

**No. 24-6578**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JEFFERY POWERS, et al.

*Plaintiffs-Appellees,*

v.

DENNIS RICHARD MCDONOUGH, et al.

*Defendants-Appellees*

BRIDGELAND RESOURCES, LLC

*Appellant-Intervenor Plaintiff*

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Appeal from United States District Court  
Central District of California, Case No. 2:22-cv-08357-DOC-KS  
Hon. David O. Carter

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**OPENING BRIEF OF APPELLANT-INTERVENOR PLAINTIFF  
BRIDGELAND RESOURCES, LLC**

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**DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the undersigned counsel of record for Appellant-Intervenor Plaintiff Bridgeland Resources, LLC certifies that:

Appellant-Intervenor Plaintiff Bridgeland Resources, LLC is a Delaware limited liability company with 100% of the membership units owned by CW Children Holdings, LLC, and no publicly held corporation owns ten percent (10%) or more of its stock.

DATED: January 17, 2025

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## INTRODUCTION<sup>1</sup>

The West Los Angeles VA Medical Center campus (the “WLA Grounds”) has housed and served veterans for more than a century. Plaintiffs, a class of veterans, sued federal officials at the Department of Veterans Affairs (the “VA”) over the government’s alleged failure to provide services and housing at the WLA Grounds. Plaintiffs contend that the VA has failed, for decades, to build sufficient veteran housing and that it unfairly excludes disabled veterans from accessing housing at the WLA Grounds, leaving many veterans to live on the streets. Plaintiffs also contend that the VA has misused the WLA Grounds by unlawfully leasing a baseball field, athletic facilities for a private school, and parking lots to private parties, depriving the VA of valuable land for veteran housing.

Those claims are admirable, and Bridgeland does not challenge them. Instead, Bridgeland appeals a narrow aspect of this case where the district court’s orders undisputedly harm veterans. Plaintiffs contend that the VA unlawfully maintains a “Revocable License” allowing Bridgeland, an energy producer, to operate a slant-drilled oil well beneath the WLA Grounds. Unlike the other

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<sup>1</sup> This appeal is related to others filed by different parties in the district court action: No. 24-6576 (filed by defendant federal officials, “the Federal Defendants”); No. 24-6888 (filed by Intervenor Brentwood School); and Nos. 24-6338 and 24-6603 (filed by non-party Regents of the University of California). On November 25, 2024, this Court ordered all of these appeals expedited and calendared together for April 2025. *See* Order (Doc. 10).

agreements Plaintiffs challenge, the Revocable License does not provide rights to occupy the WLA Grounds and does not deprive the VA of space for housing; it merely confers the right to pass through the subsurface beneath the WLA Grounds with an oil well. In exchange for this subsurface pass-through right, Bridgeland pays veterans an above-market royalty of approximately \$75,000-\$125,000 annually to transport them to medical appointments at the WLA Grounds. The district court's orders eliminate this royalty without freeing up land for veteran housing.

Bridgeland was not named as a defendant, so it intervened and asserted a single claim for declaratory relief seeking a declaration that its Revocable License is lawful. No party asserted claims or sought relief against Bridgeland.

Following trial, the district court held Bridgeland's Revocable License "void and terminated" for failing to comply with the West Los Angeles Leasing Act of 2016, Pub. L. No. 114-226, (the "Leasing Act") and *sua sponte* enjoined Bridgeland from "slant-drilling" at the WLA Grounds. The Leasing Act imposes requirements on the VA with respect to leases and land use agreements at the WLA Grounds. The district court wrongly interpreted the Leasing Act to require that the "predominant purpose" of leases at the WLA Grounds be to principally benefit veterans, even though the Leasing Act contains no such requirement.

Using this atextual interpretation, the district court held that the Revocable

License does not “principally benefit veterans” because, even though Bridgeland pays the veterans a royalty, “Bridgeland retains the lion’s share of the money generated from its slant drilling on the West LA VA Grounds[.]” 1-ER-69. This statement is contrary to the evidence that Bridgeland pays all expenses from its operations, in addition to approximately 18% of revenues to the mineral owners whose oil is produced. On top of this, Bridgeland pays the veterans’ royalty at all times, even when it loses money when oil prices are low.

The district court also faulted Bridgeland for the VA’s failure to build housing, stating that “[a] veteran is better served by housing than a drilling license for an oil company[.]” 1-ER-69. But Bridgeland’s right to occupy the WLA Grounds was not at issue—under separate agreements with the Bureau of Land Management that were not challenged, Bridgeland occupies and operates an oil production facility on a small portion of the WLA Grounds (the “WLA Drill Site”). This was not a choice between housing or oil production, but between funding for veterans’ transportation or nothing, all while Bridgeland continues occupying the WLA Drill Site and using it for oil production. In other words, without the Revocable License, the veterans’ royalty would be eliminated, and Bridgeland’s footprint at the WLA Grounds would be unchanged.

Further, the district court based its findings on the purported “health aspect” of Bridgeland’s operations, even though no party had made any claims about such

issues, and there was no such evidence in the record.

The district court then ignored the evidence that the Revocable License complies with the Leasing Act by providing transportation services for veterans.

The district court accordingly held that Bridgeland was not entitled to its declaratory relief, and that the VA violates its fiduciary duties to veterans and the Administrative Procedure Act (“APA”) by maintaining the Revocable License.

Then, without notice or request from any party, the district court *sua sponte* ordered Bridgeland to “cap” a slant-drilled well at the WLA Grounds. After Bridgeland moved to stay this order on the grounds that “capping” the well would permanently destroy it and deprive Bridgeland of its appellate rights, the district court *sua sponte* modified its injunction to bar Bridgeland from “slant-drilling” at the WLA Grounds. The district court’s modified injunction exceeds its jurisdiction because no party asserted claims against Bridgeland or sought any relief against it.

Bridgeland commends the Plaintiffs for fighting for veterans, and Bridgeland shares their goal of increasing housing and services for veterans. But the district court’s erroneous orders do nothing to further those goals. Instead, they deprive veterans of royalty funds while not freeing up a single inch of land. The Leasing Act, which is intended to benefit veterans, does not mandate this absurd result. This Court should reverse.

## **JURISDICTION**

In the district court, Bridgeland brought a single claim for Declaratory Relief pursuant to 28 U.S.C. §§ 2201 and 2202. Bridgeland sought a declaration that its Revocable License entered into with the VA—which was challenged by the Plaintiffs—complies with the West Los Angeles Leasing Act of 2016, Pub. L. 114-226, as amended. Accordingly, the district court had jurisdiction over Bridgeland’s claim under 28 U.S.C. § 1331.

On October 11, 2024, the district court entered its Final Judgment and Permanent Injunction completely disposing of all parties’ claims pursuant to Federal Rule of Civil Procedure 58. 1-ER-131. The same day, the district court entered a permanent injunction against Bridgeland. 1-ER-3. Bridgeland filed a timely notice of appeal on October 25, 2024. 8-ER-2036–39; Fed. R. App. P. 4(a)(1)(A); 28 U.S.C. § 2107(a).

This Court has jurisdiction under 28 U.S.C. § 1291.

## **STATEMENT OF THE ISSUES**

1. Did the district court err in holding that Bridgeland’s Revocable License fails to comply with the Leasing Act, after imposing a “predominant purpose” requirement that appears nowhere in the Leasing Act?

