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

DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, *et al.*, Plaintiffs, v. RYAN ZINKE, *et al.*, Federal Defendants, and WPX ENERGY PRODUCTION, LLC, *et al*., AMERICAN PETROLEUM INSTITUTE, Defendant-Intervenors.	)	Case No. 1:15-cv-00209-JB-LF

PLAINTIFFS' REPLY

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GLOSSARY OF TERMS

2001 RFDS	2001 Reasonably Foreseeable Development Scenario
2003 RMP	2003 Resource Management Plan
2014 RFDS	2014 Reasonably Foreseeable Development Scenario
APA	Administrative Procedure Act
APD	Application for Permit to Drill
APE	Area of Potential Effect
ARTR	Air Resources Technical Report
BLM	Bureau of Land Management
Citizen Groups	Diné Citizens Against Ruining Our Environment *et al.*
CO	Carbon Monoxide
EA	Environmental Assessment
EIS	Environmental Impact Statement
FFO	Farmington Field Office
Mancos RMPA	Mancos Shale Resource Management Plan Amendment
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOx	Nitrous Oxide
Park	Chaco Culture National Historical Park
PM_{10}	Particulate Matter at 10 microns
Protocol	State Protocol Agreement (BLM and NM SHPO)
RFDS	Reasonably Foreseeable Development Scenario
RMP	Resource Management Plan
SHPO	State Historic Preservation Office
VOC	Volatile Organic Compound

ARGUMENT

I. CITIZEN GROUPS HAVE STANDING

Citizen Groups satisfied Article III standing by demonstrating "injury in fact, causation, and redressability." *Friends of the Earth v. Laidlaw*, 528 U.S. 167, 168 (2000) (citations omitted); *see* Dkt.112, 8-10.[1] BLM alleges that Citizen Groups have failed to meet this burden, claiming: (1) there is no injury-in-fact due to a lack of geographical nexus to the harm, and (2) there is a lack of traceability between the alleged harms and BLM's drilling approvals. Dkt.113, 8-13. This argument fails both legally and factually. Critically, however, BLM's argument reflects a fundamental disconnect between its characterization of this case and the realities of living, working, and recreating within the Greater Chaco landscape. It is a disconnect that echoes throughout the responses filed by BLM and the intervenors. For Citizen Groups' members, there is no separation between BLM's failed environmental analysis and continued injury from an onslaught of drill rigs, fracking trucks, flares, explosions, and the degradation of their overall health and wellbeing. BLM's response misunderstands this imperiled landscape and the people who have called this place home for millennia.

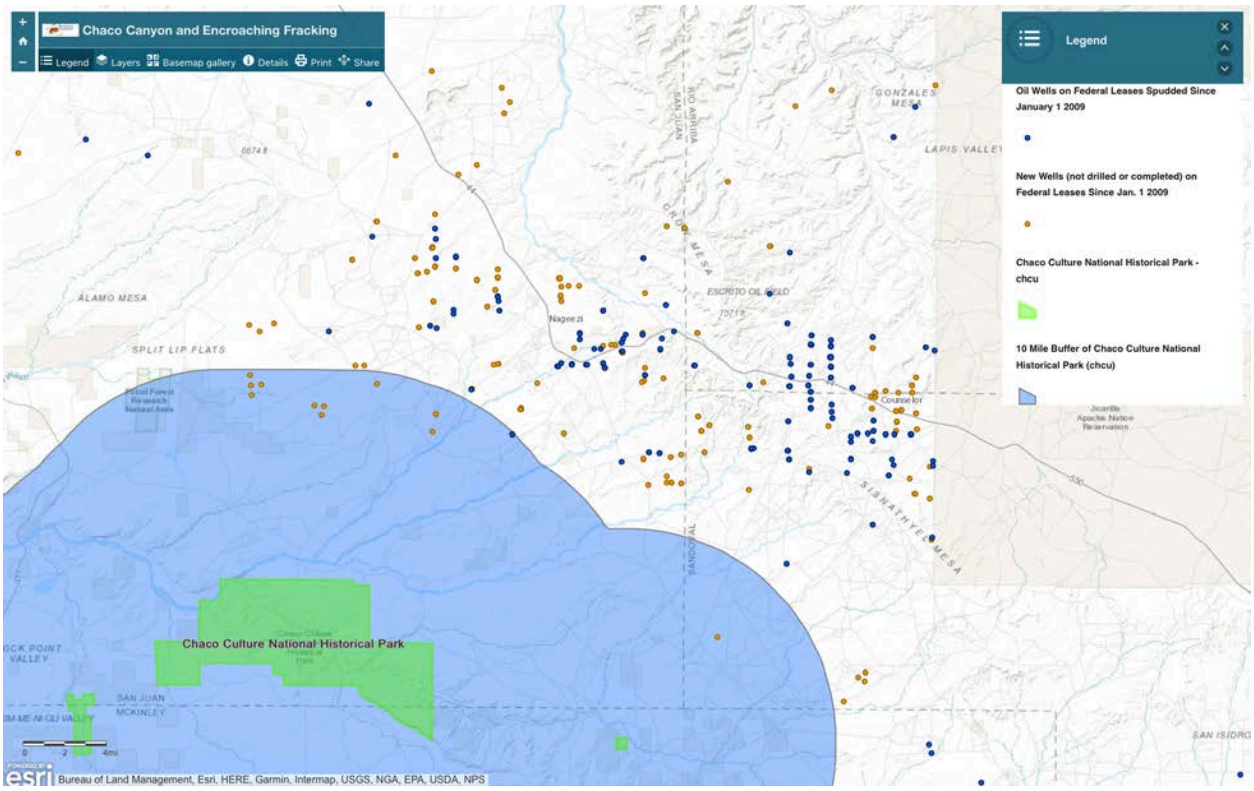
First, BLM misconstrues the purpose of the injury-in-fact requirement, which "is to ensure only those having a 'direct stake in the outcome,' and not those having abstract concerns, may have access to the courts." *Comm. to Save the Rio Hondo v. Lucero,* 102 F.3d 445, 451 (10th Cir. 1996). As this Court recognized, Diné CARE is an organization of Navajo community

[1] Citizen Groups provided detailed declarations from their members describing specific harm as a result of Mancos Shale development, including how the character of the landscape has been altered, the viewing of Mancos Shale drilling rigs and flares, impacts from fracking trucks, impacts to resources, impacts to their use and enjoyment of the region, and procedural harm from BLM's failure to comply with NEPA. *See, e.g.,* Dkt.112-1, ¶¶5, 9-10, 12-15 (Eisenfeld Declaration); Dkt.112-2, ¶¶4-12 (Nichols Declaration); Dkt.112-3, ¶¶ 7-9 (Green Declaration).

