

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

**PUEBLO OF SANTA CLARA and PUEBLO OF ZIA,
federally recognized Indian tribes,**

Plaintiffs,

v.

Civil Action No.: 1:26-cv-03593

**NATIONAL PARK SERVICE;
JESSICA BOWRON, Acting Director of the
National Park Service,
MARTIN TRAYLOR, Acting Regional Director of the
National Park Service Intermountain Region,
JORGE SILVA-BANUELOS, Superintendent of the
Valles Caldera National Preserve, all of whom are sued
In their official capacities,**

Defendants.

**PLAINTIFFS' EMERGENCY MOTION
FOR A TEMPORARY RESTRAINING ORDER**

Plaintiffs, Pueblo of Santa Clara and Pueblo of Zia (“Plaintiff Pueblos”), by and through undersigned counsel, move the Court for an emergency *ex parte* temporary restraining order (“TRO”) under Rule 65(b)(1) of the Federal Rules of Civil Procedure to prevent the Defendant National Park Service (“Park Service”) or any of the individual Defendants from issuing a Special Use Permit (“SUP”) that permits the Pueblo of Jemez (“Jemez”) to take a bald or golden eagle from within Valles Caldera National Preserve (the “Preserve”).

Plaintiff Pueblos engage in a wide array of traditional religious practices within the Preserve, and the presence of eagles is essential to those practices. The removal of eagles from the Preserve—even a single eagle—will substantially burden Plaintiff Pueblos’ exercise of religion. In approving the SUP for eagle take in the Preserve, the Park Service ignored viable

alternatives that would allow Jemez to obtain eagles without impacting Plaintiff Pueblos' religious exercise. The Park Service's actions violate the Religious Freedom Restoration Act.

The Park Service's approval of the SUP also violates the Administrative Procedure Act. The Park Service failed to take a hard look at environmental consequences of the proposed action and its selection of alternatives rendered issuance of the SUP a foregone conclusion. In fact, the Park Service's analysis of the proposed action left out any consideration of Jemez's documented violations of a nearly identical SUP issued three years prior—violations that included the taking of eagles in excess of the permitted limit.

Under these facts, Plaintiff Pueblos have a substantial likelihood of success on the merits. Plaintiff Pueblos also face a risk of immediate, irreparable harm from the SUP that outweighs any harm to the Park Service from a stay of the permit's issuance. Finally, the broader public interest is served by protecting Plaintiff Pueblos' religious rights and ensuring that agencies comply with the express directives of Congress. For each of these reasons, a TRO preventing the Park Service's issuance of the SUP to Jemez is warranted.

FACTUAL BACKGROUND

The Preserve is an 88,900-acre unit of the National Park System, located in the Jemez Mountains of north-central New Mexico. Plaintiffs Verified Complaint (hereafter, "Compl."), ¶¶ 10–11. The Preserve was first set aside as a unit of the National Forest System in 2000, *see* 16 U.S.C. §§ 698v–v-10 (repealed 2014), and then redesignated, on December 19, 2014, as a unit of the National Park System. 16 U.S.C. § 698v-11. Elevation in the Preserve ranges from 8,000 to 11,250 feet and its diverse landscapes include high-mountain valleys and resurgent volcanic domes. Compl., ¶ 10.

The Preserve is a place of “spiritual and ceremonial importance to 37 traditionally associated American Indian tribes and pueblos.” Exhibit 1 (Park Service, *Pueblo of Jemez Special Use Permit for Traditional Religious Cultural Activities at Valles Caldera National Preserve, Environmental Assessment*, October 2026), at 3. Plaintiff Pueblos have used the Preserve for traditional religious and cultural purposes since time immemorial, and such uses continue today. Compl., ¶¶ 3–4, 11. The Pueblo of Santa Clara’s lands abut the northeast corner of the Preserve. *Id.*, ¶ 3, Ex. 1 at 7. Under a multi-year agreement with the Park Service, Santa Clara performs a variety of services and functions to protect and improve the Preserve’s natural environment. Compl., ¶ 3. The Pueblo of Zia’s lands are located directly south of the Preserve, and Zia regularly visits and utilizes numerous major shrines within the Caldera. *Id.*, ¶ 4. Members of Zia often refer to the Caldera as their “cathedral.” *Id.* Zia’s religious societies also obtain plants with medicinal qualities for traditional healing purposes, and minerals for ceremonial purposes, from within the Preserve. *Id.* Both of the Plaintiff Pueblos continue to utilize many areas of the Preserve to gather plants and minerals for traditional purposes, engage in traditional ceremonial activities, and for other religious purposes. *Id.*, ¶ 37. Plaintiff Pueblos’ members also make personal pilgrimages to shrines and other places of spiritual significance within the Preserve. *Id.* Plaintiff Pueblos do not disclose where these sites of gathering, traditional activity, religious observance, or pilgrimage are located within the Preserve, because their religious leaders require this information to be kept confidential. *Id.*, ¶ 38.