2. Even if there is an atextual “predominant purpose” requirement in the Leasing Act, did the district court err in ignoring Bridgeland’s un rebutted evidence

that the Revocable License principally benefits veterans by funding transportation services through an above-market, revenue-based royalty where, in the absence of the Revocable License, no royalty is payable and no additional land is available for veterans?

3. Did the district court err in making factual findings contrary to the evidence, including that (i) Bridgeland “retains the lion’s share” of money generated under the Revocable License (where the veterans’ royalty is based on *revenues*, and Bridgeland pays it even when it loses money), (ii) the Revocable License deprives veterans of housing (where the Revocable License does not confer the right to occupy any surface land), and (iii) there are “health” impacts associated with the Revocable License (when no party made any claim or proffered evidence about such health impacts or hazards)?

4. After holding that Bridgeland’s Revocable License does not comply with the Leasing Act and entering judgment against Bridgeland on its claim for Declaratory Relief, the district court entered in a permanent injunction requiring Bridgeland to cease “slant drilling” one of its wells. No party sought an injunction—or any relief—against Bridgeland. Did the district court err in issuing the injunction against Bridgeland?

5. Neither the Leasing Act nor any other act of Congress expressly indicates the United States’s intent to accept enforceable fiduciary duties regarding the use

of the WLA Grounds. Did the district court err in holding that the Defendant federal officials (the “Federal Defendants”) violated fiduciary duties by entering into and maintaining the Revocable License with Bridgeland?

6. After interpreting the Leasing Act to impose a “predominant purpose” requirement that appears nowhere in the act, did the district court err in holding that the Federal Defendants violated the APA by entering into and maintaining the Revocable License with Bridgeland on the grounds that it violated the Leasing Act?

### **STATUTORY AUTHORITIES**

Relevant portions of the Leasing Act (Pub. L. 114-226) are reprinted at pages 67-68 of the Addendum to this Brief. The Leasing Act was amended in 2011 (Pub. L. 117-18), but the amendments did not alter the provisions cited in this Brief.

### **STATEMENT OF THE CASE**

Plaintiffs, a class of veterans, sued officials at the VA over their alleged failure to provide services and housing at the WLA Grounds. The Plaintiffs also challenged certain land-use agreements between the VA and private parties (UCLA, a private school, a parking lot operator, and Bridgeland) concerning use of the WLA Grounds. Plaintiffs contend that those land-use agreements violate the Leasing Act, breach the VA’s fiduciary duties, and violate the APA.

Bridgeland intervened and asserted a single claim for declaratory relief. 7-ER-1644–1723. Bridgeland operates an oil production facility at the WLA Grounds, and Bridgeland sought a declaration that its land-use agreement that Plaintiffs challenged—a “Revocable License” granting Bridgeland a subsurface pass-through right to operate a slant-drilled well beneath the WLA Grounds to produce oil originating outside its boundaries—is valid under the Leasing Act and otherwise lawful. No party asserted any claims against Bridgeland.

**I. Bridgeland’s Revocable License and Operations at the WLA Grounds**

Bridgeland operates oil and gas wells and associated infrastructure on a three-acre portion of the WLA Grounds (the “WLA Drill Site”). *See* 1-ER-67–68. Bridgeland and its predecessors have operated the WLA Drill Site since the 1950s and 1960s, when they entered into subsurface oil and gas leases with the Bureau of Land Management (“BLM”).<sup>2</sup> *See* 1-ER-68. The subsurface leases with BLM (the “BLM Leases”) give Bridgeland the right to produce oil from federally owned land beneath the WLA Grounds. *See id*; 8-ER-1993–2001; 8-ER-2003–2017. The BLM Leases also come with surface rights permitting Bridgeland to maintain and operate the WLA Drill Site. *See* 1-ER-68; 8-ER-1993–2001; 8-ER-2003–2017; 8-ER-1976–1987.

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<sup>2</sup> The BLM is not a party to this case, and Bridgeland’s leases with the BLM are not at issue.

In addition to the BLM Leases, Bridgeland maintains leases with private (non-federal) parties that enable Bridgeland to extract oil from private lands outside of the WLA Grounds. *See* 1-ER-68. At times, Bridgeland’s predecessors entered into agreements with the VA to slant-drill and operate oil wells from the WLA Drill Site to extract non-federal oil from private property outside of the WLA Grounds. *See id.* In 2002, Bridgeland’s predecessor’s agreement to operate such slant-drilled wells expired, and Bridgeland’s predecessor continued operating such slant-drilled wells for another 15 years without a written agreement. *See id.*

In 2017, the VA and Bridgeland’s predecessor executed the Revocable License authorizing the slant-drilled wells. *See* 1-ER-68.<sup>3</sup> To comply with the Leasing Act passed the prior year, the Revocable License requires Bridgeland to donate “a 2.5 percent royalty on the proceeds that it generates from slant drilling to the Los Angeles Chapter of Disabled American Veterans.” *Id.* That group was required to use the royalty proceeds “solely for the purpose of providing transportation to veterans on and around the VA Greater Los Angeles Healthcare System Campus.” *Id.* This royalty “hovered in the \$75,000-\$125,000 range.” 1-ER-100 (finding No. 122).

The Revocable License authorizes Bridgeland to maintain slant-drilled wells

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<sup>3</sup> The Revocable License is available at 8-ER-1989–91.

at the WLA Drill Site that pass through the subsurface to extract minerals beneath adjacent private property. *See* 1-ER-68; 1-ER-100 (finding No. 120). The Revocable License does not confer upon Bridgeland the right to occupy the WLA Drill Site, or affect its footprint there. That right is granted through the separate BLM Leases, not at issue in this case. *See* 1-ER-68; 3-ER-503:10–19. Thus, in the absence of the Revocable License, Bridgeland would continue to maintain the same rights to occupy the entire WLA Drill Site. *See* 1-ER-68; 3-ER-503:10–16.<sup>4</sup>

Bridgeland currently operates a single slant-drilled well accessing private minerals from the WLA Drill Site: the Sawtelle-2 well. *See* 3-ER-499:15–18; 3-ER-533:1–5.

Plaintiffs challenged Bridgeland’s Revocable License, and other agreements with other parties, as unlawful under the Leasing Act. *See* 7-ER-1830 (Pls.’ First Am. Compl. ¶ 286). Plaintiffs did not challenge Bridgeland’s leases with the BLM and private parties, and thus Plaintiffs did not challenge Bridgeland’s right to occupy and maintain the WLA Drill Site.

## **II. The West Los Angeles Leasing Act of 2016**

The Leasing Act regulates leases and land-use agreements at the WLA

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<sup>4</sup> *See* 3-ER-503:10–16 (“Q. So if this license is terminated, does it have any impact on Bridgeland’s current use of the surface of its current drill site or its rights to the replacement drill site? A. None. Q. So it will not change their surface footprint on the VA campus at all? A. Correct.”).

Grounds. Leases must provide certain *services* that meet the qualifications of the

Act. In relevant part, the Secretary of the VA may “carry out leases”:

[F]or a term not to exceed 50 years to a third party to provide *services* that principally benefit veterans and their families and that are limited to one or more of the following purposes:

- (A) The promotion of health and wellness, including nutrition and spiritual wellness.
- (B) Education.
- (C) Vocational training, skills building, or other training related to employment.
- (D) Peer activities, socialization, or physical recreation.
- (E) Assistance with legal issues and Federal benefits.
- (F) Volunteerism.
- (G) Family support services, including child care.
- (H) *Transportation*.
- (I) Services in support of one or more of the purposes specified in subparagraphs (A) through (H).

