

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Center for Biological Diversity v. U.S. Bureau of Land Management

Center for Biological Diversity · No. 1:23-cv-00938-JLT-CDB · Decided April 1, 2025

SUMMARY

The United States District Court for the Eastern District of California considers Plaintiffs’ motion for leave to file a second amended complaint challenging the Bureau of Land Management’s approval of oil and gas drilling permits. The court focuses on whether the proposed amendments would be futile because Plaintiffs allegedly lack Article III standing, including injury in fact, causation, and redressability. The document grants Plaintiffs’ motion for leave to file the second amended complaint.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 CENTER FOR BIOLOGICAL Case No. 1:23-cv-00938-JLT-CDB
DIVERSITY, et al., 12 ORDER GRANTING PLAINTIFFS’ MOTION Plaintiffs, FOR LEAVE
TO FILE A SECOND 13 AMENDED COMPLAINT v. 14 (Docs. 52, 58) U.S. BUREAU OF
LAND 15 MANAGEMENT, et al., 16 Defendants. 17 18 Pending before the Court is the motion
of Plaintiffs1 Center for Biological Diversity 19 (“Center”), The Wilderness Society (“TWS”),
Friends of the Earth (“FOE”), and Sierra Club 20 (collectively, “Plaintiffs”) for leave to file a
second amended complaint, filed on October 8, 2024.

21 (Doc. 58). Defendant Innex California, Inc. (“Innex”) filed an opposition to the motion on
October 22 31, 2024. (Doc. 62). That same day, Defendant California Resources Production
Corporation 23 (“CRPC”) filed a notice of non-opposition to the motion and stated therein it
“reserves all rights to 24 challenge the adequacy of the proposed [SAC] under the Federal Rules
of Civil Procedure and 25 otherwise.” (Doc.

65) Federal Defendants U.S. Bureau of Land Management (“BLM”), Debra 26 Haaland, Karen
Mouritsen, Gabriel Garcia, and John Hodge (collectively, “Federal Defendants”) 27 1 Plaintiff
Natural Resources Defense Council was terminated from this action on July 1, 28 1 filed a
response to the motion stating they “take no position on Plaintiffs’ second motion to amend” 2 and
although they filed an answer to Plaintiffs’ first amended complaint, instead of moving to 3
dismiss at that time, they “made clear that they may raise Plaintiffs lack of standing as a defense 4
and “reserve the right to raise this defense” (Doc.

63). Plaintiffs replied to Innex’s opposition on 5 November 8, 2024. (Doc. 66). The Court turns to
the pending motion below. 6 I. Relevant Background 7 Plaintiffs initiated this action with the

filing of a complaint seeking declaratory and 8 injunctive relief against Defendants on June 22, 2023. (Doc. 1).

On July 1, 2024, the Court granted 9 Plaintiffs' unopposed motion to amend and supplement the complaint. (Doc. 38). Plaintiffs filed 10 the operative, first amended complaint ("FAC") on July 8, 2024. (Doc. 40). Plaintiffs challenge 11 BLM's approval of drilling permits for new oil wells on public land in the San Joaquin Valley, 12 California, without accounting for the air quality, groundwater, public health, and climate impacts 13 of BLM's continued expansion of oil and gas drilling, and without providing for meaningful input 14 from the communities most impacted by its permitting decisions.

(Id. ¶ 1). Plaintiffs allege BLM's 15 failures violates the Clean Air Act ("CAA"), 42 U.S.C. §§ 7041 et seq., the National Environmental 16 Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., the Federal Land Policy and Management Act 17 ("FLPMA"), 43 U.S.C. §§ 1701 et seq., and the Mineral Leasing Act ("MLA"), 30 U.S.C. §§ 181 18 et seq. (Id. ¶ 2). 19 Federal Defendants and CRPC filed their respective answers to the FAC on August 27, 20 2024.

(Docs. 50, 51). That same day, Innex filed its pending motion to dismiss the FAC for lack 21 of jurisdiction, moving to dismiss all of Plaintiffs' claims related to BLM's approval of four drilling 22 permits ("APDs") to Innex on private land in the Kettleman Middle Dome oilfield, on the grounds 23 that Plaintiffs lacked Article III standing. (Doc. 52). Plaintiffs thereafter filed the pending motion 24 for leave to file a second amended complaint.

