UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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WESTERN EXPLORATION LLC, et al., Plaintiffs, v. U.S. DEPARTMENT OF THE INTERIOR, et al., Defendants.	Case No. 3:15-cv-00491-MMD-VPC ORDER (Pls.' Motion for Preliminary Injunction – dkt. no. 4.)

I. SUMMARY

Plaintiffs initiated this action to challenge two federal agencies' decisions to amend their resource management plans to provide greater protection to the greater sage-grouse species and its habitat. The merits of Plaintiffs' claims are yet to be decided. This Order addresses Plaintiffs' Motion for Preliminary Injunction ("Motion") (dkt. no. 4), which requests the extraordinary remedy of preliminary injunction to enjoin these agencies from implementing certain restrictions in their plan amendments pending a decision on the merits. Because Plaintiffs fail to meet their burden of demonstrating a likelihood of irreparable harm in the absence of the requested preliminary injunction, the Court denies Plaintiffs' Motion.

II. BACKGROUND

In March 2010, the U.S. Fish and Wildlife Service ("FWS") issued a finding on petitions to list three entities of the greater sage-grouse as threatened or endangered under the Endangered Species Act. 75 Fed. Reg. 13910 (Mar. 23, 2010). FWS found in

part that "listing the greater sage-grouse (rangewide) is warranted, but precluded by higher priority listing actions." *Id.* at 13910. FWS further examined whether existing regulatory mechanisms available to federal agencies, such as the Bureau of Land Management ("BLM") and the U.S. Forest Service ("USFS"), adequately protect sage-grouse species and their habitat and found them to be mainly inadequate. *See id.* at 13979-80, 13982. In response, BLM and USFS (collectively, "Agencies") began the process of planning for incorporation of sage-grouse protection measures into their land management plans. (Dkt. no. 22 at 12-14.) Ultimately, on September 16 and 21, 2015, the Agencies issued records of decision approving their respective management plan amendments (AR 5509, 5664), which govern 67 million acres of federal lands across ten western states. (AR 5446.)

On September 23, 2015, Plaintiffs Elko County, Eureka County, Western Exploration LLC ("Western"), and Quantum Minerals LLC ("Quantum") (collectively, "Original Plaintiffs") filed their Complaint, seeking judicial review of the Agencies' actions under the Administrative Procedure Act, 5 U.S.C. § 706. (Dkt. no. 1.) In particular, Plaintiffs challenge Defendants' decisions to adopt the portions of the plan amendments that cover over 20 million acres of federal lands in Nevada ("Plan Amendments").

On September 28, 2015, Original Plaintiffs filed their Motion for Preliminary Injunction, requesting expedited consideration and oral argument. (Dkt. no. 4.) On October 2, 2015, the Court set a hearing on the Motion for November 12, 2015, which was continued to November 17, 2015. (Dkt. nos. 10, 29.) On October 22, 2015, Plaintiffs filed an Amended Complaint adding ten additional plaintiffs (collectively, "Additional Plaintiffs"). (Dkt. no. 20.) The Motion was fully briefed on November 11, 2015. The next day, Additional Plaintiffs filed a Joinder to the Motion. (Dkt. no. 33.) This prompted the Court to clarify the scope of the scheduled hearing, limiting the hearing to the issues raised by the Original Plaintiffs in the Motion. (Dkt. no. 36 at 2.). The Court subsequently permitted certain of Additional Plaintiffs' witnesses to testify on the public interest element of Plaintiffs' Motion. (Dkt. no. 40 at 2-3.)

The Court heard testimonies and arguments on November 17-18, 2015.[1] (Dkt. nos. 42, 43.)