Leasing Act § 2(b) (emphasis added).

The term “principally benefit veterans and their families,” “with respect to *services* provided by a person or entity under a lease of property or land-sharing agreement”:

(1) means *services*—

(A) provided exclusively to veterans and their families; or

(B) that are designed for the particular needs of veterans and their families, as opposed to the general

public, and any benefit of those *services* to the general public is distinct from the intended benefit to veterans and their families; and

(2) excludes *services* in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs.

Leasing Act § 2(1) (emphasis added).

Thus, the Leasing Act requires that leases provide *services* that principally benefit veterans and their families for one of the specified purposes (*i.e.*, transportation), and those *services* must be (1) provided exclusively to veterans or (2) be designed for the particular needs of veterans as opposed to the general public. *See* Leasing Act §§ 2(b), (1).

**III. The District Court Granted Partial Summary Judgment to Plaintiffs and Held that the Federal Government Owes Enforceable Fiduciary Duties Concerning Use of the WLA Grounds**

On July 14, 2024, the district court granted partial summary judgment to the Plaintiffs. *See* 1-ER-137. The district court held that (i) the 1888 deed donating the WLA Grounds to the federal government created a charitable trust, and (ii) the federal government assumed enforceable fiduciary duties with regard to using the WLA Grounds. *See* 1-ER-160-63.

The federal government acquired the land that became the WLA Grounds in 1888 through a private donation. *See* 1-ER-140. The deed transferring the land

(the “1888 Deed”) stated that the donation was “in consideration” that the National Home for Disabled Volunteer Soldiers “should locate, establish, construct, and permanently maintain [there] a branch of said National Home for Disabled Volunteer Soldiers[.]” 1-ER-162 (quotation marks omitted).<sup>5</sup>

In granting partial summary judgment, the district court held that the 1888 Deed, in combination with an 1866 act authorizing the federal government to accept the donation (24 U.S.C. § 111, Act of Mar. 21, 1866, ch. 21 § 5, 14 Stat. 10 (repealed 1959)),<sup>6</sup> created a charitable trust:

“[T]he language in the 1888 Deed expresses far more than a *hope* on the part of the grantors that the land would be used for certain purposes; the 1888 Deed *requires* that the land be used as indicated for all time.’ . . . ‘Because land was given to the Government for the purpose of benefitting a defined group of beneficiaries, a charitable trust was created, with the Government as trustee and disabled veterans as beneficiaries.’”

1-ER-162 (quoting *Valentini v. Shinseki*, 860 F. Supp. 2d 1079, 1105-06 (C.D. Cal. 2012) *on reconsideration*, 2012 WL 12882704 (C.D. Cal. June 19, 2012), and *vacated sub nom. Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17,

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<sup>5</sup> The 1888 Deed is available at 4-ER-827–30.

<sup>6</sup> The 1866 act stated, among other things, that the federal government was “hereby authorized to receive all donations of money or property made by any person or persons for the benefit of the asylum, and to hold or dispose of the same for its sole and exclusive use.” 24 U.S.C. § 111, Act of Mar. 21, 1866, ch. 21 § 5, 14 Stat. 10 (repealed 1959).

2015)).

The district court then held that the federal government owed enforceable fiduciary duties concerning the use of the WLA Grounds, such that the Plaintiffs had standing to sue to invalidate land use agreements on the WLA Grounds. *See* 1-ER-163-64. The district court recognized that fiduciary duties against the federal government are generally unenforceable “[u]nless the government has signaled an agreement, via statute, to assume enforceable trustee duties[.]” 1-ER-163. The district court found that the Leasing Act “signal[s] the government’s assumption of enforceable duties” concerning the WLA Grounds. *Id.* The Leasing Act’s imposition of requirements on the federal government regarding use of the WLA Grounds signaled Congress’s “intent that the VA assume the duties set out in the 1888 Deed” and “use the West LA VA Grounds for the establishment, construction, and permanent maintenance (and operation) of housing and healthcare for veterans with disabilities.” 1-ER-164.

The district court reserved for trial the determination whether the federal government breached its fiduciary duties by maintaining the challenged land-use agreements at the WLA Grounds. *See* 1-ER-164–65.

#### **IV. Evidence at Trial Concerning Bridgeland’s Revocable License**

At trial, Bridgeland presented un rebutted evidence that its Revocable License complies with the Leasing Act and principally benefits veterans.

First, the Revocable License requires Bridgeland to donate a 2.5 percent royalty to the Los Angeles Chapter of Disabled American Veterans to be used “solely” for providing veteran transportation services on or around the WLA Grounds. *See* 1-ER-68; 8-ER-1990. This royalty, according to Bridgeland’s expert witness, Robert Rainbolt, is the most “generous” he has seen in his “entire career.” 3-ER-501:20–23.<sup>7</sup> This is because the VA gives up “a very limited right” “to drill through the subsurface” of the WLA Grounds in exchange for the royalty. 3-ER-501:9–16; *see also* 1-ER-68, 1-ER-100 (finding No. 120). The VA gives up a “subsurface pass-through” right for “the pore space to allow a well bore to go through the property.” 3-ER-497:13–22. The VA does not give up the right to produce oil, which Bridgeland secures through separate mineral leases. *See* 1-ER-68; 3-ER-501:8–10. And the Revocable License does not confer upon Bridgeland the right to occupy the WLA Drill Site, or expand its footprint there, which is granted through its BLM Leases. *See* 1-ER-68; 3-ER-503:10–19; 8-ER-1993–2001; 8-ER-2003–2017; 8-ER-1976–1987. Thus, Mr. Rainbolt testified, voiding the Revocable License would not impact Bridgeland’s right to occupy the WLA Drill Site.<sup>8</sup>

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<sup>7</sup> 3-ER-501:20–23 (“[B]eing compensated two and a half percent overriding royalty for giving up this limited right, I have never seen anything in my entire career as generous as that.”).

<sup>8</sup> 3-ER-503:10–16 (testifying that terminating the Revocable License would not

Second, in addition to paying the “generous” royalty, the royalty owners for the Sawtelle-2 well that produces under the Revocable License, including the veterans, bear none of the costs of production and are entitled to payment of royalties regardless whether Bridgeland makes (or loses) money from operating the well. *See* 3-ER-540:9–11; 3-ER-544:21–24; 3-ER-545:6–8. Thus, the royalty holders bear none of the “risk” of production. *See* 3-ER-551:3–4. When oil prices fall below \$60-65 per barrel, Bridgeland loses money on every barrel produced, whereas royalty holders are entitled to payment of 2.5% of the *gross revenues*, regardless of Bridgeland’s *net* profits or losses. *See* 3-ER-545:22–546:8.