(Doc. 58). 25 II. Governing Authority 26 Rule 15 provides that a plaintiff may amend the complaint only by leave of the court or by 27 written consent of the adverse party if the amendment is sought more than 21 days after the filing 28 of a responsive pleading or a motion to dismiss. Fed. R. Civ. P. 15(a). "Rule 15(a) is very liberal" 1 and a court should freely give leave to amend when "justice so requires." *AmerisourceBergen 2 Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir.

2006); see *Chodos v. W. Publ. Co.*, 292 3 F.3d 992, 1003 (9th Cir. 2002) ("it is generally our policy to permit amendment with 'extreme 4 liberality'") (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 5 1990)). 6 Granting or denying leave to amend a complaint under Rule 15 is within the discretion of 7 the court. *Swanson v. United States Forest Service*, 87 F.3d 339, 343 (9th Cir.

1996). "In exercising 8 this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision 9 on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 10 979 (9th Cir, 1981); *Chudacoff v. Univ. Med. Ctr.*, 649 F.3d 1143, 1152 (9th Cir. 2011) ("refusing 11 Chudacoff leave to amend a technical pleading error, albeit one he should have noticed earlier, 12 would run contrary to Rule 15(a)'s intent.").

13 A court ordinarily considers five factors to assess whether to grant leave to amend: “(1) bad 14 faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) 15 whether the plaintiff has previously amended his complaint.” *Nunes v. Ashcroft*, 375 F.3d 805, 808 16 (9th Cir. 2004).

The factors are not weighed equally. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995); see *Atkins v. Astrue*, No. C 10–0180 PJH2011 WL 1335607, at *3 (N.D. Cal. Apr. 7, 18 2011) (the five factors “need not all be considered in each case”). Undue delay, “by itself...is 19 insufficient to justify denying a motion to amend.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir.

20 1999). On the other hand, futility of amendment and prejudice to the opposing party can, by 21 themselves, justify the denial of a motion for leave to amend. *Bonin*, 59 F.3d at 845; see *Eminence 22 Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (the consideration of prejudice 23 to the opposing party carries the greatest weight). 24 In conducting this five-factor analysis, the court generally grants all inferences in favor of 25 permitting amendment.

Griggs v. Pace Am. Group, Inc., 170 F.3d 877, 880 (9th Cir. 1999). 26 Moreover, the court must be mindful that, for each of these factors, the party opposing amendment 27 has the burden of showing that amendment is not warranted. *DCD Programs, Ltd. v. Leighton*, 833 28 F.2d 183, 187 (9th Cir. 1987). 1 III. Discussion 2 As characterized by Plaintiffs, the proposed SAC (Doc.

58-1) “adds allegations concerning 3 Plaintiffs’ and their members’ interests and injuries and adds the Sierra Club as a plaintiff in this 4 case.” (Doc. 58 at 2). According to Plaintiffs, the proposed amendment “incorporates extensive 5 standing allegations from [six] declarations concurrently filed by Plaintiffs on behalf of their 6 organizations and members” in response to Innex’s pending motion to dismiss that “would 7 otherwise be provided at a later stage with the intent for these amendments to resolve all standing 8 concerns and avoid further motions practice regarding standing.” (Id.).

Plaintiffs contend none of 9 the four relevant factors in considering its motion—bad faith, undue delay, prejudice, or futility— 10 support a denial of its motion. (Doc. 58 at 2-3). Plaintiffs argue the amendments are not futile 11 “because they provide additional information that is relevant for the merits stage” and that “to the 12 extent there were any deficiencies in the [FAC] with regard to Plaintiffs’ standing allegations, the 13 amendments contained in the proposed [SAC] cure those deficiencies and accordingly should be 14 allowed.” (Id. at 3).

