had been and would be effective. First, with regard to existing overflights, the EIS stated that the no action alternative (continuing existing operations) would have "no disproportionately high and adverse impacts" on "environmental justice" communities (which include Tribal reservations) and that its existing mitigation would "minimize the potential for adverse noise impacts" there. EIS 3-207, -209 (AR 967, 969). This assertion ignored members of the Shoshone-Paiute Tribes of the Duck Valley who have repeatedly informed the Air Force that its existing operations are harmful despite a no-fly zone over part of the reservation. *See, e.g.*, AR 50495, 50532 (Tribal Councilmember stating jets can be heard at night, which can shake homes, scare people, and cause kids to cry); AR 50566 (Tribal Chairman, who is a combat veteran and pilot, explaining the Tribe has "struggled to maintain [its] airspace" to "conduct [their] daily lives"); AR 2111 (Air Force discussing complaints from the Tribes); AR 61317–318 (Tribal member stating that "[i]t is a war zone over the reservation with sonic booms occurring several [times] each day"); *see also* Thomas Decl. ¶¶ 8–14 (Vice Chairman reiterating such issues). Yet the EIS overlooked existing impacts despite mitigation.

For the expanded training program, the EIS admitted that changes in overflights threaten "disproportionate adverse health and environmental impact[s]" in areas where the Tribal

Reservations are located. EIS 3-206 to -208 (AR 966–968). But the EIS barely discussed those impacts and the cumulative effects of potentially even higher noise levels. EIS at 4-9 to –11, -20 (AR 983–985, 994). Instead, the EIS assumed that existing mitigation, along with proposed mitigation for the Fort McDermitt Reservation, would be effective. *Compare* EIS 1-8 (AR 692) (existing) *with* EIS 2-54 (AR 760) (proposed). The EIS did not justify its rejection of requests for extended no-fly zones. *E.g.*, AR 61317 (request for entire Duck Valley Reservation); AR 61124 (Air Force notes of Fort McDermitt Reservation); *see also* AR 52481 (EPA urging mitigation). As a result, the EIS failed to take a "hard look" at the impacts on Tribal communities. *See ONDA v. Jewell*, 840 F.3d at 570 (rejecting mitigation based on a faulty assumption, "materially affected the outcome of environmental review"); *see also* AR 2533 (Air Force guidance stating "responsibility to protect the public. . . from the hazards and effects associated with flight operations" and to "be sensitive . . . to the concerns of affected communities").

VI. The Air Force Failed to Consider Alternatives that Would Avoid or Reduce the Impacts of the Expanded Training Program in the Owyhee Canyonlands.

NEPA requires federal agencies to study a "reasonable range of alternatives." 42 U.S.C. § 4332(2)(C)(iii), (H). The alternatives analysis is the "heart" of an EIS. *Ctr. for Biological Diversity v. Dep't of the Interior*, 623 F.3d 633, 642 (9th Cir. 2010) (internal quotation marks omitted). An agency must "give full and meaningful consideration to *all* reasonable alternatives." *W. Watersheds Proj. v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (emphasis added). An agency fails to do by studying "virtually identical" alternatives. *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999). While the Air Force enjoys some discretion in identifying alternatives, "[t]he existence of a viable but unexamined alternative renders [a NEPA review] inadequate." *W. Watersheds*, 719 F.3d at 1050 (internal quotation marks omitted).

Here, the EIS took an all-or-nothing approach to low altitude training: either the Air

Force would drastically lower the airspace floors in the Oregon and Nevada MOAs, or it would take no action. The EIS tinkered with this proposal in very minor ways, varying the subsonic floors by just a few hundred feet (Alternative 1 was 100', Alternative 2 was 300', and Alternative 3 was 500'). EIS 2-8 to -21 (AR 714–727). All three options posed a massive change from the existing of floors of 3,000'. The EIS admitted these alternatives had "similar" noise impacts and reported nearly identical overall noise increases for Oregon and Nevada. EIS 3-45, 3-211 (AR 805, 971); *see also* EIS 3-135 (AR 895) (stating wildlife impacts "would not be appreciably different"); AR 52230 (NDOW stating that the alternatives' "potential impacts are similar in intensity and scope"). By studying alternatives with impacts that are similar in "nature and magnitude," the range of alternatives was unreasonable. *EDC v. BOEM*, 36 F.4th at 877–878.

The EIS failed to study a feasible alternative urged by federal, state, local, and Tribal representatives, and other members of the public, that would have accomplished the Air Force's desired outcome—lowering airspace floors in Oregon and Nevada—while strengthening and extending existing mitigation measures to avoid or reduce harmful impacts to sensitive resources and people. *See supra* pp. 5–6, 22–23, 25–28, 31–32 (highlighting the temporal and geographic restrictions proposed by Tribal Nations, NDOW, ODFW, FWS, EPA, Humboldt County, Plaintiffs, and others). Instead, the action alternatives included identical mitigation, ignoring options to meaningfully reduce impacts. AR 757–760 (showing same mitigation).