Third, Bridgeland does not need the Revocable License to operate the Sawtelle-2 well. Federal law authorizes the BLM to regulate subsurface activities beneath federal property. *See* 30 U.S.C. § 181 (federal lands containing mineral deposits “shall be subject to disposition in the form and manner provided by this chapter”); *id.* § 189 (authorizing the Secretary of the Interior “to do any and all things necessary to carry out and accomplish the purposes of this chapter”); 43 U.S.C. § 1701 *et seq.* (authorizing the BLM to manage federal lands and mineral estates); *True Oil LLC v. Bureau of Land Mgmt.*, 700 F. Supp. 3d 1004, 1014 (D. Wyo. 2023), *appeal docketed*, No. 23-8082 (10th Cir. Dec. 1, 2023), (“[I]t is well

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change Bridgeland’s “surface footprint on the VA campus at all”).

within the BLM’s authority to regulate subsurface activity that could hinder or threaten its mineral interest.”). The BLM may allow Bridgeland to operate wells passing beneath the WLA Grounds. *See* 1-ER-68. By obtaining approval of the VA, even if not required, Mr. Rainbolt testified that “the producer is covered” from any disputes that might arise regarding its rights. *See* 3-ER-496:9–14.

Maintaining the Revocable License, while legally unnecessary, is merely the practice of a “prudent operator.” *See* 3-ER-496:5–11.<sup>9</sup>

Fourth, even if the Revocable License were terminated, Bridgeland would continue to have rights to operate its slant-drilled Sawtelle-2 well by “unitizing” the BLM Leases with the leases covering adjacent private property. “Unitization ‘permit[s] the entire [oil and gas] field . . . to be operated as a single entity[.]’” *Norfolk Energy, Inc. v. Hodel*, 898 F.2d 1435, 1438 (9th Cir. 1990) (quoting 6 H. Williams & C. Meyers, *Oil & Gas Law* § 901, at 3-4 (Supp. 1988)). It effectively creates “enlarged single leaseholds, with the lessors’ mineral interests consolidated as for a single lessor and the lessees’ interests consolidated as for a single lessee.”

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<sup>9</sup> Similarly, as Mr. Rainbolt testified, California law is not settled regarding which party—the surface or mineral owner—must agree for an oil producer to pass through the subsurface. 3-ER-494:6-20; 3-ER-497:5-489:15; *see also* *Cassinovs v. Union Oil Co.*, 14 Cal. App. 4th 1770, 1784 (1993) (rejecting argument that surface owner’s permission entitled oil lessee to inject wastewater into the subsurface because, “[r]egardless of who owns the pore space,” the defendant trespassed on and damaged the mineral estate). California law therefore does not mandate that Bridgeland obtain the VA’s approval to operate Sawtelle-2.

1A Summers Oil and Gas § 6:1 (3d ed.).

If Bridgeland were to unitize its BLM Leases with its private leases, the oil reservoirs between the two sets of leases would be treated as a single leased reservoir and “the production from the Sawtelle 2 [well] would then be shared between the private landowners and the BLM.” 3-ER-500:1–9. This is possible because Bridgeland’s private leases and the BLM Leases produce from “contiguous pools” with no “feature beneath the ground separating” them. 3-ER-548:8–15. If they were unitized, Bridgeland would have rights to operate from any point on the surface above the unitized leasehold, because an oil lessee may occupy the surface “as is necessary and convenient” to produce under the leases. *Wall v. Shell Oil Co.*, 209 Cal. App. 2d 504, 516 (1962). After unitization, termination of the Revocable License would definitively have no effect on Bridgeland’s ability to produce Sawtelle-2 (or any other well), and “the two and a half percent that is now going to [veterans’] benefit [pursuant to the Revocable License] . . . would no longer be paid.” 3-ER-500:10–14. Thus, Bridgeland could continue producing Sawtelle-2 in the absence of the Revocable License and without being required to pay royalties to veterans. 3-ER-499:19–500:20.

All this was undisputed. Plaintiffs briefly cross-examined Bridgeland’s expert, Mr. Rainbolt, on the term lengths of the BLM Leases and Revocable License, but not on any other topic. *See* 3-ER-504:20–507:12. No party cross-

examined Bridgeland’s other witness, company senior engineer, Vijay Kulkarni. *See* 3-ER-552:1–6. Neither the Plaintiffs nor any other party submitted evidence challenging or contradicting Bridgeland’s evidence.

**V. The District Court’s Post-Trial Determinations**

Following trial, the district court held that the Revocable License was “void” because it violates (1) the federal government’s fiduciary duties, (2) the Leasing Act, and (3) the Administrative Procedure Act.

First, the district court found that the “scope” of the government’s fiduciary duty was “set out” in the Leasing Act. *See* 1-ER-52. Thus, if the government violates the Leasing Act, it also violates its fiduciary duty to veterans. *Id.*

The text of the Leasing Act, the district court held, requires that the “predominant purpose” of any lease must be to principally benefit veterans. *See* 1-ER-55. To this end, the court held that the Leasing Act is “clear and unambiguous” that the term “principally benefit veterans” modifies *leases*, not *services*:

[T]he phrase “principally benefit veterans and their families” refers to and modifies the sentence’s subject—leases. The phrase does not refer to “services.” . . . In other words, Section 2(b)(2) of the Leasing Act, by its plain text, requires that the underlying lease’s predominant purpose is to provide services that principally benefit veterans and their families.

1-ER-54–55.

Although the district court found the Leasing Act’s text unambiguous, the district court considered the Act’s legislative history, which it held “makes clear that the Leasing Act only allows the VA to execute leases that themselves principally benefit veterans, not leases where the lessee promises to offer some services that benefit veterans.” 1-ER-56. The district court explained that Congress enacted the Leasing Act “in response to” prior litigation involving “land deals” at the WLA Grounds other than Bridgeland’s predecessors’. *See* 1-ER-57. Citing a House Committee report, the district court held that Congress “proclaimed that, although the land deals challenged in [the prior litigation] provided some benefit to veterans in the form of increased revenue for the VA, [those] deals were nonetheless ‘misuses’ of the land.” 1-ER-57 (citing H.R. Rep. No. 114-570, at 6 (2016)). The district court found that the House Committee’s “characterization” of those challenged land deals as “misuses” of the land “supports Plaintiffs’ view that the Leasing Act requires that veterans be the primary focus of any lease on the campus.” 1-ER-57.<sup>10</sup>

Applying this interpretation, the district court held that Bridgeland’s

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<sup>10</sup> The district court took inconsistent positions regarding the probative value of this House Committee report. After citing the report to support its interpretation of the Leasing Act, the district court criticized the Federal Defendants’ reliance on the same report as of “limited probative value in discerning congressional intent” because the report “was not ratified by the whole House, nor voted on by the Senate, nor signed by the President.” 1-ER-63.

Revocable License does not principally benefit veterans, and thus violates the Leasing Act and, by extension, the government's fiduciary duties. The district court's reasoning focused on the relative size of the royalty paid to veterans:

The only benefit to veterans from the license is a 2.5 percent royalty to a charity for veterans. This donation is a de minimis benefit compared to the 97.5 percent of the revenues retained by private parties. . . . Because Bridgeland retains the lion's share of the money generated from its slant drilling on the West LA VA Grounds, the license violates the VA's fiduciary duties to veterans.

1-ER-69.