15 Innex contends Plaintiffs’ motion to amend should be denied as futile. (Doc. 62 at 5). Innex 16 argues that Plaintiffs fail to defend the adequacy of their FAC from its motion to dismiss on the 17 grounds that Plaintiffs lacked Article III standing, and that Plaintiffs “try to avoid dismissal by 18 seeking leave to file a [SAC]” to add allegations concerning perceived injuries of its members and 19 to add Sierra Club as a Plaintiff.

(Id.). The crux of Innex's opposition is that Plaintiffs fail to meet 20 its burden in establishing standing to support its claims as they fail to allege any geographic 21 connection to Innex's approval of four drilling permits ("APDs") and therefore amendment should 22 be denied as futile. (Id.). 23 Because futility of amendment is the dispositive Nunes factor here, the Court focuses its 24 analysis on that factor.

A court may deny leave to amend if the proposed amendment is futile or 25 would be subject to dismissal. *Carrico v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th 26 Cir. 2011). An amendment is futile if the complaint clearly could not be saved by amendment. 27 *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).

However, denial of leave 28 to amend on futility grounds is "rare." *Zurich Am. Ins. Co. of Illinois v. VForce Inc.*, No. 2:18-cv- 1 02066-TLN-CKD, 2020 WL 2732046, at *3 (E.D. Cal. May 26, 2020) (citing *Netbula, LLC v. 2 Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003)). "Ordinarily, 'courts will defer consideration 3 of challenges to the merits of a proposed amended pleading until after leave to amend is granted 4 and the amended pleading is filed.'" (Id.).

5 The Court reviews Plaintiffs' proposed amendments and declarations filed in support of the 6 proposed SAC to determine if the proposed amendments are futile or would be subject to dismissal. 7 Specifically, the Court determines whether the proposed SAC establishes Article III standing to 8 support Plaintiffs' claims such that amendment should be granted. 9 A. Proposed Plaintiff Sierra Club and Declarations in Support of the SAC 10 As noted above, the proposed SAC "adds the Sierra Club as a plaintiff in this case" and 11 "incorporates extensive standing allegations from declarations concurrently filed by Plaintiffs on 12 behalf of their organizations and members." (Doc.

58 at 2). The Court summarizes allegations 13 involving proposed Plaintiff Sierra Club and the six declarations filed in support of the SAC below. 14 1. Proposed Plaintiff Sierra Club 15 The proposed SAC names Sierra Club as a Plaintiff and describes it as a "national nonprofit 16 organization" with a "Kern-Kaweah Chapter, which includes Kern and Kings counties, [that] has 17 over 980 members" and that "Sierra Club brings this action on its own behalf and on behalf of its 18 adversely affected members." (Doc.

58-1 ¶ 39). Plaintiffs allege Sierra Club "pursues [its] 19 objectives nationwide, including in California and the Bakersfield Office region, by working to 20 protect communities and lands administered by the federal government from the harmful impacts 21 of oil and gas development, including air and climate pollution." (Id. ¶ 40). Plaintiffs allege one 22 of Sierra Club's "core activities is to challenge BLM's land use planning and oil and gas decision- 23 making, including in the Bakersfield Field Office region." (Id. ¶ 41).

Plaintiffs allege Sierra Club 24 “has individual members, including William Krend, who live, visit, work, or recreate in the 25 Bakersfield Field Office region in Kern and Kings counties” and these members have “specific 26 intentions to continue to interact with these areas frequently and on an ongoing basis[,]” and their 27 “enjoyment of these activities is heavily dependent on the health and protection of the surrounding 28 environment.” (Id. ¶ 44).

Plaintiffs allege that if their “challenge to the drilling permits is 1 successful, Mr. Krend will not have to suffer from increased air pollution that affects his and his 2 family’s ability to safely breathe and recreate in this region, and he will be better able to participate 3 in BLM’s decision-making process.” (Id. ¶ 45). 4 2. Declaration of Ileene Anderson (Doc.