activists with the stated goal "to protect all life in its ancestral homeland." Dkt.63, 5. It is hard to imagine a people with a greater stake in the outcome of the widespread Mancos Shale development at issue in this case. Nonetheless, BLM claims that Citizen Groups have failed to establish a "geographical nexus to any of the 382 APDs" because declarations do not name specific well locations. Dkt.113, 11. However, in *S. Utah Wilderness All. v. Palma*—a case concerning prospective harm to plaintiffs from oil and gas leasing—the Tenth Circuit rejected the notion that declarations must "show its members have visited each of the leases at issue" stating that "[n]either our court nor the Supreme Court has ever required an environmental plaintiff to show it has traversed each bit of land that will be affected by a challenged agency action." 707 F.3d 1143, 1155 (10th Cir. 2013). Instead, the court found injury where a declarant "traversed through or within view of parcels of land where oil and gas development will occur, and plans to return." *Id.* at 1156. The same is true, here. The 382 challenged applications for permit to drill ("APDs")—and the additional 3,960 foreseeable Mancos Shale wells—literally envelop the entire landscape. To claim that Citizen Groups lack standing because they identified harm on a landscape scale is disingenuous, and also inaccurate.[2] *See* n.1. The map below displays the scope of Mancos Shale development, with wells spudded and approved on Federal leases since January 1, 2009.[3]

[2] This Court previously found that development of challenged drilling permits will result in irreparable harm. *See* Dkt.63, 91, 93. *See also Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (holding to demonstrate irreparable harm the injury must be "certain, great, actual and not theoretical."). This threshold is a far greater than the burden for standing, which only requires "alleged increased environmental risks." *Comm. to Save Rio Hondo*, 102 F.3d at 449.

[3] *See* Jeremy Nichols Supplemental Declaration ¶7 (Ex.1).



Citizen Groups' members previously described the ongoing harms they experience from Mancos Shale development.[4] Nonetheless, plaintiffs are "entitled to establish standing anytime during the briefing period." *U.S. Magnesium v. EPA*, 690 F.3d 1157, 1165 (10th Cir. 2012). Therefore, Citizen Groups' members have submitted supplemental declarations describing additional harms. In particular, Kendra Pinto, a Diné woman who lives in Twin Pines, describes her work as a community advocate giving voice to the harms experienced; impacts from drill rigs and well pads along trails; when the new wave of fracking started and well-sites outsider her parent's home; the smell of gas and flares, and concerns for her health; and impacts from fracking trucks on community roads.[5] Mike Eisenfeld details changes to the area once Mancos Shale development started; specific roads traveled and well-sites encountered; the drill rigs,

[4] *See* Dkt.112-1 through Dkt.112-5.
[5] Kendra Pinto Declaration ¶¶3-12 (Ex.2).

flares, and fracking trucks littering the area; flying over the region to view landscape-level harm; and includes photos documenting these impacts.[6] Jeremy Nichols identifies how Mancos Shale has proliferated across the landscape; the influx of drilling rigs, flaring, traffic and infrastructure; viewing these facilities from public roadways, and includes photos documenting these impacts.[7] Deborah Green discusses recreating in the area and seeing drill rigs, flares, and traffic from fracking trucks and heavy equipment; air pollution from flares and truck exhaust; and noise pollution from development.[8]

Second, "[t]he element of traceability requires the plaintiff to show that the defendant is responsible for the injury," and "ensures that the injury can likely be ameliorated by a favorable decision." *S. Utah Wilderness All. v. OSMRE,* 620 F.3d 1227, 1233 (10th Cir. 2010). To establish traceability in NEPA cases, the Tenth Circuit explained that a plaintiff "need only trace the risk of harm to the agency's alleged failure to follow [NEPA] procedures." *Comm. to Save Rio Hondo*, 102 F.3d at 452. Here, it is undisputed that BLM approved hundreds of new wells that are actively being drilled across the landscape on an ongoing basis, without complying with NEPA. Dkt.110-1 (well update log). Yet BLM alleges that Citizen Groups fail to demonstrate that their injuries are fairly traceable, specifically to the 382 challenged APDs, rather than the approximately 23,000 active oil and gas wells in the San Juan Basin, more generally. Dkt.113, 12. This argument ignores causation under NEPA—that injuries are the result of BLM's failure to comply with NEPA for the challenged APDs, regardless of pre-existing wells in the affected area. It also assumes Citizen Groups can't tell the difference between wells that are actively

[6] Mike Eisenfeld Supplemental Declaration ¶¶2-8 (Ex.3).
[7] Ex.1 ¶¶5-12.
[8] Deborah Green Supplemental Declaration ¶¶4-11 (Ex.4).

being drilled, fracked, and flared.[9] *See* photographs, below, of Mancos Shale well pads, drill rigs, facilities, and flares included (among other photos) in Citizen Group declarations.[10]

[9] *See* Ex.1 ¶¶13-14; Ex.2 ¶¶3-8; Ex.3 ¶¶2, 4, 8.
[10] Ex.1 ¶¶9-10; Ex.2 ¶8.

II. BLM VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT

A. BLM Failed to Take a Hard Look at Cumulative Impacts from Mancos Shale Well Approvals.

BLM violated NEPA by failing to take a hard look at the cumulative impacts of approving 382 individual Mancos Shale wells on a piecemeal basis, and failing to disclose such impacts to the public. The goal of NEPA is to prevent or eliminate damage to the environment and biosphere by focusing the attention of the agency and public on the environmental effects of proposed agency action. *See* 42 U.S.C. § 4321. This is 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. ONRC*, 490 U.S. 360, 371 (1989). NEPA requires agencies to "take a 'hard look' at how the choices before them affect the environment, and then to place their data and conclusions before the public." *Or. Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1099-100 (9th Cir. 2010). BLM has acknowledged that this analysis is *required*, but has never been completed for the Mancos Shale. *See* AR0173818.

NEPA requires an "assessment of all 'reasonably foreseeable' impacts" at the earliest practicable point "before an irretrievable commitment of resources is made." *New Mexico ex rel. Richardson v. BLM,* 565 F.3d 683, 718 (10th Cir. 2009) (citations omitted). The 2014 reasonably foreseeable development scenario ("RFDS"), prepared for the pending Mancos Shale Resource Management Plan Amendment ("Mancos RMPA"), predicted that full-field development would result in an additional 3,960 Mancos Shale wells. AR0173823. The development of Mancos Shale wells is now reasonably foreseeable and, thus, analysis of additional impacts must occur *before* BLM makes an irretrievable commitment. BLM did not conduct this analysis prior to its authorization of the 382 Mancos Shale wells challenged herein, in violation of NEPA. Both the record and the Mancos RMPA—which is intended to analyze "additional impacts not anticipated

or analyzed in the current 2003 RMP/EIS"—belie BLM's assertion that it has already analyzed cumulative impacts. AR0173818; *see also* Dkt.52-1, 1-1 (BLM Scoping Report).