III. LEGAL STANDARD

"'An injunction is a matter of equitable discretion' and is 'an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.'" *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (quoting *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 22, 32 (2008)). To qualify for a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) that the balance of hardships favors the plaintiff; and (4) that the injunction is in the public interest. *Winter*, 555 U.S. at 20. Alternatively, in the Ninth Circuit, an injunction may issue under a "sliding scale" approach if there are serious questions going to the merits and the balance of hardships tips sharply in the plaintiff's favor. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). The plaintiff, however, must still show a likelihood of irreparable injury and that an injunction is in the public interest. *Id.* at 1135. "[S]erious questions are those 'which cannot be resolved one way or the other at the hearing on the injunction.'" *Bernhardt v. Los Angeles Cty.*, 339 F.3d 920, 926-27 (9th Cir. 2003) (quoting *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)). They "need not promise a certainty of success, nor even present a probability of success, but must involve a 'fair chance of success on the merits.'" *Marcos*, 862 F.2d at 1362 (quoting *Nat'l Wildlife Fed'n v. Coston*, 773 F.2d 1513, 1517 (9th Cir. 1985)).

IV. DISCUSSION

Plaintiffs urge the Court to preliminarily enjoin Defendants from implementing the following aspects of the Plan Amendments: restrictions on travel and grazing, the Sagebrush Focal Areas ("SFA") designation, and the net conservation gain standard. (Dkt. no. 4 at 24.) Plaintiffs argue that they have demonstrated either a likelihood of

[1]The transcript of the hearing is cited herein as "Tr." and docketed as nos. 54, 55.

success on the merits or, under the sliding scale approach, serious questions going to the merits and a disproportionate balance of the hardships that tips in their favor. (*See id.* at 6-7.) Plaintiffs must demonstrate a likelihood of irreparable harm under either theory. *All. for the Wild Rockies*, 632 F.3d at 1135. Because the Court finds that Plaintiffs cannot satisfy this prong, the Court declines to address the other factors.

The Plan Amendments guide land management decisions in greater sage-grouse ("GRSG") habitat throughout Nevada. (*See* AR 4778 (explaining that BLM's Plan Amendments "identify and incorporate appropriate measures in existing land use plans" in order to "conserve, enhance, and restore GRSG habitat").) Plaintiffs read certain aspects of the Plan Amendments as threatening the way of life for the state's residents, particularly mining and ranching communities. They allege serious concerns about the Plan Amendments' repercussions on travel in rural Nevada, as well as grazing, mining, and local land use planning. (*See* dkt. no. 4 at 24-26, dkt. no. 32 at 6-10.) The Plan Amendments, Plaintiffs assert, have already created onerous administrative processes for — and prohibits several of — these activities, and have caused uncertainty among local offices tasked with their implementation. Indeed, much of the alleged harms seem to be driven by confusion and uncertainties over the Plan Amendments' implementation. Plaintiffs allege, for example, that a water storage facility in White Pine County has been delayed because of uncertainty over how the Plan Amendments would affect the project.[2] (Dkt. no. 32-3 at 3-5; *see* Tr. at 39.) They broadly argue that the Plan Amendments may harm the environment by creating an increased risk of wildfire, impede the Counties' ability to maintain and repair roads by restricting travel to existing routes, diminish grazing allotments, and dissuade investors from Quantum's and

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[2]Plaintiffs first identified the water storage tank issue in their reply brief. (Dkt. no. 32 at 9.) The Court allowed limited testimony about the water storage tank during the hearing, and gave the parties an opportunity to file supplemental briefing on the alleged irreparable harms arising from the water tank. (Dkt. no. 47.) The Court will address the water storage tank issue in a separate order after the supplemental briefing is complete.

Western's mining interests. (Dkt. no. 4 at 24-26; dkt. no. 32 at 6-10; *see* Tr. at 383-87, 401-04.)

Although these allegations are serious, Plaintiffs have not demonstrated that irreparable harm is likely to occur absent preliminary injunctive relief from the Plan Amendments' travel and grazing restrictions, SFA designation, and net conservation gain standard. The Court will address each issue that Plaintiffs seek to enjoin in turn.