58-4) (“Anderson Decl.”) 5 Ileene Anderson declares that she resides in Los Angeles, California, and is a member of 6 the Center since 1999. (Anderson Decl. ¶¶ 2, 5). She works out of the greater Los Angeles area in 7 her employment with the Center. (Id. ¶ 6). She declares that the Center’s members, including 8 herself, “enjoy and use federal land in Southern and Central California, including land and natural 9 resources managed by the [BLM’s] Bakersfield Field Office[,]” and from whom they “expect and 10 rely upon ... to protect air and water quality, species, habitats, and viewsheds of these lands.” (Id.

11 ¶ 10). She declares that “[o]ur members’ enjoyment of the public land is diminished by poor air 12 quality in the area.” (Id.). She declares she has “strong personal interests in the public lands in the 13 Central and San Joaquin Valley” as she “grew up in Bakersfield and have family members and 14 friends who still live there, and who [she] visits several times each year.” (Id. ¶ 18).

She declares 15 she “regularly recreate and observe plants and wildlife on [the] public lands... including lands that 16 are within the area that is the subject of the [BLM’s] 2014 Resource Management Plan” including 17 “Temblor Range, and west side of the San Joaquin Valley, the Bitter Creek National Wildlife 18 Refuge and surrounding areas, and publicly accessible areas along Poso Creek, among others.” (Id.

19 ¶ 19). She declares she “visited some of these areas in spring 2023 to look for plants and animals.” 20 (Id.). She declares she has “visited and will continue to visit public lands and natural resources 21 within and managed by the Bakersfield Field Office that would be directly or indirectly affected by 22 oil and gas drilling approved by the [BLM].” (Id.).

She declares that Poso Creek “runs about a 23 mile and a half to two miles from the CACA004999 (Rench) lease where some of the APD wells 24 at issue in this case will be drilled” and that she has “enjoyed walking up Poso Creek ... looking 25 for birds and plants[.]” (Id. ¶ 23). She declares the “APDs in the CAS019301C (Alta Vedder) 26 lease will be further away from Poso Creek but are within an area that is within the San Joaquin kit 27 fox’s recovery area” which she “keep[s] a shar eye out for[.]” (Id. ¶¶ 22, 24).

She declares she is 28 also “concerned about impacts of oil and gas drilling in this area on the critically endangered 1 California condor and [her] ability to view condors ... in the area.” (Id. ¶ 25). She declares “the 2 impacts to condors in and around oil fields” may “lessen [her] ability to view condors in the areas 3 [she] visit[.]” (Id.). She declares that a “court order declaring the [BLM] violated NEPA and other 4 federal laws, vacating the permits, and preventing any drilling on these APDs until BLM complies 5 with the law would redress the injuries to the Center, its members, and [herself].” (Id. ¶ 31).

6 3. Declaration of Francisco Gonzalez (Doc. 58-5) (“Gonzalez Decl.”) 7 Francisco Gonzalez declares that he has lived in Arvin, California, for 20 years, is a member 8 of the Center, and lives “near BLM land.” (Gonzalez Decl. ¶¶ 2-3, 6). He “frequently engage[s] 9 in outdoor activities that include going to public lands to hike and walk” and is a “frequent visitor 10 to the Temblor Hills area, the Bitter Creek National Wildlife Refuge, Poso Creek, Los Padres 11 National Forest, Chimineas Ranch, and the Cuyama Valley” with Poso Creek and Chimineas Ranch 12 as the “area[s] that [he] visits the most[.]” (Id. ¶¶ 6, 7).

He declares he visits Poso Creek “to verify 13 that there are no leaks due to oil and gas drilling that are harming the water and community[.]” and 14 also “with family and neighbors to hike and walk around” with his “last visit mid-September 2024, 15 and [he] plan[s] to visit again in the upcoming weeks before the weather changes.” (Id. ¶ 8). He 16 is “concerned about the negative impacts on our communities when it comes to oil and gas” and 17 “about the air quality and the impact of the constant flaring of gas in oil fields, including right 18 across the street from Arvin High School.” (Id. ¶ 9).

He declares an “increase in oil and gas drilling 19 will also bring a lot of noise and truck traffic into this area and will cause chaos in our community” 20 as the “increased traffic makes air quality worse” and the “trucks emit so much pollution and drive 21 through our communities.” (Id. ¶ 12). He declares what most concerns him “is the possible and 22 most likely poisoning of our community due to the explosion of tanks or leaks of volatile organic 23 compounds that can cause serious damage to our community.” (Id. ¶ 14).