The district court further reasoned that allowing Bridgeland to operate Sawtelle 2—a slant-drilled well accessing oil under private land, that in no way expands Bridgeland's footprint on the WLA Grounds, and thus does not impact land available for housing—is somehow invalid because “a veteran is better served by housing than a drilling license”:

The fact that Bridgeland pays a royalty to a private charity to provide transportation highlights the pernicious effects of the VA's practice of leasing land to third parties. Part of the reason why the charity must provide transportation to and from the West LA VA Grounds is that so few veterans live on the campus. For many veterans with disabilities, like amputees, access to the campus would be greatly improved if the VA built housing. Instead, the VA has leased much of its land to third parties and outsourced veteran transportation to and from the campus to private charities. A veteran is better served by housing than a drilling license for an oil company that requires the company to make an almost

insignificant donation to charity.

1-ER-69.

The district court reasoned that the Revocable License violates the Leasing Act because its “purpose . . . is to principally benefit Bridgeland, allowing it to extract oil and gas, not to principally benefit veterans and their families.” 1-ER-75; *see also* 1-ER-100 (“The principal purpose of the revocable license agreement with Bridgeland is to slant-drill oil, not to benefit veterans and their families.”) (finding No. 124).

The district court also explained, in a hearing after trial, that, in “balancing” what is “a principal benefit to these veterans,” it was “immensely concerned” about “the health aspect of” Bridgeland’s operations at the WLA Drill Site. *See* 2-ER-312:20–24. Even though no party made a claim about such health issues or presented any such evidence—or even raised them as a concern—the district court was “concerned” whether there was “anything hazardous in the air” or “anything that ensures that the veterans with -- especially with lung issues which are prevalent in this generation, have that kind of protection.” 2-ER-309:13–22. The district court explained that it needed “some guarantee that this isn’t a health hazard[.]” 2-ER-311:7–8.

Because the district court found the Revocable License in violation of the Leasing Act, it held that the federal government both breached its fiduciary duties

and violated the APA by granting the Revocable License. *See* 1-ER-69–70; 1-ER-75.

Accordingly, the district court held that Bridgeland was not entitled to its requested declaratory relief (1-ER-67 n.13), and (though no party had requested this relief) that the Revocable License is “void and terminated” (1-ER-68). The district court also held that leases with other private parties for a baseball stadium, private school facilities, and parking lots were “void” and subject to further hearings to determine their “exit strategy” from the campus. *See* 1-ER-58; 1-ER-65; 1-ER-67; 1-ER-70; 1-ER-73.

**VI. The District Court *Sua Sponte* Issues a Permanent Injunction Against Bridgeland, Even Though No Party Sought Relief Against Bridgeland**

On September 26, 2024, the district court *sua sponte* issued an injunction mandating that Bridgeland “cap” its Sawtelle-2 well (the “Cap Order”). 2-ER-444–45. No party sought the Cap Order or any other affirmative relief against Bridgeland.

On October 1, 2024, Bridgeland filed a Notice of Appeal of the Cap Order. 2-ER-438. Bridgeland simultaneously moved the district court for a stay of enforcement of the Cap Order (“Stay Motion”). 2-ER-388–424. As Bridgeland detailed in its Stay Motion, “capping” or “plugging” a well means permanently *destroying* the well, such that it can never be used again. 2-ER-398. Specifically,

to plug and abandon an oil well, the operator must fill the wellbore with heavy drilling mud, inject cement plugs into the wellbore, remove the wellbore's steel casing, and seal the well with cement. *See id.*; 2-ER-406. Once a well is plugged and abandoned, it cannot be reopened or reactivated. 2-ER-406. Bridgeland sought a stay of enforcement of the Cap Order pending appeal, so that Bridgeland and the royalty holders would not suffer irreparable harm before Bridgeland could have its day in the appellate court. *See* 2-ER-389–391.

On October 1, 2024, the district court denied the Stay Motion, but *sua sponte* modified the Cap Order to require Bridgeland to “stop slant drilling private oil leases from the West LA VA campus” (the “Modified Injunction”). 1-ER-3.

On October 11, 2024, the district court entered final judgment for Plaintiffs on Bridgeland's claim for declaratory relief. 1-ER-133. The Court also entered judgment for Plaintiffs and against the Federal Defendants on Plaintiffs' claims for breach of fiduciary duty and violation of the APA, among other claims. 1-ER-132–33. The final judgment incorporated and made permanent the Modified Injunction against Bridgeland. 1-ER-134. Bridgeland timely appealed. 8-ER-2036–39.

### **SUMMARY OF ARGUMENT**

First, the district court fundamentally misconstrued the Leasing Act by holding that the statute requires that the “predominant purpose” of any lease

encumbering the WLA Grounds must be to “principally benefit veterans.” There is no “predominant purpose” requirement in the Leasing Act. Instead, the Leasing Act requires only that “services” provided under such leases principally benefit veterans, as that term is defined by the statute.

Bridgeland’s Revocable License complies with the Leasing Act by funding transportation services exclusively for veterans. *See* Leasing Act §§ 2(b)(2), 2(1). Under the district court’s final judgment and Modified Injunction, those transportation funds (\$75,000-\$125,000 annually) are eliminated, harming veterans without providing any benefit to them—housing or otherwise—as it is undisputed that without the Revocable License, Bridgeland would maintain the same footprint on the WLA Grounds under rights granted by the BLM. The district court’s contrary factual findings lack evidentiary support and flatly contradict the evidence.

Second, the district court erred and lacked jurisdiction in issuing the Modified Injunction against Bridgeland because no party requested it, no party asserted claims against Bridgeland, and the Modified Injunction does not remedy any claim asserted by any party.

Third, the district court erred in holding that the Federal Defendants violated their fiduciary duties and the APA in maintaining the Revocable License. The district court’s analysis of these claims was predicated on its erroneous finding that

the Revocable License violated the Leasing Act. Further, the district court erroneously held that the 1888 Deed created enforceable fiduciary duties against the government. The language of the deed fails to evidence any intention to create a charitable trust, and the Leasing Act does not create enforceable fiduciary duties. Even if they did, the Plaintiffs lack standing to enforce such duties against the government.

The district court accordingly erred in denying Bridgeland's request for declaratory relief, and in ruling in favor of Plaintiffs on their claims (against the Federal Defendants) for breach of fiduciary duty and violation of the APA, as those claims relate to the Revocable License.

### **STANDARD OF REVIEW**

This Court reviews *de novo* the district court's interpretation of the Leasing Act. *See United States v. Boyd*, 991 F.3d 1077, 1080 (9th Cir. 2021) (district court's interpretation of a federal statute is reviewed *de novo*).

This Court reviews the district court's factual findings for clear error. Fed. R. Civ. P. 52(a)(6) (findings of fact "must not be set aside unless clearly erroneous"); *Crittenden v. Chappell*, 804 F.3d 998, 1006 (9th Cir. 2015).

This Court reviews the district court's issuance of a permanent injunction under three different standards: (1) legal conclusions are reviewed *de novo*, (2) factual findings are reviewed for *clear error*, and (3) the decision to grant a

permanent injunction, as well as its scope, is reviewed for an *abuse of discretion*. *Oracle USA, Inc. v. Rimini St., Inc.*, 879 F.3d 948, 964 (9th Cir. 2018), *rev'd in part on other grounds*, 586 U.S. 334 (2019).