1. Travel Restrictions

The Plan Amendments include several management decisions on travel and transportation.[3] BLM's Amendments instruct: "In areas where travel planning has not been completed, limit off-highway vehicle (OHV) travel to existing routes in [Priority Habitat Management Areas ("PHMAs")] and [General Habitat Management Areas ("GHMAs")] (subject to valid existing rights . . .) until subsequent implementation-level travel planning is completed and a designated route system is established." (AR 4821-22.) The FWS Amendments similarly limit travel on National Forest System ("NFS") lands "to designated roads and trails within the forest transportation system." (AR 5620.) Plaintiffs assert that these directives "affect thousands of miles of roads in Elko and Eureka Counties," including routes to which the Counties' rights have not been adjudicated. (Dkt. no. 4 at 24; *see* dkt. no. 4-2 at 9-10; dkt. no. 4-3 at 9-10; dkt. no. 32 at 8-9.) In fact, they argue that the need to adjudicate those rights is itself a harm caused by the Plan Amendments. (Dkt. no. 32 at 8-9.) Defendants, by contrast, point out that the Plan Amendments do not close existing routes, but instead direct a later planning process to identify whether routes need to be closed. (Dkt. no. 22 at 37-38 (citing AR 4821-22, 5453).) Defendants further assert that federal regulations exempt emergency vehicles from travel restrictions that limit off-road vehicle uses on USFS and BLM lands. (*Id.* at 38 (citing 36 C.F.R. § 261.13; 43 C.F.R. § 8340.0–5).)

[3]According to BLM, "[m]anagement decisions and actions are those provisions that help in meeting the established goals and objectives" laid out in the Plan Amendments. (AR 5476.) BLM will apply the management decisions "to guide day-to-day activities on public lands." (*Id.*)

Plaintiffs' concerns over the Plan Amendments' travel restrictions do not rise to the level of a likelihood of irreparable harm. A plaintiff seeking preliminary injunctive relief must "do more than merely allege imminent harm sufficient to establish standing; a plaintiff must *demonstrate* immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). The alleged burden of future adjudications to define the Counties' rights-of-way is hardly immediate. Indeed, during the hearing, Julian Goicoechea, Chairman of the Board of County Commissioners for Eureka County, testified that Eureka County plans to continue to use those unadjudicated "existing routes" notwithstanding the Plan Amendments. (Tr. at 18.) Coupled with the regulations exempting emergency services from off-road use limitations, the fact that Plaintiffs may need to initiate future adjudications of roads presents only the possibility — not a likelihood — of irreparable harm. Because Plaintiffs have not demonstrated that irreparable harm is likely absent preliminary injunctive relief, the Court will not preliminarily enjoin the Plan Amendments' travel restrictions.

2. Grazing Restrictions

Next, Plaintiffs argue that the Plan Amendments will increase the risk of wildfire by restricting grazing.[4] (Dkt. no. 4 at 24, dkt. no. 32 at 29-30; *see* dkt. no. 4-3 at 6-7.) The Plan Amendments envision livestock grazing that maintains or improves conditions

[4]The Counties also argue that they will face economic repercussions from diminished grazing opportunities for their residents. (Tr. at 17; dkt. no. 4 at 12; dkt. no. 4-2 at 6-7; dkt. no. 4-3 at 3, 7-9.) Defendants contend that these economic harms are asserted on behalf of the Counties' residents as *parens patriae* claims, which the Counties cannot assert. *See In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir. 1973) ("[P]olitical subdivisions such as cities and counties, whose power is derivative and not sovereign, cannot sue as *parens patriae*, although they might sue to vindicate such of their own proprietary interests as might be congruent with the interests of their inhabitants.") Even assuming, as Plaintiffs argue (*see* dkt. no. 32 at 14), that the Counties' economic concerns represent "their own proprietary interests" and not those of their residents, *In re Multidistrict Vehicle Air Pollution*, 481 F.2d at 131, Plaintiffs have failed to establish a likelihood of irreparable harm. They assert that the grazing restrictions will cause ranchers to close their businesses (*see, e.g.*, dkt. no. 4-3 at 9), but they have not demonstrated that the Plan Amendments' adoption modified existing permits. The possibility that the Counties will lose revenue because ranchers' grazing allotments will necessarily be diminished does not constitute a likelihood of irreparable harm.