24 4. Declaration of Daniel Rossman (Doc. 58-6) (“Rossman Decl.”) 25 Daniel Rossman declares that he joined the staff of TWS in 2008 and as of September 30, 26 2024, he is “no longer a TWS employee” but continues “to support its work to ensure that our 27 federal public lands are safeguarded for future generations” and that he “remains an active TWS 28 member.” (Rossman Decl. ¶¶ 2, 3).

He declares he lives in Pasadena, California, and “occasionally 1 travel[s] for both work and pleasure to visit and recreate on public lands in and around Kern and 2 Kings Counties.” (Id. ¶ 6). He declares that if “BLM’s approvals of the APDs at issue in this case 3 are allowed to stand, TWS members and affected communities in the area of these permits will 4 experience worsened

air and water quality and be less likely to safely live and recreate in the 5 California southern Central Coast and Central Valley regions that TWS works to protect[.]” (Id. ¶ 6 18).

He declares the “relief sought by plaintiffs, including TWS, in this action—declaring BLM 7 violated NEPA, the Clean Air Act, and other laws in approving the permits at issue, vacating the 8 EAs and FONSIIs approving them, and enjoining any drilling activity pursuant to the CRPC and 9 INNEX APDs until BLM fully complies with federal laws—will remedy the injury to TWS, TWS 10 members, local communities, and the public at large, including [himself].” (Id. ¶ 29).

11 5. Declaration of Hallie Templeton (Doc. 58-7) (“Templeton Decl.”) 12 Hallie Templeton declares that she is the legal director for FOE, which has “nine active 13 members living in the area managed by the Bakersfield Field Office.” (Templeton Decl. ¶¶ 2, 4). 14 She declares that FOE’s “members and activists have used, currently use, and will continue to use 15 public lands and natural resources, including affected areas in the Bakersfield Field Office area[,]” 16 and the communities in this area “have suffered significantly degraded air quality ... from activities 17 like oil and gas drilling.” (Id. ¶ 15).

She declares that should “the challenged APDs be affirmed, 18 BLM’s decision will directly impact [FOE’s] work” and harm its “interests, as well as those of its 19 members and advocates.” (Id. ¶ 17). She declares the “relief sought by Plaintiffs, including [FOE] 20 ... will remedy the injury to [FOE], our members, local San Joaquin Valley communities and 21 ecosystems, and the public impacted by BLM’s decisions.” (Id. ¶ 18).

22 6. Declaration of Tracy McCowan (Doc. 58-8) (“McCowan Decl.”) 23 Tracy McCowan declares that she currently resides “in the Oildale community in 24 Bakersfield, California, near the lands managed by [BLM’s] Bakersfield Field Office[,]” has “lived 25 in Bakersfield since January 2022[,]” and works in Kern County as a librarian at the Wasco State 26 Prison “about 30 miles north of [her] home.” (McCowan Decl. ¶ 2).

She declares that she has been 27 a member of FOE since 2017. (Id. ¶ 3). She declares that “[l]iving in an area with such excessive 28 pollution — largely due to oil and gas drilling — takes a toll on the pride [she has] in [her] home 1 and community” and that “[i]ncreased drilling will only make” her daily walks outdoors “nearly 2 impossible.” (Id. ¶¶ 5, 7).

She declares “increased drilling activity in the area” will affect her 3 immunocompromised partner’s ability to enjoy life, “let alone breathe safely[.]” (Id. ¶ 8). She 4 declares “[m]ore oil and gas activity in our region will only worsen [her] air and water quality, 5 harm [her] and [her] partner’s health, add more eye sores to our skyline, and lock in additional dirty 6 development in our already depleted community.” (Id. ¶ 12).