## ARGUMENT

### I. The District Court Erred in Holding that the Revocable License Violates the Leasing Act

The district court erred in holding that the Revocable License fails to comply with the Leasing Act. The district court first erred by focusing on the “predominant purpose” of the Revocable License rather than applying the statutory definition of “principally benefit veterans” under the Leasing Act, which focuses on the *services* delivered under a lease. The district court interposed its own requirements found nowhere in the Leasing Act. Then, utilizing its faulty interpretation, the district court ignored Bridgeland’s undisputed evidence that the Revocable License provides services that principally benefit veterans by providing for veteran transportation in exchange for a limited subsurface pass-through right to operate a single well. The district court’s interpretation harms veterans and leads to an absurd result by eliminating the veterans’ royalty while not freeing up a single inch of land.

**A. The District Court Misinterpreted the Leasing Act as a Matter of Law by Creating a “Predominant Purpose” Requirement Not Contained In The Statute**

The district court found that the Revocable License fails to comply with the Leasing Act because “the purpose of the agreement . . . is to principally benefit Bridgeland, allowing it to extract oil and gas, not to principally benefit veterans and their families.” 1-ER-75; *see also* 1-ER-100 (finding No. 124). This ruling misinterprets the Leasing Act and ignores the evidence at trial.

“The ‘starting point for interpreting a statute is the language of the statute itself.’” *Arcona, Inc. v. Farmacy Beauty, LLC*, 976 F.3d 1074, 1078 (9th Cir. 2020) (quoting *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). “The plain meaning of the text controls unless it is ambiguous or leads to an absurd result.” *United States v. Pacheco*, 977 F.3d 764, 767 (9th Cir. 2020).

The Leasing Act requires that land-use agreements at the WLA Grounds must be for a term of less than 50 years and must be limited to a specified purpose, including “transportation.” Leasing Act § 2(b). Qualifying agreements must “provide services that principally benefit veterans,” and such services are defined as those “provided exclusively to veterans and their families” or “that are designed for the particular needs of veterans and their families, as opposed to the general

public,” and “excludes services in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs.”

Leasing Act § 2(l).

The district court ignored these requirements and held that the “predominant purpose” of a lease must be to “to provide services that principally benefit veterans and their families.” 1-ER-55. The Leasing Act contains no “predominant purpose” requirement, and the district court’s interpretation reads Section 2(l), which defines “services” that “principally benefit veterans,” out of the Leasing Act entirely. What the Leasing Act requires is the provision of “services that principally benefit veterans and their families.” Leasing Act § 2(b)(2).

In reaching a contrary conclusion, the district court relied on a House Committee report that characterized prior leases with different parties—none of which involved Bridgeland, its predecessors, or the WLA Drill Site—as “misuses” of the WLA Grounds.<sup>11</sup> *See* 1-ER-57; *see also* 1-ER-96 (finding No. 102).

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<sup>11</sup> The House Committee report (issued in May 2016) relied on by the district court preceded the existence of the Revocable License (executed in April 2017) by nearly one year and therefore could not have discussed it. *See* H.R. Rep. 114-570 (2016); 8-ER-1989–91. The report discusses leases with UCLA, “the Brentwood School; Sodexo Marriot Laundry Services; Twentieth Century Fox Television; the Veterans Park Conservancy; the Westside Breakers Soccer Club; Westside Services, LLC; and TCM, LLC.” H.R. Rep. 114-570, at 5 (2016). The report’s characterization of those agreements as “misuses” of the land has nothing to do with the Revocable License.

According to the district court, the Committee report showed “Congress’s plain aim to ‘revitalize and preserve the West LA VA campus.’” 1-ER-58 (quoting H.R. Rep. 114-570, at 6 (2016)).

But this legislative history says nothing about whether the Leasing Act imposes a “predominant purpose” requirement. Further, since the text imposes no such requirement, it is error to rely on the Committee report to do so. *See City of Chicago v. Env’t Def. Fund*, 511 U.S. 328, 337 (1994) (“[I]t is the statute, and not the Committee Report, which is the authoritative expression of the law.”); *Nw. Env’t Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 682 (9th Cir. 2007) (“[L]egislative history, untethered to text in an enacted statute, has no compulsive legal effect.”).

Bridgeland’s Revocable License complies with the Leasing Act when properly construed. The Revocable License provides transportation services that “principally benefit[] veterans” because (i) those services are “provided exclusively to veterans” to transport them to medical appointments, or are “designed for the particular needs of veterans . . . as opposed to the general public,” and (ii) it does not generate revenue for the VA. *See* 8-ER-1989–91; Leasing Act § 2(1).

Further, the district court’s interpretation leads to an absurd result that should be avoided. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 670

(9th Cir. 2021) (“We avoid absurd results when interpreting statutes.”). Under the district court’s interpretation, an agreement that generates \$75,000-\$125,000 annually for veteran transportation services, in exchange for a limited subsurface pass-through right (and not any land given up by veterans), is void because the funding levels are, in the district court’s view, too low. Not only is there no statutory basis for this interpretation, but it deprives veterans of benefits for nothing. Without the Revocable License, veterans lose the royalty while Bridgeland retains its same footprint on the WLA Grounds.

Even more, Bridgeland does not need the Revocable License to continue producing Sawtelle-2. First, the BLM is empowered to authorize Bridgeland to maintain Sawtelle-2, since the BLM regulates subsurface activities beneath federal property. *See* 30 U.S.C. § 181 (federal lands containing mineral deposits “shall be subject to disposition in the form and manner provided by this chapter”); *id.* § 189 (authorizing the Secretary of the Interior “to do any and all things necessary to carry out and accomplish the purposes of this chapter”); 43 U.S.C. § 1701 *et seq.* (authorizing the BLM to manage federal lands and mineral estates); *True Oil LLC v. Bureau of Land Mgmt.*, 700 F. Supp. 3d 1004, 1014 (D. Wyo. 2023), *appeal docketed*, No. 23-8082 (10th Cir. Dec. 1, 2023) (“[I]t is well within the BLM’s authority to regulate subsurface activity that could hinder or threaten its mineral interest.”). The Revocable License is legally unnecessary, but Bridgeland

maintains it as a “prudent operator” so that it is “covered” in case of any disputes over its rights. *See* 3-ER-496:5–14.<sup>12</sup>

Second, by unitizing its BLM and private leases—such that the oil reservoirs between the two sets of leases would be treated as a single reservoir and production would be shared between them—Bridgeland may continue producing Sawtelle-2 without the need for the VA’s authorization and thus without paying any royalty to veterans. *See* 3-ER-499:19–500:20. The veterans’ royalty is effectively a gift to veterans—one that Bridgeland is happy to give.

Thus, if the Revocable License is “void,” as the district court held, Bridgeland loses nothing, and the veterans gain nothing while losing their royalty. This absurd outcome is not what Congress intended.<sup>13</sup>

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<sup>12</sup> To the extent California law applies, it has not addressed whether subsurface pass-through rights belong to the surface or mineral owner. *See, e.g., Cassinos v. Union Oil Co.*, 14 Cal. App. 4th 1770, 1784 (1993) (rejecting argument that surface owner’s permission entitled oil lessee to inject wastewater into the subsurface because “[r]egardless of who owns the pore space,” the defendant trespassed on and damaged the mineral estate).