for GRSG. (*See* AR 4809, 5709.) Plaintiffs focus on the BLM Plan Amendments (*see* dkt. no. 32 at 7-8), which outline several mechanisms to "[m]anage permitted livestock grazing to maintain and/or enhance PHMAs and GHMAs," including "grazing authorization modifications," "allotment management plan implementation," and "implement[ing] management strategies" based on certain "land health assessments in SFA, PHMAs, or GHMAs." (AR 4809-10.) The Plan Amendments instruct BLM to prioritize reviewing existing grazing permits and processing new permits or leases in the SFA before processing permits outside the SFA. (AR 4810.) Plaintiffs assert that this prioritization scheme and the ongoing land health assessments create a likelihood of irreparable harm by potentially limiting the grazing allowed under the reviewed permits, and, in turn, increasing the risk of wildfires. (Dkt. no. 32 at 7-8; *see, e.g.*, Tr. at 11-12, 59, 86.) BLM's Amendments indicate, however, that "[g]razing, which is the most widespread use of the sagebrush ecosystem, will continue in a manner consistent with the objective of conserving the GRSG." (AR 5469.) The Plan Amendments additionally "provide specific guidance for improving efforts to reduce the risk of GRSG habitat loss to wildfire." (*Id.*)

As with the travel restrictions, Plaintiffs have not demonstrated a likelihood of irreparable harm arising from the Plan Amendments' grazing restrictions. Although the Plan Amendments instruct BLM to prioritize the review of certain existing grazing permits, Plaintiffs' witnesses conceded that the Plan Amendments themselves do not modify grazing permits and current permit-holders have not yet been affected by those directives. (Tr. at 44-47, 224.) During the hearing, Plaintiffs' witnesses identified possible harms arising from potential grazing restrictions, including decreased property values and a build-up of wildfire fuels in the absence of grazing. (*See* Tr. at 52, 86.) But those harms are speculative because, as Plaintiffs' witnesses concede, Defendants have not modified existing permits. (Tr. at 44-47.)

Instead, Plaintiffs rely on the assumption that current grazing levels will necessarily decline as a result of the Plan Amendments. They cite a provision ("MD LG

5") that directs the implementation of certain management strategies to limit the adverse effects of grazing on GRSG. (Tr. at 49-50, 125, 143-45, 308, 310-13; dkt. no. 32 at 7-8.) That provision, however, applies only where "results from a land health assessment indicate that GRSG habitat objectives . . . are not met in SFA, PHMAs, or GHMAs and grazing is a causal factor." (AR 4810.) Additionally, as Defendants point out, Plaintiffs overlook the Plan Amendments' directives to reduce wildfire fuels by controlling invasive species and restoring habitat. (AR 5458-59.) While it is possible that a land health assessment may affect an existing permit-holder's grazing privileges, which, in turn, could limit grazing and create more wildfire fuels, Plaintiffs have shown only that such harm is potential, not likely. Plaintiffs are not entitled to preliminary injunctive relief from the Plan Amendments' grazing provisions.

3. Land Designations

Plaintiffs' remaining alleged harms stem from the Plan Amendments' habitat designations.[5] They specifically seek relief from the SFA designation, which, they contend, creates a likelihood of irreparable harm by limiting mining activities, as well as rights-of-way and land disposals for local development. The Court disagrees.

a. Mining

The BLM Amendments recommend withdrawing lands within the SFA from the Mining Act of 1872, which allows citizens to "locate mining claims on public lands open to location." *Indep. Mining Co., Inc. v. Babbitt*, 105 F.3d 502, 506 (9th Cir. 1997); (AR 4781, 4796, 4821). Based on that recommendation, on September 24, 2015, the Department of the Interior issued a notice of approval of an application to withdraw the SFA, which "temporarily segregates the lands for up to 2 years while the application is