She declares that “[s]hould this 7 litigation succeed in preventing drilling activity at these new wells while the federal government 8 properly fulfills its mandates under the [NEPA, CAA,] and

other federal laws,” she is “confident 9 that these harms will be slowed if not stopped altogether[.]” (Id. ¶ 14). 10 7. Declaration of William Krend (Doc. 58-9) (“Krend Decl.”) 11 William Krend declares that he currently lives in Lemoore, California, “near the lands 12 managed by [BLM’s] Bakersfield Field Office in Kings County” and that he has lived here since 13 1972.

(Krend Decl. ¶ 2). He declares that he is a lifetime member of Sierra Club. (Id. ¶ 5). He 14 declares that he spends “a lot of [his] time in and around Lemoore and the San Joaquin Valley and 15 am active in [his] community” as he “enjoy[s] hiking near [his] home” and has “taken hiking trips 16 through the Sierra Nevada Mountains, Yosemite, and Mount Whitney.” (Id. ¶ 7).

He declares he 17 “still ha[s] friends in Avenal and return to visit them at least two to three times every year[.]” often 18 stops “in Kettleman City during trips to the Central Coast or other parts of the San Joaquin 19 Valley[.]” and enjoys “stopping for dinner at the nearby Harris Ranch” which he has “already 20 visited numerous times this year.” (Id. ¶ 8).

He declares that when he “lived in Avenal in the early 21 1970’s, [he] lived at the base of Kettleman Hills and the oil and gas drilling that took place 22 there ... which was incredibly concerning to [him]” and that he “still live[s] near this area now and 23 worry about the impact of this pollution on [him] and [his] family.” (Id. ¶ 12). He declares “[i]f 24 the Valley had clean air, without multiple polluting facilities including oil and gas wells making it 25 harder to breathe and appreciate our natural resources, [he] would hike more often in this area and 26 feel more comfortable spending time outdoors in [his] community.” (Id. ¶ 15).

He declares that 27 the “relief that Plaintiffs, including Sierra Club, are seeking in this case ... will remedy the injury 28 to [him], Sierra Club, other San Joaquin Valley residents, and the public.” (Id. ¶ 17). 1 B. Standing as an Environmental Plaintiff 2 Federal courts are courts of limited jurisdiction, possessing “only that power authorized by 3 the Constitution and statute.” *Kokkonen v. Guardian Life Ins.*

Co. of Am., 511 U.S. 375, 377 (1994). 4 Under Article III, federal courts may hear only actual cases or controversies. *DaimlerChrysler 5 Corp. v. Cuno*, 547 U.S. 332, 341 (2006); see U.S. Const. art. III, § 2, cl. 1.

The case or controversy 6 requirement demands that “[i]n every federal case, the party bringing the suit must establish 7 standing to prosecute the action.” *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004) 8 (abrogated on other grounds by *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 9 118 (2014)). 10 It is an “essential and unchanging part of the case-or-controversy requirement” that a 11 plaintiff seeking to sue in federal court must establish Article III standing.

Lujan v. Defs. of 12 Wildlife, 504 U.S. 555, 560 (1992). For a plaintiff to have standing, there must be: (1) “an injury 13 in fact—a harm suffered by the plaintiff”; (2) “causation—a fairly

traceable connection between 14 the plaintiff's injury and the complained-of conduct of the defendant"; and (3) "redressability—a 15 likelihood that the requested relief will redress the alleged injury." *Steel Co v. Citizens for a Better 16 Env't*, 523 U.S. 83, 103 (1998) (citation omitted).

17 "Article III grants federal courts the power to redress harms that defendants cause plaintiffs, 18 not a freewheeling power to hold defendants accountable for legal infractions." *TransUnion LLC 19 v. Ramirez*, 594 U.S. 413, 427 (2021) (citation omitted). "Only those plaintiffs who have been 20 concretely harmed by a defendant's statutory violation may sue that private defendant over that 21 violation in federal court." *Id.* Plaintiffs may establish standing to challenge environmental harms 22 by alleging "that they use the affected area and are persons 'for whom the aesthetic and recreational 23 values of the area will be lessened' by the challenged activity." *Friends of the Earth, Inc. v. 24 Laidlaw Env't*.