1. The RMP/EIS never analyzed the impacts of horizontal drilling and multi-stage fracturing, providing no analysis to which BLM can tier.

BLM's RMP/EIS never contemplated or analyzed the cumulative impacts from horizontal drilling and multi-stage fracturing of Mancos Shale. Rather, the scope of BLM's analysis in the RMP/EIS was expressly limited to the 9,942 wells predicted, and that 99.7 percent of this development would occur in five natural gas-bearing formations, which did not include Mancos Shale. AR0001020. Therefore, BLM cannot tier to the RMP/EIS in lieu of analyzing the additional impacts from horizontally drilled Mancos Shale wells.

When BLM approved 382 Mancos Shale wells through individual EAs, BLM was required to analyze cumulative impacts, including the "incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. As detailed in the Opening Brief, Dkt.112, 15-17, BLM should have updated its cumulative impacts analysis to add the now foreseeable addition of 3,960 Mancos Shale wells from the 2014 RFDS, to the 9,942 wells predicted in the RMP/EIS, for a combined total of 13,902 wells across the San Juan Basin—in addition to other past oil and gas development, coal mining and combustion, and other uses, prior to authorizing additional development. No such analysis has ever occurred.

BLM argues that the development of 9,942 vertical wells predicted in the RMP/EIS is no longer foreseeable due to changes in drilling technology and economic conditions. Dkt.113, 20. This claim is unsupported, and merely an attempt by BLM to avoid undertaking the required cumulative impacts analysis. BLM failed to provide any analysis to support this allegation in the individual EAs, or point to any supporting analysis in the RMP/EIS, to which each individual EA tiers. Critically, an EA tiering to a broader EIS "must include a finding that the conditions and

environmental effects described in the broader NEPA document are still valid or address any exceptions." 43 C.F.R. § 46.140. Accepting BLM's argument that 9,942 wells are no longer foreseeable, then individual Mancos Shale EAs cannot tier to the RMP/EIS for cumulative analysis that BLM now argues is no longer valid. Therefore, BLM must analyze cumulative impacts for all 13,902 wells across the San Juan Basin, or complete analysis to support its claim that less drilling will, in fact, occur based on current technologies and market conditions.

BLM's response is filled with contradictory allegations undermining the veracity of its defense. BLM claims "the RMP/EIS considered the development of wells in the Mancos," Dkt.113, 17, while simultaneously alleging the "[RMP/EIS] did not consider development in the Mancos Shale in particular." *Id.* at 18. BLM also points to fleeting Mancos Shale and horizontal drilling references in the 2001 RFDS as proof that it has analyzed impacts from this development, *id.*; but then suggests the 2001 RFDS is unreliable and contains no analysis. *Id.* at 19-20. However, BLM fails to address the fact that the RMP/EIS is devoid of any mention, let alone environmental analysis of horizontal drilling and multi-stage fracturing in the Mancos Shale.[11]

BLM eventually acknowledges this fact, arguing that "[t]he RMP/EIS did not exclude horizontal drilling and multistage fracking from its analysis because both were widely used in similar formations elsewhere in the United States by 2003, and foreseeable in the Mancos Shale as soon as the market made them economically feasible." Dkt.113, 19. Even if true, this

[11] The RMP/EIS did not analyze horizontal drilling in the Mancos Shale. Instead, the RMP/EIS consistently references gas-bearing formations and ties analysis of resource impacts to high development areas where these formations are located. *See, e.g.,* AR001078 (recognizing "high development area in the northwest part of the San Juan Basin"); AR001112 (Map 4-2 showing where the high development area is located); AR001115 (stating "99 percent of the high development area is currently leased"); AR001115, 119, 121, 126, 128, 131, 134 (analyzing resource impacts as confined to or concentrated in the high development area).

statement has no relevance to the shale play at issue, or the actual analysis in the RMP/EIS. BLM failed to identify anywhere in the RMP/EIS that discussed, let alone analyzed, horizontal drilling and multistage fracturing in the San Juan Basin. The record is also clear that, at the time of the RMP/EIS, "[h]orizontal drilling has not yet found an economic application in the basin," AR0000109, so it was never analyzed. However, once development of Mancos Shale wells became economically feasible due to improved horizontal drilling and hydraulic fracturing techniques, it also became foreseeable that these techniques would be applied in Mancos Shale, and, as BLM acknowledged, "require[d] an EIS-level plan amendment" to consider "additional impacts…that previously were not anticipated in the [2001] RFD or analyzed in the current 2003 RMP/EIS." AR0173818. The record conclusively demonstrates that the RMP/EIS was focused only on the foreseeable impacts from 9,942 wells developed in economically feasible gas-bearing formations at that time, not on Mancos Shale. BLM failed to point to any contrary record evidence.

Within this context, BLM cannot identify any analysis in the RMP/EIS to which the individual Mancos Shale EAs can tier for analyzing the cumulative impacts from horizontally drilled Mancos Shale wells on the Greater Chaco landscape.[12] *See* 43 C.F.R. § 46.140(c) (recognizing tiering is impermissible where a broader EIS has failed to fully analyze significant cumulative effects); *S. Fork Band Council v. Dep't of Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (finding tiering unlawful where the previous document fails to "discuss the impacts of the project at issue."). As this Court correctly stated: "If the EIS did not conduct an analysis of a particular

[12] *See* Dkt.63, 14 (recognizing BLM's "EAs, being narrow and site-specific, tiered to the broader RMP/EIS and incorporated that document by reference").

technology, then, clearly, the EA may not tier to the EIS for the EIS' (nonexistent) analysis of that technology; rather, either the EA or a new EIS must analyze the technology." Dkt.63 at 88.

2. The added magnitude of Mancos Shale impacts exceeds impacts in the RMP/EIS, and individual EAs fail to cure this NEPA violation.