[5]Plaintiffs also seek preliminary injunctive relief from the net conservation gain standard. (Dkt. no. 4 at 24.) During the hearing, Mr. Goicoechea commented that the new standard was ambiguous, and could affect conservation measures taking place in Eureka County to limit Pinyon and Juniper tree populations. (Tr. at 31-32, 38.) As with Plaintiffs' other alleged harms, this potential harm is possible, but not likely. Plaintiffs have not offered other evidence of irreparable harms that could arise from the net conservation gain standard. (*See* dkt. no. 4 at 24-25; dkt. no. 32 at 29-30.)

processed." 80 Fed. Reg. 57635 (Sept. 24, 2015), *amended by* 80 Fed. Reg. 63583 (Oct. 20, 2015). The proposed withdrawal occurred after BLM had filed an application requesting it. 80 Fed. Reg. at 57636. During the segregation period and "subject to existing rights, the [SFAs] will be segregated from location and entry under the United States mining laws." *Id.* at 57637. "[I]f a mining claim is located on public lands that are later withdrawn or segregated from entry to explore for minerals . . . , the government has the authority to examine all claims within the withdrawn land to determine if they are valid." *Ernest K. Lehmann & Assocs. v. Salazar*, 602 F. Supp. 2d 146, 150 (D.D.C. 2009). Quantum and Western have not received any notice that their mining claims will be subject to a claim validity examination.[6] (Tr. at 179-82, 199-201.)

Plaintiffs challenge the Plan Amendments' recommendation to withdraw lands within the SFAs from the Mining Act of 1872, which, they argue, creates a "cloud of uncertainty" over the mining prospects of both Quantum and Western and "has a chilling effect on Western's ability to continue raising the necessary funds for its development." (Dkt. no. 4 at 25.) Defendants insist that Plaintiffs have targeted the wrong action — the Motion attacks only the Plan Amendments' recommendation to withdraw, not the notice of withdrawal. (Dkt. no. 22 at 25-26.) Plaintiffs counter that the notice of withdrawal would not have occurred but for the Plan Amendments, such that preliminary injunctive relief from the recommendation would alleviate the harms alleged by Quantum and Western. (Tr. at 404; *see* dkt. no. 32 at 12 ("[T]he notice of proposed withdrawal is a logical outgrowth of [the Plan Amendments].").) Assuming without deciding that Western's and Quantum's claims are ripe, the Court finds that they have not shown a likelihood of irreparable harm to support granting preliminary injunctive relief.

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[6]John G. Cleary, a consulting geologist for Western, testified that a USFS representative informed Western in July 2015 that USFS intends to begin the claim validity examination "as soon as possible" and that Western's "claims are were at the top of the list." (Tr. at 167, 169-70.) However, Plaintiffs have not offered evidence that such an exam has commenced. In fact, Mr. Cleary acknowledged that Western has not received formal notice of such an examination. (*Id*. at 180.)

Plaintiffs packaged the alleged harms as a chilling effect on mineral development, but this claim must be viewed in the context of the highly regulated mining industry. Quantum and Western hold unpatented mining claims.[7] Owners of unpatented mining claims "must take their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests." *United States v. Locke*, 471 U.S. 84, 105 (1985). Because the federal government "maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired," *id.* at 104, the risks of a land withdrawal from the Mining Act of 1872 and a claim validity examination are part and parcel of ownership of unpatented mining claims. Against this regulatory setting, the Court will analyze Quantum's and Western's arguments individually.

In August 2015, Quantum received a decision memo from the USFS to process Quantum's Plan of Operations, with some modifications, for its exploration project on unpatented mining claims in the Jarbidge Mining District. (Dkt. no. 4-4 at 3, 8-11.) There is no evidence that the adoption of the Plan Amendments has disrupted this process. To the contrary, in a letter dated November 9, 2015, USFS informed Quantum of its receipt of the required bond and outlined the process for approval of Quantum's project. (Defs.' Hr'g Exh. 4.) Clearly, the adoption of the Plan Amendments has not affected the normal approval process for Quantum to develop its mining claims. Quantum has not demonstrated immediate threatened harm sufficient to warrant preliminary injunction relief. *See Caribbean Marine Servs. Co.*, 844 F.2d at 674.