Plaintiff Pueblos each have strongly held religious beliefs that eagles are sacred, revered creatures that form an integral and irreplaceable part of the landscape of the Preserve. *Id.* ¶¶ 45–47. The safety and protection of eagles in the Preserve are major tenets of Plaintiff

Pueblos’ religious beliefs. *Id.*, ¶ 47. Thus, Plaintiff Pueblos view the destruction of even a single eagle within the Preserve as a substantial burden on their religious and cultural practices. *Id.*

Sometime in 2023, the Park Service issued a special use permit to Jemez for the purpose of conducting ceremonial activities in the northwestern corner of the Preserve from October 13, 2023, to November 12, 2023. Exhibit 2 (Park Service, *Finding of No Significant Impact – Eagle Take within Valles Caldera National Preserve Environmental Assessment* (“2023 FONSI”), October 2023) at 2. Then, in October 2023, the Park Service amended Jemez’s special use permit to authorize the taking of *one* bald eagle or golden eagle within the Preserve. *Id.* This authorization allowed taking of a golden eagle any time during the duration of the underlying special use permit, but limited the taking of a bald eagle to the period of November 1, 2023, to November 12, 2023, consistent with Jemez’s separate permit from the U.S. Fish and Wildlife Service (“USFWS”). *Id.* The Park Service did not circulate its Environmental Assessment (“EA”) for Jemez’s eagle take to affected Tribes or other members of the public because “public review was not practicable.” *Id.* (noting “the limited window of time between application submittal and the start of the ceremonial period within which the proposed eagle take would occur”).

After Jemez’s special use permit expired, the Park Service opened a “law enforcement investigation.” Exhibit 3 (Park Service, *General Report, Incident NP23360223 Law Enforcement*, November 13, 2023) at 1. The investigation was initiated based on evaluation of Jemez’s campsite in the ceremonial use area, the discovery of “resource and permit violations,” and the need “to determine if more than one Eagle was harvested from [Preserve] lands.” *Id.* The Park Service’s investigation report, while heavily redacted, describes the investigator’s finding that multiple eagles had been taken within the Preserve. *Id.* at 5 (“Physical evidence suggests that

all eagles taken were taken within the boundaries of [the Preserve].”). The report also indicates that Jemez had taken a bald eagle before November 1, 2023, in violation of both its Park Service and USFWS permits. *Id.* The investigation reflected other permit violations as well, including the use of vehicles not authorized by the permit, extensive damage of vegetation, and extensive ground disturbance. *Id.* at 2, 6. A ranger from the Park Service referred the matter to the United States Attorney for potential criminal prosecution, which was declined. *See* Exhibit 4 (Park Service, E-mail correspondence with Sarah Meese, Supervisory Assistant U.S. Attorney, Sept. 24, 2024) at 3.

On or around July 17, 2026, Jemez applied to the Park Service for a SUP to conduct eagle take activities in the Preserve during a month-long period in October and November of 2026. The Park Service notified Plaintiff Pueblos, among other tribes, for purposes of government-to-government consultation under Section 106 of the National Historic Preservation Act. Compl., ¶ 24. The Park Service, in its consultation letter, stated that it had developed a proposed finding of “no adverse effect” on historic properties within the area of potential effects, “provided all permit stipulations are adhered to.” *Id.*, ¶ 26. Plaintiff Pueblos each submitted letters objecting to the “no adverse effect” finding and describing potential harmful effects that would result from issuance of the SUP. *Id.*, ¶¶ 28–29.

On October 1, 2026, the Park Service published its EA for the proposed SUP allowing Jemez to take an eagle within the Preserve (“2026 EA”). *See* Ex. 1, Exhibit 5 (Park Service, (PEPC) Planning, Environment & Public Comment Page). The Park Service allowed the public to submit comments on the 2026 EA until October 16, 2026. Ex. 5. The 2026 EA explained that “[a]ction is needed to respond to Jemez’s SUP application and to ensure that such activities are conducted in a manner consistent with federal and state law, NPS policies, and park resources

protection obligations.” Ex. 1 at 6. In the purpose-and-need statement of the 2026 EA, the Park Service explained that “implementation of the proposed action depends on Jemez obtaining the required eagle take for Indian religious purposes permit from the USFWS,” but also noted that this condition precedent had already been satisfied for 2026/2027. *Id.* The Park Service also described the need for “a programmatic approach ... to guide long-term management,” in light of anticipated eagle take requests from Jemez “on an ongoing and recurring basis—potentially as frequently as annually.” *Id.* The Park Service stated that “future SUP decisions concerning this ceremonial use” could “tier” from the analysis in the 2026 EA. *Id.*

The 2026 EA outlined two proposed alternatives: first, a “No Action Alternative,” in which the Park Service would not issue the requested SUP; and, second, the “Proposed Action,” which would grant Jemez exclusive use of a ceremonial area in the northwest portion of the park for approximately 30 days and allow the taking of one bald or golden eagle. *Id.* at 8. Under the SUP described in the Proposed Action,, golden eagle take could commence immediately, while bald eagle take would be prohibited before November 1, 2026, in accordance with Jemez’s separate permit from USFWS.¹ *Id.* at 8–9.

For purposes of evaluating baseline environmental conditions and the anticipated environmental consequences of the proposed action, the Park Service relies primarily on environmental impact statements prepared by USFWS when reissuing its 2025 and 2026 eagle take permits to Jemez. Ex. 1 at 11–15. These EISs in turn rely upon regional and national population statistics for bald and golden eagles and were mainly conducted prior to 2016, with a

¹ Jemez’s USFWS permit, which is described in the 2026 EA, authorizes the combined take of up to eight bald or golden eagles within Los Alamos, Rio Arriba, Sandoval, San Miguel, and Santa Fe counties. *See* Ex. 1 at 4–5. Jemez is permitted to take eagles outside of the Jemez Reservation. *Id.* at 5. The USFWS permit authorizes golden eagle take from August 16, 2026, to February 28, 2027, and bald eagle take from November 1, 2026, to February 28, 2027. *Id.*

most recent estimate in 2020. *See id.* None of the studies focus specifically on the Preserve or the Jemez Mountains. *Id.* In its analysis, the Park Service noted that “[t]here may be one breeding pair of resident golden eagles in the vicinity of the park during spring and summer; however, it is unknown whether this resident pair overwinters in the park or on adjacent lands.” *Id.* at 12.

