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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

CENTER FOR BIOLOGICAL DIVERSITY,  
WESTERN WATERSHEDS PROJECT, and  
WILDEARTH GUARDIANS,

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND  
MANAGEMENT; MARY D’AVERSA, in  
her official capacity as District Manager for  
the Bureau of Land Management Idaho Falls  
District; UNITED STATES DEPARTMENT  
OF THE INTERIOR,

Defendants.

Case No. 1:21-cv-182

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. Plaintiffs Center for Biological Diversity (Center), Western Watersheds Project (WWP), and WildEarth Guardians challenge the decision and analysis of the United States Department of Interior’s Bureau of Land Management (BLM) for the Caldwell Canyon Mine, an open-pit phosphate mine proposed in Caribou County, Idaho. Relying on a May 2019 Final Environmental Impact Statement (FEIS), BLM signed a Record of Decision (ROD) approving the Caldwell Canyon Mine on August 14, 2019. This action will allow P4 Production, LLC (P4), a subsidiary of Bayer AG, to develop and mine approximately 1,559 acres of important, currently undeveloped land essential for sage-grouse and other species over more than 40 years for the purpose of producing the brand-name pesticide Roundup.

2. Glyphosate dimethylammonium salt (glyphosate) is an herbicide manufactured by German multinational pharmaceutical and life sciences company Bayer AG for use as the active ingredient in “Roundup” brand herbicides. The World Health Organization’s cancer-research arm considers glyphosate a probable carcinogen, and the United States Environmental Protection Agency (EPA) recently determined that glyphosate is likely to adversely affect 93 percent of all threatened and endangered species. Elemental phosphorus, which is necessary to manufacture glyphosate, is produced using phosphate ore extracted from a phosphate mine—in this case the Caldwell Canyon Mine—that is then processed—in this case at the Soda Springs Plant in Soda Springs, Idaho.

3. This suit challenges BLM’s cursory analysis of the environmental impacts of that extraction and refinement process on public lands, wildlife, downstream waters, Tribal lands, and nearby communities for generations to come. BLM’s analysis in the FEIS and ROD violated the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706, for several reasons.

4. First, BLM failed to take a hard look at potential selenium pollution from the Caldwell Canyon Mine. Selenium, which is toxic at high concentrations, has killed hundreds of livestock in southeast Idaho, and has caused deformities and other adverse effects in birds, aquatic animals, and other wildlife. As EPA identified in its comments to BLM on the Draft Environmental Impact Statement (DEIS), the mine will release dust contaminated with selenium into the ambient environment. Those dust particles are a concern because of the high likelihood that they will contaminate nearby lands and waters, including the Blackfoot River that runs at the feet of this mine and already exceeds state water quality standards for selenium. Yet, even with these significant pollution concerns, BLM did not adequately disclose how it analyzed fugitive dust emissions, how those emissions will impact the Blackfoot River, or whether there are alternatives to mitigate those emissions.

5. Second, BLM failed to consider the cumulative effects of phosphate mining, and in particular, selenium contamination, in its environmental analysis. P4 will build the Caldwell Canyon Mine in an area that has already been impacted by decades of phosphate mining. Southeast Idaho is the second largest producer of phosphate in the United States. In total, at least 30 phosphate mines have disturbed approximately 17,000 acres of land in this region since the early 20<sup>th</sup> century and have caused significant selenium contamination, both of surface water and groundwater. There are over 10 federal hazardous waste—or Superfund—sites in the area. Nonetheless, BLM prepared only a cursory analysis of the cumulative effects of the Caldwell Canyon Mine when combined with the impacts of other past, present, and future mining projects.

6. Third, BLM entirely failed to consider the indirect effects from ore processing, including the potential for radioactive waste and ground water pollution. Ore from Caldwell Canyon will be processed at the Soda Springs Plant, which was listed as a Superfund site in

1990. Remediation efforts at the Soda Springs Plant, which are ongoing, have focused on addressing soil contaminated with radionuclides and metals (arsenic and beryllium), and groundwater contaminated with selenium, cadmium, sulfates, and fluorides—contamination that has left the property and impacted nearby surface water. Despite the fact that further deterioration of air, surface water, and ground water quality is reasonably foreseeable from processing phosphate ore at this Soda Springs Plant, BLM failed to analyze those impacts or use them to inform reasonable alternatives to this project.

7. Fourth, BLM failed to take a hard look at the mine’s impact on Greater sage-grouse, an iconic western bird species whose population has plummeted rangewide in recent decades. Greater sage-grouse narrowly avoided listing pursuant to the Endangered Species Act (ESA) in 2010 and 2015, and despite federal commitments to improve protections for the bird, populations have only further declined since that time. The Caldwell Canyon Mine would impair roughly 1,000 acres of Greater sage-grouse habitat, including sensitive breeding and nesting grounds for the small and declining East Idaho Uplands sage-grouse population. Nonetheless, the EIS failed to meaningfully analyze the direct, indirect, and cumulative impacts of this project on local and regional populations of Greater sage-grouse.

8. Finally, without regard for its obligations under NEPA, BLM only reviewed a very narrow set of alternatives to the project—limiting the consideration of available options to mitigate harms from this project and preventing the public from meaningfully analyzing the project and BLM from making an informed choice. BLM’s review also unlawfully excluded alternatives proposed in public comments, including by Plaintiffs WWP and the Center, without adequate consideration and reasoned explanation.

9. Accordingly, Plaintiffs request that the Court declare that BLM's FEIS and ROD for the Caldwell Canyon Mine are arbitrary, capricious, and not in accordance with NEPA and the APA; vacate and set aside BLM's FEIS and ROD approving the Caldwell Canyon Mine; and enjoin BLM from authorizing any further action associated with the Caldwell Canyon Mine until it complies with the statutory and regulatory demands of NEPA and the APA.

### **JURISDICTION AND VENUE**

10. Plaintiffs bring this action pursuant to the judicial review provisions of the APA, 5 U.S.C. §§ 701–706.

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), and may issue a declaratory judgment, injunctive relief, and further relief requested by Plaintiffs pursuant to 28 U.S.C. §§ 2201–02.

12. Plaintiffs also seek an award of costs and expenses, including attorneys' fees, costs, and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412.

13. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Plaintiff WWP resides in the district, with its headquarters in Hailey, Idaho; the events or omissions giving rise to the claims in this case occurred in Idaho; and Defendant D'Aversa resides in this district.

14. Pursuant to Local Rule 3.1, this case is properly assigned to the Southern Division because Plaintiff WWP is headquartered in Hailey, which is in Blaine County.

### **PARTIES**

15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) corporation headquartered in Tucson, Arizona, with offices in several states and Mexico. The Center has approximately 84,333 members throughout the United States and the world, including 533 members in Idaho. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health

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