Western is further along in its mineral exploration process. Western has been working on its exploration efforts since 1997, spending more than $32 million to date. (Dkt. no. 4-7 at 2-3.) In 2013, Western discovered a promising gold and silver deposit near the Wood Gulch Mine that it believes has the potential to put the gross value of the

[7]Quantum has 110 unpatented mining claims and 9 patented mining claims in the Jarbidge Mining District. (Dkt. no. 4-4 at 2.) Western has 112 unpatented mining claims at Doby George and 331 unpatented mining claims at Wood Gulch. (Dkt. no. 4-7 at 2.)

project in excess of $3 billion, depending on Western's success in obtaining a permit for a mine. (*Id.* at 3; Tr. at 175.) Western's Plan of Operations, which is effective for 10 years, was approved in June 2014. (Tr. at 171.) Because Western is an exploration company with a single project, its sole source of revenue is investor funding. (*Id.* at 173.) According to Mr. Cleary, Western lacks the financial resources to survive a claim validity examination, and, in fact, Western's current funding is sufficient to continue operation, working on only non-drilling related activities, only until the start of next year's drilling season.[8] (*Id.* at 171, 174-75, 180-81.) Mr. Cleary further testified that Western's main funding group has indicated that it cannot "attract any additional investment" to fund next year's drilling program in the absence of a preliminary injunction, and that "there's a reasonable chance" that Western would be able to obtain the necessary funding if the Court grants preliminary injunctive relief. (*Id.* at 174-75, 233.) There is no evidence, however, that adoption of the Plan Amendments will interrupt Western's approved Plan of Operations from a regulatory standpoint. In sum, Western's claimed harm is the potential loss of its exploration business because of investors' concerns about uncertainties created by the adoption of the Plan Amendments.

Even accepting Mr. Cleary's testimony, Western's arguments are problematic for two reasons. First, there is no connection between Western's claimed harm and the adoption of the Plan Amendments. The action challenged in this case is the adoption of the Plan Amendments, not the notice of withdrawal, but the adoption of the Plan Amendments has not resulted in any actual immediate changes to the regulatory environment governing Western's mineral explorations. Nor have Plaintiffs demonstrated that changes will occur during the two-year assessment period for the proposed withdrawal. Indeed, Mr. Cleary did not testify that Western cannot continue its operations because of the adoption of the Plan Amendments or even any actions taken by

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[8]Western's drilling activities are seasonal — Western shuts down its drilling operations in November and resumes again the following July. (Tr. at 178-79, 181.)

Defendants. Rather, Mr. Cleary expressed concerns over the reactions of Western's primary investor group to anticipated regulatory changes triggered by the Plan Amendments. (*See, e.g.*, Tr. at 171, 173-74, 183-85, 233.) Mr. Cleary testified that the uncertainty created by the adoption of the Plan Amendments has created a "chilling effect" on investment. (*Id.* at 184-85.) However, reactions of a third party such as Western's main investor group to hypothetical outcomes are insufficient to support a finding of imminent irreparable harm.

Second, Western's claimed harm is too speculative to rise to the requisite level of irreparable harm. Mr. Cleary testified that Western does not have the financial resources to survive a protracted claim validity examination, but Western has not even received formal notice of such examination. (*Id*. at 180, 364.) He believes the examination would take at least two years (*id.* at 170), but the length of the examination depends on a number of factors. (*Id.* at 363, 366-68.) Mr. Cleary also testified that Western's main investor group has threatened to pull funding and if that were to occur, Western would not have the financial resources to operate beyond next spring. (*Id*. at 171, 174-75, 180-81.) These various hypothetical scenarios would thus have to occur before Western would experience economic harm. While imminent threat of economic harm may satisfy the likelihood of irreparable harm factor, under these circumstances, the claimed harm is not imminent and is too speculative to amount to irreparable harm.[9] *See Caribbean*