Servs., 528 U.S. 167, 183 (2000) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 25 (1972)). The Ninth Circuit has explained that "evidence of a credible threat to the plaintiff's 26 physical well-being from airborne pollutants falls well within the range of injuries to cognizable 27 interests that may confer standing." *Hall v. Norton*, 266 F.3d 969, 976 (9th Cir.

2001); see *Sierra 28 Club v. EPA*, 762 F.3d 971, 977 (9th Cir. 2014). 1 An entity may establish organizational standing if it alleges "concrete and demonstrable 2 injury to the organization's activities—with the consequent drain on the organization's activities— 3 [that] constitutes far more than simply a setback to the organization's resources." *Havens Realty 4 Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

An organization "that has not suffered a concrete 5 injury caused by a defendant's action cannot spend its way into standing simply by expending 6 money to gather information and advocate against the defendant's action." *FDA v. Alliance for 7 Hippocratic Medicine*, 602 U.S. 367, 394 (2024)). 8 Because Plaintiffs do not argue in their filings whether they have associational² standing 9 over their claims, the Court undertakes its standing analysis in determining whether the individual 10 Plaintiffs, through the declarations attached to the proposed SAC, may establish standing under the 11 above framework.

12 C. Analysis 13 Plaintiffs argue that their proposed SAC adds "extensive additional details regarding 14 Plaintiffs' standing" that "add[s] specificity far beyond that required at the pleadings stage[.]" 15 (Doc. 66 at 2). Plaintiffs contend that the proposed amendments allege that "members of Plaintiffs' 16 organizations will be harmed by [BLM's] approval of oil wells challenged in this case—including 17 INNEX's—because air pollution from these wells will directly impact Plaintiffs' members." (*Id.*).

18 Plaintiffs therefore contend Innex's arguments regarding standing—that "Plaintiffs' members are 19 too far from the wells, or that their wells' emissions are too small to impact Plaintiffs' members"—20 are arguments "inextricably intertwined with the merits" of the case such that it is "inappropriate 21 to decide at this juncture." (Id.). Further, Plaintiffs contend Innex fails to address Ninth Circuit 22 precedent that establishes "that evidence of a credible threat to the plaintiff's physical well-being 23 from airborne pollutants" establishes an injury-in-fact sufficient to confer standing.

(Id.) (citing 24 *Ass'n of Irrigated Residents v. U.S. EPA*, 10 F.4th 937, 943 (9th Cir. 2021)). Plaintiffs also contend 25 26 2 Under the associational standing doctrine, an entity may show injury by establishing that "(a) its members [or any one of them] would otherwise have standing to sue in their own right; (b) 27 the interests [the entity] seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the 28 1 they have adequately alleged organizational standing.

(Id. at n. 1). 2 Innex contends that the proposed SAC is futile because it does not allege a cognizable 3 injury-in-fact, specifically in failing to show that the individual members use the area affected by 4 the challenged activity and not an area roughly in the vicinity of a project site. (Doc. 62 at 10). 5 Innex contends that the member declarations annexed to the proposed SAC fail to assert a 6 geographic nexus to any specific wells or drilling sites.

(Id. at 13). Innex contends that Plaintiffs' 7 air quality concerns do not establish standing because the allegations thereto "do not have anything 8 to do with [its] permits[.]" fail to connect the generalized grievances to the APDs at issue, and the 9 health impacts are "speculative." (Id. at 15-17). Innex contends Plaintiffs fail to establish 10 organizational standing because the proposed SAC fails to allege facts demonstrating standing for 11 the organizational Plaintiffs to sue on their own behalf.

(Id. at 19). 12 In *Ass'n of Irrigated Residents*, the Ninth Circuit found that the association established 13 injury-in-fact required for Article III standing because the association's members submitted 14 "declarations containing credible allegations of respiratory distress as well as harm to their 15 recreational and aesthetic interests as a result of ozone pollution in the [San Joaquin] Valley." *Ass'n 16 of Irrigated Residents*, 10 F.4th at 943.