Given this finding, the Park Service noted that taking of a “resident golden eagle ... could reduce a resident population of golden eagles around the park, at least temporarily.” Using 2016 data from USFWS, the Park Service concluded, nonetheless, that “there may be enough ‘floaters’ in a local population to fill the role of the missing eagle(s).” *Id.* at 15.

In its classification of archeological and ethnographic resources that may be affected by the SUP, the Park Service describes a “known site ... identified by Jemez as a Traditional Cultural Property.” *Id.* at 16–17. The Park Service then states:

In November 2023, the NPS documented changes to this site when compared to previous surveys, including the construction of a new fire pit on a leveled earthen platform, two new holes measuring one meter by one meter near other holes, expanded foundation terraces for the wooden cabin structure, and a water diversion trench on the upper edge of the terraces. Other observed changes documented during the November 2023 survey include a 616-meter-long trail of UTV tracks north of the site.

Id. at 17. While consistent with the timing of Jemez’s 2023 special use permit, the 2026 EA does not expressly link these findings with that permit. *See id.* And, outside of the passage quoted above, the Park Service makes no mention of its investigation of Jemez’s suspected violations of the 2023 SUP, such as the taking of additional eagles beyond the permit limit. *See Ex. 1.*

On October 26, 2026, the Park Service issued its FONSI for the 2026 permit. Doc. 1-1. This action by Plaintiff Pueblos followed. Plaintiff Pueblos have notified the Park Service by providing copies of the Complaint and this Emergency Motion for a Temporary Restraining Order to the United States Attorney for the District of New Mexico, by hand delivery on October

26, 2026.

ARGUMENT

Federal Rule of Civil Procedure 65 governs preliminary injunctions and TROs. The legal requirements for a TRO and a preliminary injunction “are essentially the same.” *Legacy Church, Inc. v. Kunkel*, 455 F. Supp. 3d 1100, 1131 (D.N.M. 2020). To obtain either form of injunctive relief, the moving party must show: “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest.” *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). These four factors also determine when a court should grant a stay of agency action under the Administrative Procedure Act, 5 U.S.C. § 705. *State v. U.S. Env't Prot. Agency*, 989 F.3d 874, 883 (10th Cir. 2021). The likelihood-of-success and irreparable harm factors are “the most critical” in the analysis. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In addition to preventing irreparable harm to the moving party, the issuance of a TRO “preserve[s] the [court’s] power to render a meaningful decision on the merits.” *Keirnan v. Utah Transit Auth.*, 339 F.3d 1217, 1220 (10th Cir. 2003).

The moving party bears a heavier burden when it requests a “specifically disfavored” form of injunction, which include: “(1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits.” *Schrier v. Univ. Of Colo.*, 427 F.3d 1253, 1259 (10th Cir. 2005). The third category, however, “must be supplemented by a further requirement that the effect of the order, once complied with, cannot be undone.” *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1247 (10th Cir. 2001)

(providing, as an example, “a case involving the disclosure of confidential information”). When requesting a disfavored form of relief, the moving party must make a “strong showing” that the “likelihood-of-success-on-the-merits and the balance-of-harms factors ... tilt in her favor.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 797 (10th Cir. 2019).

Plaintiff Pueblos request a TRO preserving the status quo until the Court can hear argument from both parties on whether a preliminary injunction should issue. No mandatory injunctive relief is requested, and the TRO, by definition, will be of limited duration and subject to change at the Court’s discretion. *See* Rule 65(b)(1). Accordingly, the requested TRO is not a “disfavored” form of relief. Issuance of a TRO is warranted here because Plaintiff Pueblos can satisfy each part of the four-factor test outlined above.

I. Plaintiff Pueblos have a substantial likelihood of success on the merits.

A. Plaintiff Pueblos are likely to succeed under RFRA.

RFRA commands that the federal government “shall not substantially burden a person’s exercise of religion” unless the “application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. The SUP authorizing Jemez to kill a bald or golden eagle within the boundaries of the Preserve inflicts precisely the burden RFRA forbids, and the Park Service cannot supply the exacting justification the statute demands.

i. The SUP substantially burdens Plaintiff Pueblos’ exercise of religion.