Rather than responding to public input, the EIS stuck with the alternatives that were finalized months before the NEPA process was even announced to the public. *Compare* AR 60534, 60574–585 (June 2019 Final "Description of Proposed Action and Alternatives") *with* EIS 1-17 (AR 701) (public scoping began in October 2019). The EIS even refused to include another alternative with stronger mitigation in its list of those that it considered but rejected from

further analysis. EIS 2-34 (AR 740). Such disregard for public input is contrary to NEPA's core principle of "democratic decisionmaking." *ONDA v. BLM*, 625 F.3d at 1121 n.24, 1122.

The EIS provided little reasoning for this decision, asserting without explanation that an alternative that "addresses public concerns and implements mitigation measures identified by citizen groups" would not meet the purpose and need or its training needs. EIS App. B-70, B-164 (AR 1140, 1198). But the record undermines this peremptory assertion. The Air Force adopted seasonal and geographic restrictions on low-altitude training in Idaho to address concerns about impacts to resources there, EIS 1-5 to -8 (AR 689–692), which are now "standard operating procedures." AR 8 (ROD). For expanded training, the Air Force cannot have it both ways—claiming that it needs to train at low-altitudes across this vast area throughout the year, while simultaneously arguing that "low-altitude flight activity" will be "rare." EIS App. B-38 (AR 1072). The EIS did not explain why the approximately 80 hours of additional training needed below 500' in Oregon and Nevada, could occur outside of certain times (like key breeding and rearing times for sensitive wildlife) or completely avoid other places (like Tribal Reservations). EIS 2-11 (AR 717) (sum of southern MOAs and Paradise North in Oregon).

Even with additional restrictions, the Air Force could still secure a massive net gain of low-altitude airspace for training. Such restrictions on routes and altitudes may have an "operational impact" but may not "impact readiness," according to the Air Force. AR 2533 (AF Instruction 13-201 for Airspace Management). The ROD illustrated this concept by adopting Alternative B (the supersonic alternative of 10,000'), which "would not represent realistic combat conditions" but still met the EIS's purpose and need. EIS 2-27 (AR 733). Because it was feasible for the Air Force to choose an alternative that did not perfectly fit its training needs, it was arbitrary and capricious to refuse to consider a "viable" alternative that incorporated

mitigation proposed by sovereigns and stakeholders to protect human and natural communities.

Under NEPA, the Air Force had a duty to at least *consider* another alternative with operational restrictions during the most sensitive times and in the most sensitive locations. *See also* AR 2523, AR 26725 (Air Force guidance encouraging operational restrictions to follow the Sikes Act and DoD policies to conserve natural resources). The Air Force's refusal to do so, given the devastating impacts to people, wildlands, and wildlife that its decision will have, was a serious error that violated NEPA. *EDC v. BOEM,* 36 F.4th at 877–878; *W. Watersheds*, 719 F.3d at 1050 ("existence of a viable but unexamined alternative" renders NEPA review inadequate).

VII. The Court Should Vacate the ROD and EIS.

When "a court holds an agency action unlawful, vacatur and remand is the default remedy under the APA." *Haaland*, 127 F.4th at 50 (internal quotation marks omitted). Vacatur is warranted given the seriousness of the Air Force's NEPA violations, which undermined the statute's twin aims of informed agency decisionmaking and meaningful public participation. *See Or. Wild v. U.S. Forest Serv*., No. 1:22-cv-01007-MC, 2026 WL 96908, at *12 (D. Or. Jan. 13, 2026) (vacating agency decision where "error involved the failure to explain and consider environmental impacts"); *ONDA v. Zinke*, 250 F. Supp. 3d 773, 774 (D. Or. 2017) (vacating agency decision due to "serious" violations of NEPA, including a failure to adequately study a project's impacts to sage-grouse). "Because vacatur . . . is the ordinary remedy," the Air Force, if it opposes vacatur, "bears the burden of demonstrating vacatur is inappropriate." *Nw. Env't Advocs. v. EPA*, No. 3:12-cv-1751-AC, 2018 WL 6524161, at *3 (D. Or. Dec. 12, 2018).

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for summary judgment on its claims and vacate and remand the ROD and EIS.

Respectfully submitted this 4th day of February, 2026.

s/ Elizabeth H. Potter
ELIZABETH H. POTTER
LAURENCE ("LAIRD") J. LUCAS
Advocates for the West
P.O. Box 1682
Bend, OR 97709

PETER M. ("MAC") LACY
Oregon Natural Desert Association
2009 NE Alberta St., Ste. 207
Portland, OR 97211

Attorneys for Plaintiffs