Neither the individual Mancos Shale EAs, nor the RMP/EIS that BLM improperly tiered to, contemplate or analyze the greater magnitude of impacts that result from horizontal drilling and multi-stage fracturing on a cumulative basis. *See* Dkt.63, 21-22 (finding horizontally drilled wells result in a greater magnitude of environmental impacts compared to vertically drilled wells); *Diné CARE v. Jewell*, 839 F.3d 1276, 1283 (10th Cir. 2016) (finding "horizontal drilling and multi-stage fracturing may have greater environmental impacts than vertical drilling and older fracturing techniques."). *See also Pennaco Energy v. Dep't of Interior*, 377 F.3d 1147, 1158-59 (10th Cir. 2004) (requiring NEPA analysis to account for the "unique environmental concerns" between drilling technologies).[13] BLM argues "horizontal drilling and multistage fracking result in the same types of impacts as any other types of oil and gas development, including impacts to air, water, wildlife, and cultural resources," without providing any support for this argument. Dkt.113, 21; *see also* Dkt.114, 9. BLM cannot find support because it has never analyzed the greater magnitude of cumulative impacts resulting from horizontal drilling and multi-stage fracturing.

BLM alleges that because "the addition of 3,960 predicted Mancos wells…to the 3,945 wells drilled in the San Juan Basin on federal lands since the 2003 RMP/EIS was issued will not

[13] Operators attempt to distinguish *Pennaco* on the basis that the mineral extraction contemplated was coalbed methane, rather than shale oil. *See* Dkt.114, 9-10. This distinction is immaterial. Rather, the *Pennaco* court's concern was how extraction of coalbed methane differed from conventional oil and gas extraction, and, as here, the fact that the agency never analyzed different extraction methods. *Pennaco*, 377 F.3d at 1153.

exceed the impacts analyzed by the RMP/EIS, the APD EAs properly tier to that document for its analysis of the broad impacts of oil and gas development." Dkt.113, 16. This is demonstrably incorrect.[14] As the tables below show, the combined impacts from both vertical and horizontal wells vastly exceed what was analyzed in the RMP/EIS.

Surface Impacts[15]		
Well Type	Acres (per well)	Estimated Total Impacts (3,945 vert./3,960 horiz.)
Vertical	2	7,890
Horizontal	5.2	20,592
Total Combined		**28,482**
Considered (2003 RMP/EIS)		**18,577**
Percentage Increase		**53%**

Water Consumption[16]		
Well Type	Gallons (per well)	Estimated Total Impacts (3,945 vert./3,960 horiz.)
Vertical	283,500	1,118,407,500
Horizontal	1,020,000	4,039,200,000
Total Combined		**5,157,607,500**
Considered (2003 RMP/EIS)		**2,818,557,000**
Percentage Increase		**82%**

[14] BLM suggests the magnitude of impacts provided in Citizen Groups' opening brief is "inadmissible at the merits stage" because they were aggregated by expert declarant, Susan Harvey, for use in a prior stage of this litigation. Dkt.113, 22. BLM failed to mention that Ms. Harvey derived these figures from the 2001 RFDS, the 2003 RMP/EIS, the 2014 RFDS, and each Mancos Shale EA and FONSI from 2011 to April 2015, which are all in the administrative record. Dkt.16-7, ¶8; *see also* Dkt.63, 21-22 (accepting as fact evidence compiled by Ms. Harvey).

[15] *See* AR001012 (RMP/EIS, finding "long-term surface disturbance…with each new well pad averaging 2 acres"), AR000011 (2001 RFDS, estimating 2 acres disturbance per vertical well), AR001015 (RMP/EIS estimating net disturbance of 18,577 acres); *but cf.,* AR14456 (estimating 5.88 acres of disturbance per horizontal well), AR125988 (estimating 7.75 acres per horizontal well), AR047459 (estimating 5.62 acres and 6.77 acres per horizontal well). *See also* Dkt.16-7, ¶36 (averaging 5.2 acres per well from review of all Mancos EAs issued between 2011 and April 2015).

[16] *See* AR001025 (RMP/EIS, averaging water use at 6,750 barrels per well, or 283,500 gallons); AR173823 (2014 RFDS estimating 3.13 acre-feet per horizontal well, or 1,020,00 gallons); *but cf.,* AR066983 (calculating 1.3 million gallons horizontal per well), 126010 (same), AR104259 (same); AR061091 (calculating 966,000 gallons horizontal per well), AR062519 (same), AR063928 (same).

Air Pollution[17]					
Well Type	Well construction (days)	NOx (tpy)	CO (tpy)	VOC (tpy)	PM_{10} (tpy)
Vertical	9	2.30	0.63	0.20	0.92
Horizontal	25	6.13	1.64	0.55	2.54
Percentage Increase		267%	260%	275%	276%
Est. Total Impacts (3,945 vert.)		20,869	2,485	789	3,629
Est. Total Impacts (3,960 horz.)		24,275	6,494	2,178	10,058
Total Combined		**45,144**	**8,979**	**2,967**	**13,687**
Considered (2003 RMP/EIS)		**22,866**	**6,263**	**1,988**	**9,146**
Percentage Increase		**97%**	**43%**	**49%**	**50%**

In every instance, adding the estimated impacts from wells drilled since the RMP/EIS, to foreseeable impacts from Mancos Shale wells, substantially "exceeds that which the operative EIS anticipated." Dkt.63, 87. Rather than performing the necessary analysis and then reaching a conclusion, as NEPA demands, BLM treats the RMP/EIS as an umbrella under which any development may occur, and asks this Court and the public to take the agency's word for it. *See Davis v. Mineta,* 302 F.3d 1104, 1112 (10th Cir. 2002) (criticizing agency for prejudging NEPA) (overruled on other grounds). The record shows such assumptions to be false.

BLM's failure to analyze the cumulative effects from horizontally drilled Mancos Shale wells is not cured through site-specific EAs, or any other document to which the agency tiers. Operators claim that the most recent individual EAs fill the cumulative analysis void. Dkt.114, 12. However, the 2016 EA cited by example shows this to be false. When analyzing cumulative impacts, BLM consistently uses an "analysis area and impact indicator for cumulative impacts [that] is the same as for direct and indirect impacts" which fails to consider the true scope of impacts from all Mancos Shale development. *See, e.g.,* AR236492. For example, the impacts

[17] *See* AR001071-72 (RMP/EIS providing qualitative assessment of air quality impairment and violations of NAAQS standards); 001068-69 (emissions estimates based on developing 663 wells per year). *See, e.g.,* AR234990 (providing table of air pollutant emissions per horizontal well), 034721 (same), 066977 (same). Dkt.16-7, ¶¶45-47. Notably, several Mancos EAs state that "[h]orizontal drilling typically takes approximately 30 days per well," yet calibrate air pollutant emissions on a 25-day period. *See, e.g.,* AR062519, 053762-63. This underrepresents emissions by 20%.

area is limited only to "actions within the Cañada Alemita-Chaco Wash watershed." *Id.* (surface), *see also* AR236494 (vegetation), 495 (noxious weeds), 497 (surface water), 500 (wildlife). Critically, this analysis does not address the cumulative impacts from 382 Mancos Shale wells already approved; 3,960 foreseeable Mancos Shale wells; or the total of past, present and foreseeable oil and gas impacts, as NEPA requires. 40 C.F.R. § 1508.7. BLM's cumulative analysis "must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum." *Grand Canyon Trust v. FAA,* 290 F.3d 339, 342 (D.C. Cir. 2002). Yet, that isolated view is all BLM offers.