To establish a *prima facie* claim under RFRA, the plaintiff must first show: “(1) a substantial burden imposed by the federal government on a (2) sincere (3) exercise of religion.” *Hale v. Fed. Bureau of Prisons*, 759 F. App’x 741, 746 (10th Cir. 2019). RFRA defines a “religious exercise” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5. Here, the Plaintiff Pueblos’ religious

practices within the Preserve include gathering plants and minerals for traditional purposes, engaging in traditional ceremonial activities, and personal pilgrimages by individual members of the Pueblos. Compl., ¶¶ 3–4, 11, 37. The Park Service’s own EA confirms the religious character of the landscape, acknowledging that the Preserve is “of spiritual and ceremonial importance to 37 traditionally associated American Indian tribes and pueblos,” a group that expressly includes the Plaintiff Pueblos. Ex. 1 at 3. In similar cases, the Government rarely questions the sincerity of tribal cultural and spiritual practices, or their characterization as religious exercise. *See, e.g. United States v. Friday*, 525 F.3d 938, 946 (10th Cir. 2008); *United States v. Hardman*, 297 F.3d 1116, 1126 (10th Cir. 2002); *see also Comanche Nation v. United States*, No. CIV-08-849-D, 2008 WL 4426621, at *3 (W.D. Okla. Sept. 23, 2008) (explaining that “[t]he exercise of Native American traditional religious practices has been recognized as constituting an ‘exercise of religion’ for purposes of RFRA”). Thus, the more critical question is whether the SUP places a “substantial burden” on Plaintiff Pueblos’ exercise of religion.

Religious exercise is substantially burdened “when a government (1) requires participation in an activity prohibited by a sincerely held religious belief, or (2) prevents participation in conduct motivated by a sincerely held religious belief, or (3) places substantial pressure on an adherent ... to engage in conduct contrary to a sincerely held religious belief.” *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010).² To satisfy this test, the burdened conduct need not be “central” to the adherent’s religious practice, so long as it is “important and based on a sincere religious belief.” *Id.* at 1316.

² In *Abdulhaseeb*, the court defined “substantial burden” for the purposes of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc et seq. 600 F.3d at 1312–13. However, the Tenth Circuit has since clarified that “Congress intended the substantial burden tests in RFRA and RLUIPA to be interpreted uniformly” and adopted the *Abdulhaseeb* test in the context of RFRA. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1138 n.13 (10th Cir. 2013).

Here, the second factor controls. While the Park Service’s issuance of the SUP does not prevent Plaintiff Pueblos or their members from physically accessing sacred sites within the Preserve (apart from the temporary closure of a ceremonial area for Jemez to use in conjunction with its eagle take activities), it does prevent Plaintiff Pueblos from participating in their religious practices *as they currently exist*. For Plaintiff Pueblos, the presence of eagles is an attribute that makes certain sites within the Preserve sacred. *See* Compl., ¶¶ 45–46. The removal of even one eagle works an irreparable harm to the spiritual qualities of these landscapes.

Plaintiff Pueblos are not asking the Court to plow new ground. The Tenth Circuit has recognized, for example, that “[t]he eagle feather is sacred in many Native American religions” and “[a]ny scheme that limits their access to eagle feathers therefore must be seen as having a substantial effect on the exercise of religious belief.” *Hardman*, 297 F.3d at 1126–27; *see, similarly, Friday*, 525 F.3d at 947 (finding that, where a religiously pure eagle tail is needed for a Tribal ceremony, “a law that limits ... access to the eagle needed for the ceremony substantially burdens [the plaintiffs’] ability to exercise their religion”). Here, the only difference is that Plaintiff Pueblos’ religious practices require access to live eagles, unharmed, and in their natural habitat. Eradication of those eagles clearly burdens Plaintiff Pueblos’ exercise of religion.

The District of Wyoming recognized the exact religious interest that Plaintiff Pueblos assert here, albeit in an indirect way, in *N. Arapaho Tribe v. Ashe*, 925 F. Supp. 2d 1206 (D. Wyo. 2012). There, the Northern Arapaho Tribe challenged a decision by USFWS allowing the Tribe to take eagles outside of, but not within, the boundaries of the reservation it shares with the Eastern Shoshone Tribe. *Id.* at 1214. The court assumed, without deciding, that preventing eagle take on the reservation substantially burdened Northern Arapaho’s religious exercise. *Id.* at 1216. But the court, recognizing that the Eastern Shoshone “oppose eagle take within the Reservation

on religious and cultural grounds,” found that USFWS had a “compelling interest in fostering and protecting the Eastern Shoshone's culture and religion.” *Id.*³ To balance the Tribes’ competing interests, the USFWS selected an alternative that would “allow Northern Arapaho to take a live eagle for religious purposes *in a manner that would avoid burdening the religious and cultural beliefs and practices* of the Eastern Shoshone.” *Id.* at 1218 (emphasis added) (cleaned up). This passage expressly recognizes that eagle take within a Tribe’s reservation, where that Tribe attaches religious significance to the eagles, burdens its exercise of religion. The only distinction here—that Plaintiff Pueblos’ religious beliefs and practices depend on the existence of eagles in a traditional ceremonial use area, and not on their reservations—does not shift the overall calculus.

The District of Oklahoma, in *Comanche Nation*, recognized a substantial burden to a Tribe’s religious exercise on facts closely resembling Plaintiff Pueblos’ concerns here. There, the court found a substantial likelihood that construction near the Medicine Bluffs—a sacred site for the Comanche Tribe—would “impose a substantial burden on the traditional religious practices of the Comanche people.” *Comanche Nation*, 2008 WL 4426621, at *17. The construction was adjacent to lands the Comanche used “to pray, to contemplate the Bluffs, to gather plants for use in healing and religious ceremonies, and to engage in sacred observance,” and would disturb “the last remaining open, unobstructed viewscape” of the Medicine Bluffs. *Id.* at *3, 17. Here, the impacts from the Park Service’s issuance of the SUP are nearly identical. As in *Comanche*

³ The District of Wyoming later examined the same competing interests of the Northern Arapaho and Eastern Shoshone Tribes, albeit in the context of the First Amendment’s Free Exercise Clause, and reached a different conclusion in *N. Arapaho Tribe v. Ashe*, 92 F. Supp. 3d 1160, 1187–88 (D. Wyo. 2015) (rejecting the notion that USFWS had a compelling interest in preventing eagle take on the reservation, where the “take of two bald eagles one foot outside of the Wind River Reservation and bringing those eagles back to the reservation would produce ‘substantial harm or alleged harm of the same sort’”).