[9]Plaintiffs rely on *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) to support their argument that a substantial loss of business is sufficient to demonstrate a likelihood of irreparable harm. In that case, the plaintiffs were corporations that operated bars with topless dancers. They had challenged an ordinance that "ma[de] it unlawful for bar owners and others to permit waitresses, barmaids, and entertainers to appear in their establishments with breasts uncovered or so thinly draped as to appear uncovered." *Id.* at 924. One of the plaintiffs had attempted to continue offering nude dancers, but it received several criminal summonses because of the ordinance. *Id.* at 925. The Supreme Court found that the plaintiffs' allegations of "a substantial loss of business and perhaps even bankruptcy" were sufficient to support the granting of preliminary injunctive relief. *Id.* at 932. The alleged harms in *Doran* — loss of business and possible bankruptcy — flowed from the adoption of an ordinance that restricted the entertainment that the plaintiffs offered. By contrast, the claimed harms here do not flow from the adoption of the Plan Amendments. They instead appear to derive from the segregation notice, a separate agency action that is not presently before the Court.

Marine Servs., 844 F.2d at 674-76 (finding that economic harm caused by increased exposure to potential liability that could arise from the presence of female observers on ships with all-male crews living in close quarters depends on "multiple contingencies" and is too speculative to constitute irreparable harm to warrant preliminary injunctive relief).

The Ninth Circuit Court of Appeals' analysis in *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201-02 (9th Cir. 1980), is instructive. In that case, the Los Angeles Memorial Coliseum Commission sued the NFL and its team members to challenge provisions in the League's by-laws, which require a three-fourths vote of team owners before a new member may be admitted or before any member club may transfer the location of its franchise or playing location to a different city. *Id.* at 1199 & n.1. The plaintiff sought to enjoin the defendants from invoking these provisions to prevent the transfer of the Oakland Raiders' home site to the Los Angeles Coliseum, but no request for a vote to approve the transfer had been made. *Id.* at 1199. To demonstrate irreparable harm, the plaintiff offered evidence of threats that the proposed transfer would be disapproved, consisting of an affidavit stating that the Raiders' owner did not believe he could obtain approval, two other team owners' predictions that the Raiders would not be able to obtain approval, and a statement from one of these owners that the NFL Commissioner was opposed to the transfer. *Id.* at 1201. Based on this evidence and evidence of economic loss — which included loss of income, diminution in value of the plaintiff's property, and loss of goodwill, among other economic harms — the district court granted the preliminary injunction. *Id.* at 1201-03. The Ninth Circuit reversed, finding that the evidence of threats of disapproval failed to establish that the voting provision requiring three-fourths approval for the transfer "was a realistic block to transfer." *Id.* at 1201. The court found that the plaintiff challenged the voting provision as an "unreasonable obstacle without first determining whether that perceived barrier was a shadow or substance." *Id.* at 1201-02.

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Similarly here, Western's claimed harm is based on hypothetical scenarios of adverse consequences, but with several more contingencies than the plaintiff offered in *Los Angeles Memorial Coliseum Commission*. The plaintiff there faced a barrier with binary alternatives — the vote would be either for or against the proposed transfer. Here, by contrast, Western's alleged harm is based on multiple assumptions — Western would be compelled to go through a claim validity examination, the examination would be lengthy, Western would not be able to validate all or some of its claimed mineral resources, Western's main investor group would follow through on the threat to discontinue funding, and, in that event, Western would not be able to obtain alternative funding.[10] Given these "multiple contingencies," Western has, at best, articulated a possibility of harm, not a likelihood of irreparable harm. *Caribbean Marine Servs. Co.*, 844 F.2d at 675.

b. Land Disposal

In their supplement to the Motion and at the hearing, Plaintiffs contend that Washoe County and Humboldt County have identified additional harms from the adoption of the Plan Amendments.[11] (Dkt. no. 13.) In particular, Plaintiffs argue that

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[10]Mr. Cleary testified that Western's main investor has indicated that it may not be able to attract funding for next year's drilling program in the absence of a preliminary injunction, but that "there's a reasonable chance" that it may be able to obtain funding if preliminary injunctive relief is granted. (Tr. at 174-75, 233.) This threat strikes the Court as an improper attempt to condition Western's harm on the Court's ruling. Moreover, Western has invested more than $32 million in, and has spent over 18 years on, its exploration efforts. (Dkt. no. 4-7 at 2-3.) And Mr. Cleary estimates that Western would need two to three years of drilling efforts to "fully define the resources" in its project area. (Tr. at 176.) In light of Western's investment to date, the advanced stage of Western's exploration activities, and the estimated potential gross value of the resources (over $3 billion), it seems incredible that investors would abandon their lucrative investment solely out of fear of uncertainties created by the adoption of the Plan Amendments.