BLM also failed to take a hard look at the cumulative impacts on greenhouse gas pollution and climate change from 3,960 additional Mancos Shale wells, *added* to other past, present, and reasonably foreseeable BLM-managed oil and gas emissions on a regional, national, and global scale. 40 C.F.R. §§ 1508.7, 1508.25(c) (stating actions that when viewed with other proposed actions have significant impacts should be considered together). Cumulative impacts analysis protects against "the tyranny of small decisions." *Kern v. BLM,* 284 F.3d 1062, 1078 (9th Cir. 2002). BLM did not consider climate change in the RMP/EIS. AR0001733. In the individual Mancos Shale EAs, BLM failed to include site-specific analyses concerning the incremental contributions of the GHG emissions generated by the 382 approved and 3,960 foreseeable Mancos Shale wells. AR154430-33, 36-37. BLM quantified direct emissions from a single well to conclude that "emissions from one horizontal oil well (609.2 metric tons) would represent a 0.0008 percent increase in New Mexico CO_2 emissions." *See, e.g.,* AR0234991. BLM's cumulative analysis for APDs rests with the Air Resources Technical Report ("ARTR"). *See* AR234992. While the ARTR includes a general qualitative discussion of climate change, and makes broad assumptions about future San Juan Basin development, it fails to include an

analysis of the incremental contribution of 382 approved and 3,960 foreseeable Mancos Shale wells, as NEPA demands. *See* AR154430-33, 36-37. "To be useful to decision makers and the public, the cumulative impact analysis must include 'some quantified or detailed information; …general statements about possible effects and some risk do not constitute a hard look.'" *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir. 2011).

Finally, the responses claim that "deference is owed to the agency" and suggest that this alone should cure any of its errors or omissions. Dkt.113, 24 (citing *Marsh*, 490 U.S. at 378); *see also* Dkt.115, 9 (same). But the agency misunderstands the scope of deference it is owed. This is not a case involving battling experts or conflicting scientific information. Rather, the dispute here concerns whether BLM satisfied NEPA. "NEPA compliance is not within the special province of administrative agencies" and, thus, "deference to agency expertise is inapplicable in the NEPA context." *Park County v. Dep't of Agric.*, 817 F.2d 609, 620 (10th Cir. 1987) (overruled on other grounds). Here, BLM violated NEPA by refusing to take a hard look at the impacts of additional Mancos Shale development across the Greater Chaco landscape, and is not entitled to deference on these failures.

B. BLM Failed to Complete an EIS Despite Significant Impacts.

BLM failed to complete an EIS despite approving 382 Mancos Shale APDs, and overwhelming record evidence that these additional wells may cause significant impacts; a point BLM concedes in its commitment to prepare the Mancos RMPA and EIS. Dkt.112, 25-28; AR0173818.[18] BLM argues that industry predictions of Mancos Shale wells "proved significantly overblown," and underscore that the agency's Notice of Intent to prepare the Mancos RMPA

[18] *See Diné CARE v. OSMRE*, 82 F.Supp.3d 1201, 1210 (D. Colo. 2015) (recognizing as unlawful the approval of activity before "imminent completion of the pending EIS") (vacated as moot); *Center for Bio. Diversity v. Jewell*, 2014 WL 12617468 at 3 (M.D. Fla. 2014) (same).

relates only to "*full-field development*" and the "additional impacts [that] *may* occur." Dkt.113, 30 (emphasis in original). *Cf. Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (requiring EIS if "substantial questions are raised as to whether a project...*may* cause significant degradation"). Yet BLM entirely ignores the context and intensity of already-approved 382 Mancos Shale wells, and specifically "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts." 40 C.F.R. §1508.27(b)(7). Notably, "[s]ignificance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by…breaking it down into small component parts." *Id.* BLM offers no defense for the significant impacts that have already occurred from approved Mancos Shale wells. *See Ocean Advoc. v. Army Corps of Engrs*., 402 F.3d 846, 864 (9th Cir. 2005) (requiring BLM to "put forth a 'convincing statement of reasons' that explains why the project will impact the environment no more than insignificantly."). As detailed above, BLM is required to analyze impacts *before* wells are approved, not after achieving full-field development. *New Mexico*, 565 F.3d at 718. Because 382 horizontally drilled Mancos Shale wells may cause significant impacts, an EIS is required.

C. BLM Failed to Involve the Public in its NEPA Process.

BLM violated NEPA by failing to involve the public in its decisionmaking process for Mancos Shale APDs, and only made NEPA documents available after it had already issued approvals. Citizen Groups were deprived of their opportunity to "react to the effects of [the] proposed action at a meaningful time" and were therefore prejudiced by BLM's NEPA violation. *Marsh*, 490 U.S. at 371.

BLM alleges the public was adequately informed through its online NEPA log, Notices of Staking for individual wells, and onsite meetings for individual wells that provide

"opportunities for public involvement." Dkt.113, 31. However, none of these actions provided information about the context or potential impacts of APD development. The NEPA log simply lists the name and location of the project associated with each EA. *See*, *e.g.*, AR150140-151809. The Notice of Staking provides similar information, and announces staking of an APD footprint's boundary prior to onsite inspection. *See*, *e.g.*, AR54774-807 (Notice of Staking example). An onsite visit to a staked APD consists of reviewing the project area boundaries to observe ground-disturbance areas. *See*, *e.g.*, AR147029 (onsite invitation example). However, Citizens Groups' concerns were not limited to surface disturbances associated to drill pads and related access roads. BLM failed to provide the public with the requisite information about the cumulative environmental impacts of the hundreds of Mancos Shale wells, which was necessary for meaningful public input, prior to approval. As the Tenth Circuit explained, for the NEPA process "[a] public comment period is beneficial only to the extent that the public has meaningful information on which to comment." *New Mexico*, 565 F.3d at 708. Here, informing the public that the boundaries of an APD have been staked, or that a site-visit to discuss a well's location has occurred, does not satisfy BLM's duty to ensure public participation in the NEPA process. BLM failed to provide the public with "meaningful information" about the direct, indirect, and cumulative impacts of BLM's decisions, prior to approving the wells.[19]

BLM also incorrectly argues that, even if it failed to provide some type of public notice for APD approval, this error did not prejudice Citizen Groups. Dkt.113, 34-35. NEPA

[19] BLM cites to *Amigos Bravos v. BLM*, 2011 WL 7701433 (D.N.M. 2011), to support its claim that it satisfactorily involved the public; however, that case is distinguishable. There, the court found BLM complied with NEPA's public participation requirements for lease sales when the agency published sale notices on its website and had a formal protest period, during which the public could convey its concerns about leasing's environmental impacts *before* BLM authorized a lease sale. *Id*. at *27.

regulations define "harmless error," limiting it to "trivial violation[s] of these regulations." 40 C.F.R. § 1500.3. Given that public participation and informed agency decisionmaking are the "twin aims" at the heart of NEPA, BLM's failure to involve the public prior to decisionmaking cannot constitute harmless error. *Balt. Gas & Elec. v. NRDC,* 462 U.S. 87, 97 (1983).