Nation, the destruction of even one eagle at the Preserve alters important elements of Plaintiff Pueblos’ religious exercise and prevents Plaintiff Pueblos from engaging in ceremonies and practices as they currently exist. This is enough to show substantial burden.

If there was any doubt whether the SUP substantially burdens Plaintiff Pueblos’ religious exercise within the Preserve, such doubt is removed by the Park Service’s acknowledgement that it designed the EA as a “programmatic” framework from which future permits will “tier.” Ex. 1 at 6. Under this programmatic framework, the Park Service admits that eagle take may be authorized “as frequently as annually.” *Id.* Thus, the burden here is by no means isolated. It will be recurring, subjecting Plaintiff Pueblos’ religious practices to a series of compounding harms.

Similarly, the Park Service’s records pertaining to Jemez’s 2023 eagle take suggest that the impacts of the 2026 SUP will extend beyond the killing of one eagle. The Park Service found evidence suggesting that, in 2023, Jemez had taken not one, but several, eagles within the boundaries of the Preserve. Ex. 3 at 5. The Park Service’s investigation also revealed the use of an unpermitted vehicle and extensive damage to the ground surface and vegetation. *Id.* at 2, 6. Each of these findings increases the potential that the 2026 SUP will substantially burden Plaintiff Pueblos’ exercise of religion.

ii. Allowing eagle take in the Preserve is not the least restrictive means of furthering a compelling government interest.

Once the plaintiff makes a prima facie showing under RFRA, the burden “shift[s] to the Government to show the challenged regulation furthers a compelling interest in the least restrictive manner.” *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 342 F.3d 1170, 1173 (10th Cir. 2003) (internal quotation omitted).

Plaintiff Pueblos do not dispute that the government has a compelling interest in allowing Jemez to obtain bald or golden eagles for religious practices. Such interest is embodied in the

provisions of the Bald and Golden Eagle Protection Act (BGEPA), which specifically allows “the taking, possession, and transportation of specimens ... for the religious purposes of Indian tribes.” 16 U.S.C. § 668a; *United States v. Wilgus*, 638 F.3d 1274, 1286–88 (10th Cir. 2011) (acknowledging Congress’s intent in the BGEPA “to preserve the culture and religion of federally-recognized tribes” and describing this as a “compelling government interest”).⁴

However, considering the combined permitting options of the Park Service and USFWS, authorizing eagle take within the Preserve is not the “least restrictive means” of furthering the government’s compelling interest. The USFWS permit allows Jemez to take up to eight bald or golden eagles across five counties in New Mexico, within or outside of the Jemez Reservation. Ex. 1 at 4 –5. Jemez can satisfy its permitted eagle take outside the boundaries of the Preserve. Plaintiff Pueblos do not challenge Jemez’s right to take eagles outside of the Preserve.

The government does not have to “refute every conceivable option in order to satisfy the least restrictive means prong of RFRA.” *Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011). However, the government—and the reviewing court—must at least consider “the alternative regulation schemes proffered by the parties, and supported in the record” and ensure that “none of the proffered alternative schemes would be less restrictive while still satisfactorily advancing the compelling governmental interests.” *Id.*

Here, the Park Service had Plaintiff Pueblos’ preferred alternative before it in the EA. Ex. 1 at 8 (providing a “No Action Alternative,” in which the Park Service “would not issue the requested SUP”). In the EA, the Park Service does not explain why the No Action Alternative would be inconsistent with the government’s interests. For example, the EA recognizes the vast

⁴ While Plaintiff Pueblos acknowledge the government’s legitimate interest in allowing Jemez to obtain eagles for traditional religious purposes, they expressly disavow the notion that the Park Service has a “compelling interest” in allowing Jemez to take eagles *within the Preserve*. See Compl., ¶ 48.

geographic area in which Jemez is authorized to take eagles under the USFWS permit, Ex. 1 at 4, but never examines the impact to Jemez if its SUP for eagle take within the Preserve were denied. Importantly, the burden is on the Park Service to demonstrate that its SUP is the least restrictive alternative. 42 U.S.C. § 2000bb-1. The Park Service cannot carry that burden here. *See Comanche Nation*, 2008 WL 4426621, at *18 (finding it “unlikely that Defendants can meet their burden under the RFRA” where they “failed to consider means of fulfilling their compelling interest which would have been less restrictive of the religious practices of Plaintiffs”).

Issuance of the SUP substantially burdens Plaintiff Pueblos’ exercise of religion within the Preserve. While the government has a compelling interest in ensuring Jemez can obtain eagles for ceremonial purposes, less restrictive alternatives are available to achieve this end. For these reasons, Plaintiff Pueblos have a high likelihood of success on their RFRA claims.