[11]Because Original Plaintiffs rely on harms identified by Washoe County and Humboldt County to augment their claim of a likelihood of irreparable harm, the Court will address Plaintiffs' alleged harms despite the earlier order limiting the scope of the hearing. Eureka County also identified lands needed for expansion and development, claiming that the Plan Amendments would interfere with the County's development plans by modifying which lands are available for disposal. (Dkt. no. 4-3 at 6.) But Plaintiffs have not shown any immediate irreparable harm as a result of the revision of the BLM habitat map.

BLM's habitat map covers federal lands suitable for disposal, which these two Counties have been in the process of acquiring through BLM's public land disposal program.[12] However, testimonies offered at the hearing show that the two Counties are in the midst of a predictably prolonged BLM land disposal process, and any interruption caused by the adoption of the Plan Amendments would not lead to immediate irreparable harm while this case is pending.

For example, Washoe County's Planning Director, Bill Whitney, testified that Washoe County has identified six parcels that it desires to acquire as part of BLM's land disposal program, including a parcel that the City of Sparks has identified for building a veterans' cemetery and a parcel that the Washoe County School District plans to use for building a middle school. (Tr. at 90-93.) Although these parcels are identified on a land disposal map that has been finalized, the resource management plan update, of which the map is a part, has not been finalized. (*Id.* at 102-03.) Assuming the updated resource management plan is adopted, the local authorities would then have to go through "a rather lengthy process" to obtain BLM's approval for use, including submitting an application. (*Id.* at 96, 100.) Humboldt County is similarly going through a lengthy land disposal process, but that process is much further along. About eight years ago, Humboldt County submitted its application for land disposal under BLM's resource management plan to expand a landfill and a buffer zone for a regional shooting park; Humboldt County has not received notice of a decision on its application. (*Id.* at 213-14, 222-28.) Humboldt County's projection is that the existing landfill has "12 to 15 years [of] life expectancy." (*Id.* at 226.) As for the buffer zone, BLM has permitted Humboldt

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[12]The BLM Plan Amendments state that "[l]ands classified as PHMAs and GHMAs for GRSG will be retained in federal management, unless: (1) the agency can demonstrate that disposal of the lands, including land exchanges, will provide a net conservation gain to GRSG or (2) the agency can demonstrate that the disposal, including land exchanges, of the lands will have no direct or indirect adverse impact on conservation of the GRSG. (AR 4821.) Lands that fall within these classifications would not automatically and absolutely be withdrawn from disposal.

County to fence the southeast boundary of the shooting park pending its application for disposal. (*Id.* at 228-29.)

Even accepting that the lands identified for disposal by Washoe County and Humboldt County are on BLM's habitat map, and even assuming that those lands will be withdrawn from disposal,[13] such a withdrawal is nevertheless not immediate. Nor is the harm imminent and irreparable. The land disposal process is lengthy, the two Counties have not completed this process, and the planned projects do not have a clear or certain start date in the near future.

In sum, as with the grazing and travel restrictions, Plaintiffs have not demonstrated that irreparable harm is likely absent preliminary injunctive relief. The Court will not preliminarily enjoin the Plan Amendments' SFA designation.

V. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the Motion.

Plaintiffs cannot demonstrate the likelihood of irreparable harm in the absence of preliminary injunctive relief. It is therefore ordered that Plaintiffs' Motion for Preliminary Injunction (dkt. no. 4) is denied.

DATED THIS 8th day of December 2015.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

[13]Mr. Whitney testified that he was informed that the parcels that Washoe County has identified would not be available for disposal. (Tr. at 93.)