Finally, BLM asserts that Citizen Groups were not prejudiced because they "eventually receive[d]" the NEPA documents for the approved APDs.[20] Dkt.113, 35; *see also* Dkt.114, 19-20 (arguing that because NEPA documents were "ultimately made available" to the public, BLM did not violate NEPA). This argument turns NEPA's foundational requirement on its head, which requires BLM to "insure that environmental information is available to public officials and citizens *before* decisions are made and *before* actions are taken." 40 C.F.R. § 1500.1(b) (emphasis added).

III. BLM VIOLATED THE NATIONAL HISTORIC PRESERVATION ACT

The record demonstrates that BLM only considered how APD development directly impacted archaeological sites within the APD footprint—impacts that could be easily mitigated through avoidance or excavation—while ignoring indirect and cumulative impacts to landscape-level historic properties. *Id*. Dkt.112, 36-37; *see also* 36 C.F.R. §§ 800.16(i), 800.5(a)(1) (requiring BLM to assess whether a project will *indirectly* and *cumulatively* affect the characteristics of a historic property). Defenses of these failures lack merit.

[20] BLM's reliance on *Friends of Ompompanoosuc v. FERC*, 968 F.2d 1549 (2d Cir. 1992) to support its claim that failure to involve the public resulted in no prejudice is misplaced. There, the Court held the plaintiff was not prejudiced because it had "received the document through a Freedom of Information Act request two months *in advance* of the Order licensing the Project." *Id*. at 1557-58. Here, there was no public notice of BLM's decisions approving the challenged APDs *prior to* approval. *Drake's Bay v. Jewell*, 747 F.3d 1073 (9th Cir. 2014), is also inapposite on this issue. There, the court found no prejudice to plaintiff where the Secretary published an EIS less than 30 days before the decision and the agency labeled the final decision document as a "Decision Memorandum" rather than a "Record of Decision." *Id*. at 1091.

First, the responses argue that because the "Greater Chaco Landscape" is not listed on the National Register, BLM was not required to evaluate whether APD development would adversely affect it. Dkt.113, 40; Dkt.114, 21. This misunderstands Citizen Groups argument, as well as the NHPA. Citizen Groups do not argue that BLM failed to apply the NHPA's criteria of adverse effects to the Greater Chaco Landscape, nor do they argue that the Greater Chaco Landscape is a listed historic property subject to Section 106. Instead, Citizen Groups use this term to denote the area encompassing all of the known material manifestations of the "Chaco Phenomenon," including Chaco Culture National Historical Park, Chacoan Outliers, the Chaco Culture Archaeological Protection Sites, and the Great North Road. Dkt.112, 34-35. The NHPA and Section 106 require that BLM consider whether APD development indirectly and cumulatively results in adverse effects to *all* of these individual historic properties (within the area referred to as the Greater Chaco Landscape) because each is listed or eligible for listing on the National Register. AR0000977-78, 0217967-208011, 0218001, 0218004.

Second, the responses argue that none of the historic properties within the Greater Chaco Landscape will be affected by APD development. Dkt.113, 40-41; Dkt.114, 23. Yet they offer no evidence that BLM ever considered the *indirect* or *cumulative* impacts to any Chacoan site.[21] Rather, BLM and Operators admit that the agency only considered direct impacts within and immediately outside the APD footprint. Dkt.113, 39; Dkt.114, 23. This constrained analysis area

[21] BLM argues that by designating the Chaco Culture Archaeological Protection Sites included in the Chaco Outliers Protection Act, 16 U.S.C. § 410ii *et seq*., as Areas of Critical Environmental Concern with no surface occupancy stipulations ("NSO"), it relieves BLM from its NHPA obligations with respect to assessing indirect and cumulative effects. Dkt.113, 41-42. However, NSO stipulations only protect the site surface from ground-disturbing activities, as BLM admits. Dkt.113, 42 (discussing protective measures, including barriers and monitoring). NSO stipulations do not mitigate adverse effects to a property's "setting...feeling, or association." 36. C.F.R. § 800.5(a)(1).

conflicts with the requirements of Section 106 and the Protocol. *See Montana Wilderness Ass'n v. Fry*, 310 F.Supp.2d 1127, 1153 (D. Mont. 2004) (recognizing agency "is obligated to consider the 'affected area,' not just the narrow area where the pipeline is laid"). By altogether ignoring indirect and cumulative effects simply because those properties are not near the challenged APDs, Dkt.113, 41, BLM violated the NHPA.

Responses attempt to excuse this failure by shifting the burden to Citizen Groups to demonstrate that APD development will adversely affect landscape-level historic properties. Dkt.113, 40; Dkt.114, 22-23. This ignores Section 106's dictate that the *agency*, not the public, is responsible for this analysis. 36 C.F.R. §§ 800.4, 800.5. Moreover, even though Citizen Groups did not bear the burden of assessing adverse effects, the record shows Citizen Groups' members provided BLM with such evidence, including that noise, air, and light pollution from APD development could adversely affect the Park, Chacoan Outliers, and Chaco Protection sites both indirectly and cumulatively. *See* Dkt.112, 39-40 (summarizing potential adverse effects and record evidence thereof). Because BLM did not consider these impacts, it "failed to consider an important aspect of the problem." *Motor Vehicle Mfrs. v. State Farm*, 463 U.S. 29, 43 (1983).

Third, BLM considers the distance between landscape-level historic properties and the challenged APDs as preventing noise and air pollution from APD development. Dkt.113, 41. Even if true, this does not absolve BLM from analyzing those potential impacts and substantiating its conclusion. And, even assuming BLM is correct regarding an individual well, *see* AR0228414 (cited by BLM), this assumption does not necessarily remain true for the *cumulative* impacts of all 382 Mancos Shale wells. As detailed above, horizontal wells produce over 250 percent more air pollution than vertical wells, Dkt.112, 20; which is added to vast

quantities of existing air pollution from vertical wells drilled under the RMP/EIS.[22] Every new well that BLM approves adds to this prevailing legacy of pollution. Regardless of whether the drill rig or well are visible from a historic property, air pollution from APD development can indirectly or cumulatively "diminish the integrity of the property's location...setting...feeling, or association." 36. C.F.R. § 800.5(a)(1). BLM is required to analyze these potential impacts and consult with the New Mexico State Historic Preservation Officer ("SHPO") regarding this and other forms of cumulative pollution. *Id*. § 800.5(a). Here, BLM has failed to do both.