B. Plaintiff Pueblos are also likely to succeed under the APA.

Under the Administrative Procedure Act (“APA”), a court may hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). Here, approval of the SUP should be set aside because the Park Service (1) failed to take a hard look at the environmental consequences of the proposed action and (2) violated conservation mandates within Preserve’s enabling statute and the agency’s own regulations.

i. The agency failed to take a hard look at environmental impacts.

NEPA “requires federal agencies to take a ‘hard look’ at environmental impacts when making decisions.” *Friends of Animals v. U.S. Fish & Wildlife Serv.*, 186 F.4th 1212, 1233 (10th Cir. 2026). The agency, in reaching its decision must “have available, and ... carefully consider, detailed information concerning significant environmental impacts.” *Id.*; *see also Motor Vehicle*

Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983) (explaining that an agency must examine the relevant data and articulate a satisfactory explanation for its action including a “rational connection between the facts found and the choice made”). Although the Supreme Court narrowed the “hard look” doctrine in *Seven County Infrastructure Coalition v. Eagle County*, it confirmed that agencies still need to evaluate environmental impacts within their specific regulatory authority. 605 U.S. 168, 188 (2025).

Here, the most glaring omission in the Park Service’s 2026 EA is the lack of discussion of the eagle take activities conducted by Jemez in 2023. The Park Service’s internal investigation revealed numerous suspected permit violations, including eagle take in excess of permitted limits, eagle take ahead of the authorized dates, ground and vegetation disturbance, and unauthorized use of a motor vehicle. *See* Ex. 3. By not addressing these known impacts to the environment which occurred during the last authorized eagle take in the Preserve, the Park Service failed to examine relevant data, and, as such, cannot articulate a satisfactory explanation for the choice it made to allow the same activity again. This is especially true where the FONSI relies on the assumption that Jemez will follow all permit restrictions within the SUP. *See* Doc. 1-1.

An agency must provide a satisfactory explanation for its actions based on relevant data. *See Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43. Because the Park Service had relevant data in its possession, yet failed to offer a satisfactory explanation why this data was not incorporated into its decision-making process, issuance of the SUP is arbitrary and capricious. *See id.* (finding agency action arbitrary and capricious where 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”).

The Park Service also violated NEPA by impermissibly narrowing its purpose-and-need statement such that its agency's preferred alternative was effectively predetermined. A NEPA purpose-and-need statement may not be drawn so narrowly that the agency's chosen alternative is the only conceivable result. *See Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002); *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997). Here, the purpose-and-need statement in the 2026 EA treats Jemez's application for the SUP to conduct eagle take activities in the Preserve as an automatic issuance because Jemez was already in possession of a permit from the USFWS. *See* Ex. 1 at 6. This result is irrational, however, where the USFWS permit does not, by its own terms, allow eagle take activities to be conducted in the Preserve.⁵

Finally, there is no relevant scientific data upon which the Park Service can base the FONSI, because it neither conducted any independent research nor caused Jemez to present such data or research on which to base a FONSI, and instead relies on environmental action statements prepared by USFWS in reissuing the 2025 and 2026 permits from USFWS to Jemez. *See* Ex. 1 at 11–14. These statements rely on regional and national population statistics for bald and golden eagles and were mainly conducted prior to 2016, with a most recent estimate in 2020, but none of these studies focus specifically on the Preserve or the Jemez Mountains, or discuss the effect of the eagle take activities conducted in 2023. *See id.* Because there is no reasoned explanation in the 2026 EA for how regional trends in eagle populations determined by USFWS stand in for the specific population dynamics of the Preserve, which is under Park Service authority, or how removing any eagles affects the overall biological integrity of the Preserve, issuing the SUP based on a flawed FONSI determination is “arbitrary, capricious, an abuse of

⁵ The USFWS permit to Jemez stipulated that the “permit does not authorize [the permittee] to conduct activities on lands outside the Pueblo of Jemez Reservation, including on Federal, State or other public or private property without additional prior written permits or permission from the landowner.” Compl., ¶ 17.

discretion, or otherwise not in accordance with law.”

ii. The proposed SUP is not “in accordance with the law” where the Park Service ignored conservation mandates in the Preserve’s enabling statute and the agency’s own regulations.

The Preserve was designated as a unit of the National Park System in order to “protect, preserve, and restore the fish, wildlife, watershed, natural, scientific, scenic, geologic, historic, cultural, archaeological, and recreational values of the area.” 16 U.S.C. § 698v-11(b)(1). Under the enabling act, the Secretary “shall ensure the *protection* of traditional cultural and religious sites in the Preserve;” and provide “access” by Tribal or Pueblo members to sites for “traditional cultural and customary uses,” in accordance with the 1978 American Indian Religious Freedom Act (“AIRFA”). 16 U.S.C. § 698v-11(b)(11). The Preserve’s enabling legislation mandates that the Park Service protect traditional cultural and religious sites within the Preserve, and the reference to AIRFA does not authorize any specific activities apart from providing *access* to traditional sites for customary uses.⁶ The Park Service points to no federal or state law that allows the taking of eagles within the Preserve, and any reliance on AIRFA is misplaced.

The Park Service’s explanations in the 2026 EA that the Preserve is “designated as a ‘shall-hunt’ park under its enabling legislation” or the Secretary is directed to “permit hunting, fishing, and trapping on land and water [. . .] in accordance with applicable Federal and State law” also fall short. Ex. 1 at 3. The Park Service offers no satisfactory explanation as to why the general allowance of the hunting of game animals under state regulation would authorize the taking of eagles within the Preserve.