<sup>13</sup> Plaintiffs themselves recognized the absurdity of this outcome and sought to avoid it. Before trial, Plaintiffs reached a settlement with Bridgeland, to which the Federal Defendants concurred, that would require Bridgeland to (i) increase the royalty paid to veterans under the Revocable License and (ii) transfer a portion of the WLA Drill Site back to the VA. *See* 4-ER-780–93. In exchange, Plaintiffs agreed not to contest the legality of the Revocable License, or any similar license, or any extension thereof. *See* 4-ER-789. Plaintiffs moved the district court for approval under Federal Rule of Civil Procedure 23(e), explaining that the proposed settlement was “more beneficial” to veterans “than the relief that might be granted even if the class were successful in its claims.” *See* 4-ER-781. In other words,

**B. Legislative History Indicates There Is No “Predominant Purpose” Requirement in the Leasing Act**

As the district court found, the Leasing Act is not ambiguous, and thus its plain meaning controls. *See* 1-ER-55–56. Further, the legislative history cited by the district court—a report from the House Committee on Veterans’ Affairs, H.R. 114-570 (2016)—offers limited (if any) insight into Congress’s intent given that it was not voted on by the whole House or the Senate or signed by the President. *See City of Chicago*, 511 U.S. at 337 (“[I]t is the statute, and not the Committee Report, which is the authoritative expression of the law.”).

Nonetheless, to the extent it is consulted, the legislative history supports the interpretation that *services* provided under leases must principally benefit veterans, and that there is no “predominant purpose” requirement. *See Pac. Coast Fed’n of Fishermen’s Ass’ns v. Glaser*, 945 F.3d 1076, 1084 (9th Cir. 2019) (when the statutory text does not resolve the question at issue, the court may “use canons of construction, legislative history, and the statute’s overall purpose to illuminate

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Plaintiffs recognized the absurdity of eliminating the veterans’ royalty while Bridgeland remains at the WLA Drill Site, which is exactly what the district court did. Plaintiffs ultimately withdrew their motion for preliminary approval (*see* 4-ER-762) (noting that the proposed settlement was “withdrawn by Plaintiff”) after the district court criticized the settlement’s proposed royalty amount and questioned whether the land Bridgeland would surrender could be used for housing (4-ER-772:2–776:11).

Congress’s intent” (quotation marks omitted)).

First, the report from the House Committee on Veterans’ Affairs indicates no intent to create a “predominant purpose” requirement. In describing the “background and need” for the Leasing Act, the Committee noted that the VA had previously leased space on the campus to entities that “provided services primarily to the general public or others and any use or benefit of the leased space by veterans or their families was ancillary.” H.R. Rep. No. 114-570, at 5 (2016). Such leases triggered prior litigation, where a district court held that the VA “had violated federal law when it leased portions of the West LA campus to businesses and organizations for purposes unrelated to providing care or services to veterans.”<sup>14</sup> *Id.* (referencing *Valentini*, 860 F. Supp. 2d 1079). After the VA settled the *Valentini* litigation, it prepared a draft master plan for managing the WLA Grounds that was intended to comply with the terms of the settlement. *Id.* at 6.

To “assist” the VA “in carrying out the tenets” of its draft master plan, the Committee noted that the Leasing Act would “authorize the VA to carry out [] certain leases” on the WLA Grounds. *Id.* “Such leases” would include

any lease lasting less than fifty years to a third party *to provide services* that benefit veterans and their families

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<sup>14</sup> The Revocable License did not yet exist at the time of the *Valentini* litigation, so it was not one of the agreements adjudicated by the *Valentini* court.

by promoting health and wellness, education, [and] activities on the West LA campus ***that are principally focused on providing services and training related to*** employment, peer activities, assistance with legal services and Federal benefits, volunteerism, family support services, or ***transportation***[.]

*Id.* (emphasis added).<sup>15</sup> Thus, according to the Committee, leases must provide qualifying *services* that benefit veterans and their families.

The Committee identified specific leases it viewed as compliant with the Leasing Act. Such compliant leases included “parking lease agreements” that “generate funds and provide services to veterans and their families” and a lease with the Brentwood School, a private school on the WLA Grounds, that would “offer veterans and their families . . . substantial opportunities for physical recreation, health and wellness, education, and vocational training as well as direct community service and increased revenue.” *Id.* at 6-7. Both leases are for land that would otherwise be available for veterans’ housing. If those leases were compliant because they provide the required *services* to veterans, as the Committee believed, then the Revocable License, which uses no land and funds veteran transportation services in exchange for a mere subsurface pass-through right, must

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<sup>15</sup> The Committee also noted that the Leasing Act would require each lease “to be consistent with the draft master plan.” *Id.* That draft master plan kept the WLA Drill Site in place. *See* 4-ER-0978 (noting the “current” and “preferred” uses of the Drill Site parcel, parcel 57, as an “Oil Drill Site”).

also be compliant.

The Committee report says nothing about a “predominant purpose” requirement. Indeed, such requirement would be inconsistent with the Committee’s recognition that leases for parking and a private school meet the requirements of the Leasing Act, as both leases predominantly serve non-veteran purposes (*i.e.*, provision of parking and private education).

Second, when Congress amended the Leasing Act in 2021, it was aware of arguments that the Revocable License was unlawful, but Congress took no action to amend the statute to invalidate the Revocable License or to clarify that there was a “predominant purpose” requirement. The Leasing Act requires both VA and its Office of Inspector General (“OIG”) to periodically report to Congress on the VA’s compliance with the statute. Leasing Act §§ 2(h)(1), (j)(1)-(3). In 2018, the OIG submitted to Congress a report concluding that the Revocable License was unlawful because it was not “veteran focused.” *See* 8-ER-1861; 1-ER-97-98 (finding that the OIG found the Revocable License “noncompliant” in 2018). The report included the VA’s response, wherein the VA maintained that the Revocable License was lawful and complied with the Leasing Act because, among other things, Breitburn (Bridgeland’s predecessor) already had rights to occupy the WLA Drill Site pursuant to the BLM Leases. *See* 8-ER-1951–52.

After receiving this report, Congress amended the Leasing Act in 2021 to

modify how land use revenues are used. *See* Pub. L. 117–18. Despite being fully aware of OIG’s conclusion and the VA’s disagreement, Congress chose not to invalidate the Revocable License through the amendment or add any “predominant” (or similar) purpose requirement. It is therefore presumed that Congress was adopting the VA’s interpretation that the Revocable License complied with the Leasing Act. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change”); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009) (same). The rule from *Lorillard* and *Forest* is particularly applicable here, where the VA’s interpretation of the Leasing Act as it relates to the Revocable License was reported directly to Congress prior to the amendment.

Accordingly, the legislative history confirms that *services* provided under leases must principally benefit veterans, and that there is no “predominant purpose” requirement in the Leasing Act.

**C. Even if it Correctly Interpreted the Leasing Act, the District Court Erred**

**1. The District Court Erroneously Ignored Bridgeland’s Undisputed Evidence That the Revocable License Principally Benefits Veterans**

Even if it correctly interpreted the Leasing Act to impose a “predominant purpose” test, the district court erred in ignoring Bridgeland’s undisputed evidence at trial. A district court’s finding is “clearly erroneous if it is implausible in light of the record, viewed in its entirety, or if the record contains no evidence to support it.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188 (9th Cir. 2024) (quotation marks omitted).