Fourth, the responses argue that BLM followed the New Mexico Protocol for assessing the effects of APD development on historic properties. Dkt.113, 38; Dkt.114, 24-25. This is incorrect. BLM misunderstands its responsibility under the Protocol, alleging that by defining the Area of Potential Effect ("APE") for direct effects, AR169265 (Appendix B of the Protocol), this is also sufficient to cover indirect effects because the only historic properties "near" the challenged APDs—and potentially indirectly affected by development—are archaeological sites for which the property's setting is not a contributing factor.[23] Dkt.113, 38-39; *see also* Dkt.114,

[22] Operators use the fact that this is "an already highly-developed landscape" to argue that the addition of new wells will not make a discernable difference in the character or setting of any landscape-level historic properties, therefore a cumulative effects analysis is not necessary. Dkt.114, 23. This argument ignores the fundamental purpose of assessing a project's incremental impacts: Even "a slight increase in adverse conditions…may sometimes threaten harm that is significant. One more factory…may represent the straw that breaks the back of the environmental camel." *Grand Canyon Trust,* 290 F.3d at 343. The U.S. Supreme Court's recognition of this in the NEPA context is just as relevant in the NHPA context: "[W]hen several proposals for…actions that will have a cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." *Kleppe v. Sierra Club*, 427 U.S. 390, 396 (1976).

[23] Archaeological sites are usually eligible to the National Register only under NHPA implementing regulation Criterion (d), which requires the property to have "yielded, or may be likely to yield, information important in prehistory or history." 36 C.F.R. § 60.4. As the Tenth Circuit recognized in *New Mexico ex rel. Richardson v. BLM*, 459 F.Supp.2d 1102, 1124-25 (D.N.M. 2006) (overruled on other grounds), effects to discrete archaeological sites are easily

25 (recognizing "BLM did not identify known historic properties outside the direct [APE] that might be indirectly affected"). Thus, the agency concedes that it only considered the direct effects to archaeological sites within the APD footprint when, in fact, it was required to consider indirect and cumulative effects to landscape-level properties outside this footprint and susceptible to noise, air, and light pollution even if those sites are not impacted by ground disturbance from the APD. *See* Dkt.112, 37-38. Failing to consider whether APD development would adversely affect historic properties outside the immediate footprint of development violates the requirements of the Protocol, the NHPA, and its implementing regulations.

Finally, Operators argue that BLM met its NHPA obligations for APD approvals when the agency consulted with the SHPO regarding the cumulative effects of development on landscape-level historic properties as part of the 2003 RMP/EIS. Dkt.114, 25. However, the RMP/EIS limited its discussion to archaeological sites by watersheds that could be directly affected by oil and gas development, and based on the amount of surface disturbance that would occur under each alternative. AR0001051-53, 0001089, 0001108, 0001126, 0001138. Notably, there is no discussion of impacts to landscape-level historic properties in the RMP/EIS, and thus no analysis to which BLM could tier.[24]

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mitigated by avoidance or excavation, measures which are not adequate for landscape-level historic properties.

[24] Operators' reliance on *San Juan Citizens Alliance v. Norton,* 586 F.Supp.2d 1270 (D.N.M. 2008), is misplaced. There, the NHPA issue was limited to whether BLM had adequately consulted with the Navajo Nation during the RMP/EIS process. *Id.* at 1292-93. The court determined that "BLM met its requirement to consult in good faith with the Navajo Nation" to identify Traditional Cultural Properties in the Planning Area, but that it was too early in the process to assess potential adverse effects to those properties given that "the RMP does not authorize specific activities." *Id*. at 1294.

IV. BLM AND INTERVENOR DEFENSES LACK MERIT

A. Challenges to APDs with Completed Wells are Not Moot.

BLM erroneously argues that Citizen Groups' challenge is both preemptive because 28 APDs lack a final agency action, and moot for the 177 APDs that have already been drilled or abandoned. Dkt.113, 13-15. BLM is mistaken on both arguments.

BLM erroneously characterizes Citizen Groups' injuries as stemming solely from "the drilling and fracking of the wells and associated ground disturbance," which it alleges are not redressible once a well has been drilled—citing to cases where courts have found moot challenges to actions that were completed during the course of litigation. *Id*.[25] However, Citizen Groups' injuries are not confined to the acts of drilling, and persist even once wells are complete.[26] Nor has BLM demonstrated that drilling a new well "forestall[s] any occasion for meaningful relief." *S. Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 727 (10th Cir. 1997). To the contrary, "even the availability of a 'partial remedy' is sufficient to prevent a case from being moot." *Byrd v. EPA*, 174 F.3d 239, 244 (D.C. Cir. 1999); *see also Airport Neighbors Alliance. v. U.S.*, 90 F.3d 426, 428-29 (10th Cir. 1996) (finding claims not moot because court could order the runway closed or impose restrictions until agency complied with NEPA); *Hillsdale Envtl. Loss Prevention v. Army Corps of Eng'rs*, 702 F.3d 1156, 1167 (10th Cir. 2012) (concluding that

[25] Each case is distinguishable. In *Nev. State Bd. of Agric. v. U.S.*, 699 F.2d 486, 487-88 (9th Cir. 1983), *Fund for Animals, Inc. v. BLM*, 460 F.3d 13, 22 (D.C. Cir. 2006), and *Benzman v. Whitman*, 523 F.3d 119, 132 (2d Cir. 2008), the challenged actions were completed before a merits decision. Other cases are also distinguishable. In *Park County*, 817 F.2d at 615, and *Jackson v. Denver Producing & Refining*, 96 F.2d 457, 459 (10th Cir. 1938), drilling and production had been completed. Here, the wells are continuing to operate. In *Ouachita Watch League v. USFS*, 2016 WL 3511691 at *3 (E.D. Ark. 2016), the court had previously determined BLM complied with NEPA in approving an APD, so when plaintiff challenged the APD approval again as part of a case alleging failure to supplement an EIS, and the well had already been drilled, the court found the APD challenge moot.

[26] *See* Dkt.112-1, ¶¶9, 13, 14, 16; Dkt.112-2, ¶¶8-11; Dkt.112-3, ¶¶7-8; Dkt.112-4, ¶¶7-8.