⁶ AIRFA by no means gives Jemez a “right” to eagle take within the Preserve. In *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 455 (1988), the Supreme Court determined that AIRFA did not “create a cause of action or any judicially enforceable individual rights.” In fact, the sponsor of the bill that became AIRFA, Representative Udall, emphasized that the bill would not “confer special religious rights on Indians,” would “not change any existing State or Federal law,” and in fact “has no teeth in it.” *Id.*

The Park Service has promulgated regulations at 36 C.F.R. § 2.1 for the preservation of natural, cultural and archeological resources within the National Park System. 36 C.F.R. § 2.1(d) states that this “section shall not be construed as authorizing the taking, use, or possession of fish, wildlife, or plants for ceremonial or religious purposes, except for the gathering and removal of plants or plant parts by enrolled members of an Indian tribe [. . .], or where specifically authorized by federal statutory law [or] treaty.” The Park Service, in promulgating this regulation, specifically considered Native American ceremonial and religious use of wildlife, stating: “The Service recognizes that the American Indian Religious Freedom Act directs the exercise of discretion to accommodate Native religious practice consistent with statutory management obligations,” yet “the National Park Service is limited by law and regulations from authorizing the consumptive use of park resources.” *See* General Regulations for Areas Administered by the National Park Service, 48 Fed. Reg. 30252, 30255 (June 30, 1983).

36 C.F.R. § 2.1 does not authorize ceremonial or religious take of wildlife except where “specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 [prohibiting the taking of wildlife but authorizing hunting where designated by federal law] or § 2.3 [authorizing fishing].” No federal statute authorizes “religious take” of eagles in a unit of the National Park System, and Jemez does not have a treaty right to take eagles within the Preserve. Thus, the issuance of the SUP violates not only the conservation mandates in the statute creating the Preserve, but also the Park Service’s own regulations governing preservation of natural, cultural, and archaeological resources. The proposed issuance of the SUP would constitute action that is “otherwise not in accordance with law,” and the Pueblos are likely to succeed on the merits of this claim.

II. Plaintiff Pueblos will suffer immediate and irreparable injury from the taking of a bald or golden eagle within the Preserve.

As described above, the Park Service’s issuance of the SUP violates RFRA by substantially burdening Plaintiff Pueblos’ sincere exercise of religion within the Preserve. While RFRA provides statutory remedies, its protections may be “analogized to a constitutional right.” *Hobby Lobby*, 723 F.3d at 1146 (cleaned up). For purposes of a TRO, “[t]he deprivation, or threat of deprivation, of a constitutional right is sufficient, standing alone, to constitute irreparable injury.” *Herrera v. Santa Fe Pub. Schs.*, 792 F. Supp. 2d 1174, 1182 (D.N.M. 2011); *see Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). Thus, “establishing a likely RFRA violation satisfies the irreparable harm factor.” *Hobby Lobby*, 723 F.3d at 1146; *O Centro Espirita*, 342 F.3d at 1187 (“[A] plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA.”). Plaintiff Pueblos have met that burden here.

While likelihood of success on a RFRA claim demonstrates irreparable harm *per se*, Plaintiff Pueblos’ expected injuries would independently satisfy this factor. “A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain.” *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (recognized as abrogated on other grounds by *Free the Nipple-Fort Collins*, 916 F.3d at 797). An impending action may also have “irreparable effect in the sense of making it difficult or impossible [for Plaintiffs] to resume their activities or restore the status quo ante in the event they prevail.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). Here, no remedy at trial can replace the spiritual significance of a bald or golden eagle to the Plaintiff Pueblos during their traditional practices within the Preserve. The taking of an eagle is irreversible. As Defendants recognize in the case of golden eagles, the

taking of a single eagle “could reduce a resident population ... around the park.” Ex. 1 at 15.

As the Supreme Court has recognized, “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.” *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987). The Tenth Circuit, for example, recognized irreparable harm where construction of a golf course was expected to result in the removal of bald eagle nests and otherwise disturb eagle populations through “noise, human activities, [and] ground disturbance.” *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1259–1261 (10th Cir. 2003). This finding is by no means unique. Courts have found irreparable injury where Caspian tern habitat would be destroyed without suitable alternatives, *Nat’l Audubon Soc. v. Butler*, 160 F. Supp. 2d 1180, 1191 (W.D. Wash. 2001), where marine mammals would be harassed by “loud and far traveling [low frequency] sonar,” *Nat. Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1053 (N.D. Cal. 2002), and where cattle grazing on public lands would jeopardize sage-grouse habitat, *W. Watersheds Project v. Bernhardt*, 391 F. Supp. 3d 1002, 1022 (D. Or. 2019). If indirect threats of this nature constitute irreparable injury, so too must the complete eradication of an eagle from the Preserve.