The Ninth Circuit explained that an injury is fairly traceable 17 to a challenged action as long as the links in the proffered chain of causation are not hypothetical 18 and remain plausible and that the redressability requirement can be met by showing that "it is likely, 19 although not certain, that [a plaintiff's] injury can be redressed by a favorable decision." (Id. at 20 944).

In finding that neither part of the test “demands absolute certainty,” the Ninth Circuit found 21 both parts of the test satisfied. (Id.). The Ninth Circuit found that the threat that the Valley faced— 22 in continuing to fail to meet the ozone standard under the EPA such that “the contingency measure 23 [at issue] will be activated—was neither conjectural nor hypothetical” and instead “a reasonable 24 inference from the historical record” in making its determination that an injury-in- fact had been 25 alleged.

(Id.). 26 Here, the Court finds that the declarations in the proposed SAC likewise contain credible 27 allegations of respiratory distress as well as harm to [the] recreational and aesthetic interests” of 28 the individual Plaintiffs as a result of the air pollution in the San Joaquin Valley that will be 1 exacerbated by BLM’s unlawful approval of the APDs at issue.

See *Ass’n of Irrigated Residents*, 2 10 F.4th at 943; (Doc. 66 at 8-9). For example, Krend alleges that he lives “near the lands managed 3 by [BLM’s] Bakersfield Field Office in Kings County” and that “BLM’s approvals of new oil and 4 gas wells near Bakersfield and Kettleman City ... add[s] more emissions of dangerous pollutants 5 that prevent [him] and other local residents from safely enjoying the place where [they] live.” 6 (Krend Decl. ¶¶ 2, 14).

Further, McCowan alleges that that “[i]ncreased drilling will only make” 7 her daily walks outdoors “nearly impossible[,]” that it will affect her immunocompromised 8 partner’s ability to enjoy life, “let alone breathe safely[,]” and that “[m]ore oil and gas activity in 9 our region will only worsen [her] air and water quality, harm [her] and [her] partner’s health, add 10 more eye sores to our skyline, and lock in additional dirty development in our already depleted 11 community.” (Id. ¶¶ 7-8, 12).

12 Additionally, the Court finds the proposed SAC contains allegations sufficient to 13 demonstrate that the amendments regarding organizational standing are not futile. Plaintiffs have 14 alleged facts throughout the proposed SAC showing that its organizations’ “core activities are 15 directly affected by [Innex’s] conduct[,]” such as in the allegations and declarations establishing 16 that participating in decision-making processes related to oil and gas drilling are core business 17 activities of the organizations, and BLM’s unlawful issuance of APDs without public notice harms 18 the organizations’ ability to participate.

See *Havens Realty Corp.*, 455 U.S. at 379; see (Doc. 58-1 19 ¶¶ 18-19, 26-29, 31-33, 36, 41-43). 20 Because Plaintiffs have shown the proposed amendments to the operative complaint are not 21 futile — meaning it is not clear the complaint is unsavable by the proposed amendments (see 22 *Corinthian Colleges*, 655 F.3d at 995) — and granting all inferences in favor of permitting 23 amendment, the Court finds that granting Plaintiffs leave to amend to file the SAC is warranted.

24 *Griggs*, 170 F.3d at 880; see *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) 25 (proposed amendment is futile “only if no set of facts can be proved under the amendment to the

26 pleadings that would constitute a valid and sufficient claim or defense.”). 27 /// 28 /// 1 | IV.
CONCLUSION AND ORDER 2 For the reasons set forth above, IT IS HEREBY ORDERED
that: 3 1.

Plaintiffs’ motion for leave to file a second amended complaint (Doc. 58) is GRANTED; 4 2.
Within seven (7) days of entry of this order, Plaintiffs shall file the proposed second 5 amended
complaint (Doc. 58-1) as a standalone docket entry; and 6 3. Within 14 days of Plaintiffs’ filing of
the second amended complaint, Defendants shall file 7 their responsive pleadings (see Fed.

R. Civ. P. 15(a)(3)). 8 | Ir Is SO ORDERED. ° Dated: _ April 1, 2025 | hwrnrD Pr 10 UNITED
STATES MAGISTRATE JUDGE 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 14