"NEPA claims are not prudentially moot," even where facility construction and associated mitigation were nearly complete). The relevant inquiry for mootness is not tied to the challenged action, as BLM intimates; rather, it is the availability of relief.

Here, the Court's equitable authority includes imposing conditions on APDs already drilled, or even shutting in production wells that were unlawfully authorized.[27] First, where a harmful agency action undertaken in violation of applicable law can be "undone"—even if this would require significant cost or complexity—a case challenging that agency action is not moot. *See Columbia Basin Land Ass'n v. Schlesinger*, 643 F.2d 585, 591 n.1 (9th Cir. 1981) (holding a case not moot even where project built and in use for three years "ultimately could be required to remove the line from this route"). Second, the Court maintains broad discretion to order equitable relief short of requiring well removal, such as mitigation measures and restrictions on well operations. *See Airport Neighbors*, 90 F.3d at 428-29 (challenge to already-constructed airport runway not moot where court "could order that the runway be closed or impose restrictions on its use"). Third, the Court can issue a declaratory judgment against BLM, which is an equitable remedy that "declare[s] the rights and other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a); *see also Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1175 (9th Cir. 2002) (finding where declaratory relief is available, action is not moot). Finally, BLM's unlawful APD approvals fall well within the contours of action that is "capable of repetition but evading review." *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). If BLM's mootness argument

[17] *See Tinoqui-Chalola Council of Kitanemuk v. Dep't of Energy*, 232 F.3d 1300, 1305 (9th Cir. 2000) (in determining whether effective remedies exist, "practical considerations" about costs of such remedies are not pertinent to the jurisdictional question, but "are more appropriately considered when weighing the equities of any particular remedy.").

for APDs with already-drilled wells prevails, nothing would prevent BLM from "ignor[ing] the requirements of NEPA, build[ing] its structures before a case gets to court, and then hid[ing] behind the mootness doctrine. Such a result is not acceptable." *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001). As long as BLM continues to approve Mancos Shale APDs, Citizen Groups will be continually subject to the same type of injury without being able to obtain timely judicial review.

B. The Law-of-the-Case Doctrine Does Not Preclude Review of NEPA Claims.

API argues that the law-of-the-case doctrine should prevent the Court from considering Citizen Groups' substantive NEPA claims—including whether BLM took a hard look at the environmental impacts of horizontal drilling and multi-stage fracturing in the Mancos Shale—because these general issues were before the Court in Plaintiffs' Motion for a Preliminary Injunction, which the Court denied. Dkt.115, 3-5. API's argument is a red herring. The law-of-the-case doctrine "is discretionary, not mandatory" and "merely expresses the practice of the courts generally to refuse to reopen what has been decided, not a limit to their power." *Stifel v. Woolsey*, 81 F.3d 1540, 1544 (10th Cir. 1996) (citations omitted). As this Court recognized, "district courts generally remain free to reconsider their earlier interlocutory orders." *Lujan v. City of Santa Fe*, 122 F.Supp.3d 1215, 1238 (D.N.M. 2015).

API admits that both this Court and the Tenth Circuit in *Diné CARE*, 839 F.3d at 1285, recognized that Citizen Groups could still prevail on the merits, even where the Court denies a motion for preliminary relief, by providing additional evidence or better-developed arguments. Dkt.115, 4-5, which is precisely what Citizen Groups have done. Given this possibility, and that the Court's ruling that the likelihood of success on the merits is not equivalent to a ruling on the merits, the Court should issue a decision based on the complete record and merits arguments.

V. CITIZEN GROUPS ARE ENTITLED TO THE RELIEF REQUESTED

Based on the egregiousness of the NEPA failures articulated herein, the only appropriate remedy in this case is vacatur. "Vacatur is the normal remedy for an agency action that fails to comply with NEPA." *High Country Conserv. Advocates v. USFS*, 67 F.Supp.3d 1262, 1263 (D. Colo. 2014). Under the Administrative Procedure Act courts "shall…hold unlawful and set aside agency action" that is found to be arbitrary or capricious. 5 U.S.C. § 706(2)(A). Here, vacatur is the only remedy that serves NEPA's fundamental purpose of requiring agencies to look *before* they leap, and the only one that avoids a "bureaucratic steam roller." *Davis*, 302 F.3d at 1115. Operators argue that even if the Court finds that BLM violated federal law, it should not vacate BLM's APD approvals, and instead limit its remedy to remanding the APD approvals to the agency, Dkt.114 at 26, which would not provide adequate relief. However, NEPA regulations instruct that the NEPA process must "not be used to rationalize or justify decisions already made." 40 C.F.R. § 1502.5. While courts retain equitable discretion to depart from vacatur to craft an alternate remedy for violations, they do so only in unusual and limited circumstances. *See W. Oil & Gas v. EPA*, 633 F.2d 803, 813 (9th Cir. 1980) (fashioning alternative remedy where vacatur would thwart the objective of the statute at issue). Here, remand with vacatur is appropriate. *Colo. Environmental Coalition v. Office of Legacy Mgmt.,* 819 F.Supp.2d 1193, 1224 (D. Colo. 2011) (ordering that no new leases could be issued and no ground-disturbing activity could occur until the agency fully complied with NEPA).

API argues that Citizens Groups are not entitled to equitable relief enjoining APD development or future APD approvals[28]—even if the Court finds that the agencies violated

[28] It is at this point that the Court can address the appropriateness of granting relief for the 28 APDs that BLM claims are not yet ripe. Dkt.113, 14.

federal law—because Citizens Groups have not demonstrated that they meet the necessary elements for injunctive relief. Dkt.115 at 12-13. Should Citizens Groups prevail on the merits, they respectfully ask the Court to bifurcate the remedy phase and allow for additional briefing, at which point they will satisfy the required elements for a permanent injunction, as articulated in *Monsanto v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010).

CONCLUSION

For the foregoing reasons, Citizen Groups respectfully request that this Court declare that BLM's approval of Mancos Shale drilling permits violate NEPA, the NHPA, and their implementing regulations; vacate and remand BLM's individual EAs; and suspend and enjoin BLM from any further drilling authorizations pending BLM's full compliance with NEPA and the NHPA.

Respectfully submitted this 28th day of July 2017,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), and Plaintiffs unopposed motion for expansion of words, Dkt.116, because this brief contains 7,962 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

Dated this, 28th day of July, 2017.

/s/ Kyle Tisdel
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Counsel for Plaintiffs

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

I hereby certify that on July 28, 2017, I electronically filed the foregoing PLAINTIFFS' REPLY with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to other participants in this case.

/s/ Kyle Tisdel
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