The impacts to Plaintiff Pueblos’ traditional religious practices from the loss of one or more eagles in the Preserve are similarly irreparable. Plaintiff Pueblos view the eagles as an integral part of the Preserve’s sacred landscape, and removal of even a single eagle from the Preserve impacts Plaintiff Pueblos’ spiritual practices. *See* Compl, ¶ 47. A burden on the “traditional religious practices” of an Indian Tribe “constitute[s] irreparable harm.” *Comanche Nation*, 2008 WL 4426621, at *19. The court in *Comanche Nation* recognized that “the traditional religious practices of the Comanche people are inextricably intertwined with the natural environment.” *Id.* at *17. Similarly, in *Hualapai Indian Tribe v. Haaland*, the court found

irreparable harm where damage to a “culturally significant” water source was anticipated from the drilling of boreholes on adjacent land. 755 F. Supp. 3d 1165, 1197 (D. Ariz. 2024). The water source at issue was used by the Tribe for “traditional and cultural purposes, including gathering native plants, clay and other materials, observing wildlife, and holding ceremonies.” *Id.* at 1174. Likewise, the court in *Quechan Tribe of Fort Yuma Indian Rsrv. v. U.S. Dep’t of Interior* granted a preliminary injunction against a solar energy project that could impact “hundreds of known historical sites” in an area with “cultural and religious significance” for the affected Tribe. 755 F. Supp. 2d 1104, 1120 (S.D. Cal. 2010) (noting that “[d]amage to or destruction of any of them would constitute irreparable harm in some degree”).⁷

III. A balancing of the equities supports the requested TRO.

Plaintiff Pueblos will suffer immediate, permanent consequences as a result of the SUP. By contrast, the Park Service will experience no corresponding injury from a temporary restraining order that delays the SUP’s issuance. The Park Service describes its need “to respond to Jemez’s SUP application and to ensure that such activities are conducted in a manner consistent with federal and state law, NPS policies, and park resources protection obligations.” Ex. 1 at 6. The Park Service demonstrates no particular reason for urgency, here or elsewhere in the EA. If anything, the Park Service’s action calls for greater deliberation. For example, the Park Service recognizes that its initial decision on the SUP may inform a “programmatic approach” that guides long-term management decisions involving eagle take in the Preserve. Ex. 1 at 6 (explaining that Jemez’s requests “for eagle take within park boundaries [] are anticipated

⁷ Actions that burden religious practice are considered irreparable, not only in the setting of tribal cultural practices, but across all religions. *See, e.g., Kikumura*, 242 F.3d at 963 (finding that trial remedies “would not adequately compensate” a plaintiff for denied visits with his pastor in the prison setting); *Jensen v. Utah Cnty.*, 767 F. Supp. 3d 1153, 1177 (D. Utah 2025) (explaining that “[n]o amount of damages later can compensate Plaintiffs” for depriving them of psilocybin mushrooms, which they viewed as a “religious sacrament”).

to occur on an ongoing and recurring basis – potentially as frequently as annually”). According to the Park Service, future eagle take decisions would “tier from this [initial] analysis.” *Id.* Yet, for no obvious reason, the Park Service limited its comment period on the EA to a meager fifteen days, and then issued its FONSI within 10 days of the close of comments. Finally, while the SUP implements Jemez’s eagle take permit from USFWS, that separate permit does not compel the Park Service to act on any particular timeline. Jemez’s USFWS permit allows the taking of eagles through February 28, 2027. Ex. 1 at 5.

The Park Service itself will be left unharmed by a TRO. Nor does the record reveal any legitimate concerns on Jemez’s part to show why the SUP must issue immediately. Jemez’s USFWS permit allows for the taking of up to eight eagles from lands, within and outside of the Jemez Reservation, that range across five counties in New Mexico. *Id.* at 4. If the TRO prevents Jemez from taking eagles within the Preserve for a limited period of time, Jemez still has ample opportunity to fulfill its USFWS permit elsewhere.

IV. A TRO delaying issuance of the SUP is in the public’s interest.

Plaintiff Pueblos’ substantial likelihood of success under RFRA not only satisfies the irreparable harm factor, but also establishes that a TRO is in the public’s interest. *Hobby Lobby*, 723 F.3d at 1147 (“Because [plaintiffs] have demonstrated a likely violation of their RFRA rights, an injunction would be in the public interest.”). “[I]t is always in the public interest to prevent the violation of a party's constitutional rights.” *Id.*

The same analysis holds with respect to Plaintiff Pueblos’ APA claims. A court must “look[] to the statutes enacted by Congress rather than to its own analysis of desirable priorities in the first instance.” *Quechan Tribe*, 755 F. Supp. 2d at 1122. Thus, with respect to NEPA, for example, “the public has an undeniable interest in the government’s compliance with NEPA’s

environmental review requirements and in the informed decision-making that NEPA is designed to promote.” *San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Serv.*, 657 F. Supp. 2d 1233, 1242 (D. Colo. 2009); *see, similarly, Hualapai Indian Tribe*, 755 F. Supp. 3d at 1198 (describing the public’s interest in ensuring that an agency does not “short-cut its regulatory consultation obligations or reasoned evaluation of the effects of its undertaking”). Likewise, Congress’s instruction at 16 U.S.C. § 698v-11 that the Secretary must “ensure the protection of traditional cultural and religious sites in the Preserve” reflects the public interest.

Considering that Plaintiff Pueblos face a threat of irreparable injury that is not offset by any corresponding harm to the Government, the public interest favors maintaining the status quo until the Court can further consider the merits of this action.

CONCLUSION

For the foregoing reasons, Plaintiff Pueblos request that the Court grant a temporary restraining order preventing the Park Service from issuing a special use permit for eagle take to the Pueblo of Jemez.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of October, 2026, he caused a true copy of the foregoing Emergency Motion for Temporary Restraining Order, with attachments, to be personally served on the Office of the United States Attorney for New Mexico, and caused true copies of the same to be mailed by certified United States Mail, return receipt requested, to the following:

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