Bridgeland’s evidence at trial showed that the Revocable License principally benefits veterans because the government and veterans give up virtually nothing in exchange for a “generous” royalty. *See* 3-ER-501:20–23; 1-ER-67; 1-ER-100 (finding Nos. 120-21). The government’s only property interest impacted by the Revocable License is its interest in the subsurface “pore space” beneath the WLA Grounds that the Sawtelle-2 well occupies. *See* 1-ER-100 (finding No. 120); 3-ER-497:13–22. The Revocable License does not confer upon Bridgeland the right to occupy the surface. *See* 1-ER-68. Unlike other private parties whose leases give them the right to *occupy* the WLA Grounds, the Revocable License merely

allows Bridgeland to utilize its existing surface rights to maintain a subsurface slant-drilled well. *See id.* (finding that Bridgeland’s BLM Leases “come with surface rights” to the WLA Drill Site).

The Revocable License also does not confer rights over any of the government’s or veterans’ oil. The oil produced under the Revocable License is from beneath “privately-owned land neighboring the WLA Campus,” so neither the federal government nor veterans have a property interest in it. 1-ER-100 (finding No. 120).

Moreover, terminating the Revocable License does not even require that Bridgeland cease operating the Sawtelle-2 well, since (i) the BLM may authorize the Sawtelle-2 well, and (ii) Bridgeland may unitize its BLM and private leases, obviating any need for the Revocable License. *See supra* 24-25.

Further, veterans are entitled to the royalty under the Revocable License even if Bridgeland loses money. Veterans and other royalty holders bear none of the risk or costs of production. *See* 3-ER-551:3–4. Bridgeland loses money on every barrel produced unless oil is at least \$60-65 per barrel, whereas royalty holders are entitled to payment regardless of the price of oil. *See* 3-ER-545:22–546:8.

Given all of this, even under the district’s court’s interpretation of the Leasing Act, the “predominant purpose” of the Revocable License is to principally

benefit veterans. The only impact of the Revocable License, with respect to veterans, is to generate royalty funds that would otherwise not have to be paid. Veterans give up nothing in exchange—they give up neither land nor oil. Without the Revocable License, veterans lose the royalty and gain nothing. The district court committed clear error in failing to credit this evidence.

## **2. The District Court Made Factual Findings Contrary to the Evidence**

The district court also committed clear error in making factual findings contrary to the evidence.

First, the district court held that the Revocable License does not principally benefit veterans because “[t]he only benefit to veterans . . . is a 2.5 percent royalty to a charity for veterans. This donation is a de minimis benefit compared to the 97.5 percent of the revenues retained by private parties.” 1-ER-69.

But there was no evidence that “97.5 percent of the revenues [are] retained by private parties.” The undisputed evidence was that Bridgeland *loses* money on production unless the price of oil is at least \$60-65 per barrel. *See* 3-ER-545:22–546:8. The Revocable License requires payment of the 2.5% royalty to veterans at all times, even if Bridgeland loses money. *See* 3-ER-537:25–538:18; 3-ER-545:25–546:8; 3-ER-550:17–551:7. Bridgeland must also pay approximately 18%

of the revenue to other royalty holders (on top of the 2.5% veterans' royalty)<sup>16</sup>, even if Bridgeland loses money. *See* 3-ER-540:5–13; 3-ER-544:21–24; 3-ER-545:4–8; 8-ER-2019–34 (listing royalty shares for wells at the WLA Drill Site). After those royalties are paid, Bridgeland and the other working interest owner, Pacific Coast Energy Company (“PCEC”), share the remaining approximately 79% of revenues, out of which they pay all costs of operating the well. *See* 3-ER-543:15–545:5; 8-ER-2033 (listing Bridgeland’s and PCEC’s revenue shares). Thus, the district court erred in finding that 97.5% of revenues are “retained by private parties.”

Second, the district court erroneously found that “[a] veteran is better served by housing than a drilling license for an oil company.” 1-ER-69. But there is no

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<sup>16</sup> Those other royalty holders—the lessors under Bridgeland’s oil and gas leases, including the BLM—own the rights to the minerals beneath lands leased by Bridgeland. They grant Bridgeland the right to produce the oil and gas in which they have a property interest, in exchange for royalty payments. *See, e.g., Dabney-Johnston Oil Corp. v. Walden*, 4 Cal. 2d 637, 649 (1935) (“Under the usual oil and gas lease the owner confers on the lessee . . . an exclusive right of profit to drill for and produce oil; the lessee usually returning to the lessor for the privilege granted a rent or royalty measured by a fraction of the oil produced.”). By contrast, the VA lacks any property right in the minerals beneath the WLA Grounds, as the mineral rights beneath the WLA Grounds are managed and leased by the BLM. *See* 1-ER-68. Bridgeland pays the 2.5% royalty under the Revocable License for a subsurface *pass-through* right, not for any right to produce minerals. *See* 3-ER-483:21–484:17 (testifying the royalties paid to the BLM, as the lessor and mineral owner, and the 2.5% royalty to the VA, are “two classes” of “completely separate royalties”); 3-ER-468:2–11 (the “[i]ndustry standard[]” is for the “base royalty” to be paid to the property owner).

evidence to support this finding, and it is contrary to the undisputed evidence and the court's own findings that the Revocable License does not impact Bridgeland's footprint at the WLA Grounds. *See* 1-ER-68 (finding that Bridgeland's "sub-surface leases [with the BLM] also come with surface rights that permit Bridgeland to maintain and operate a drill site on the West LA VA Grounds"). Voiding the Revocable License does nothing to free up land at the WLA Grounds for housing or anything else, but the district court erroneously believed that it did.

Third, after trial, the district court revealed that it had considered the health effects of oil and gas operations in determining whether the Revocable License principally benefits veterans, even though no party had made any claim regarding such impacts. The district court explained that, in "balancing" what is "a principal benefit to these veterans," it was "immensely concerned" about "the health aspect of" Bridgeland's operations at the WLA Drill Site. *See* 2-ER-312:20–24. The district court was "concerned" whether there was "anything hazardous in the air" or "anything that ensures that the veterans with -- especially with lung issues which are prevalent in this generation, have that kind of protection." 2-ER-309:13–22. The district court explained that it needed "some guarantee that this isn't a health hazard." 2-ER-311:7–8. But there is no evidence in the record—and no claim by any party—concerning health impacts or potential hazards of Bridgeland's oil operations at the WLA Grounds, and the district court's consideration of such

issues is clear error.

## **II. The District Court Erred in Issuing an Injunction Against Bridgeland**

After holding the Revocable License “void and terminated,” the district court *sua sponte* issued the Modified Injunction requiring Bridgeland “to stop slant drilling private oil leases from the West LA VA campus.” 1-ER-3.

As explained above, Bridgeland’s Revocable License complies with the Leasing Act. But even if the district court was correct in ruling against Bridgeland on that issue, it erred in issuing the Modified Injunction.

### **A. The Injunction Was Issued Without Jurisdiction**

A court lacks jurisdiction to issue judgments beyond the scope of the pleadings and issues in the case, unless the parties consent. A district court has jurisdiction only over “the merits of the case or controversy before it, and does not have the authority to issue an injunction based on claims not pled in the complaint.” *LA All. for Hum. Rts. v. Cnty. of Los Angeles*, 14 F.4th 947, 957 (9th Cir. 2021) (quotation marks omitted) (holding it was an abuse of discretion to issue an injunction on claims the plaintiffs did not allege); *see also Evans Prods. Co. v. W. Am. Ins. Co.*, 736 F.2d 920, 923–24 (3d Cir. 1984) (“[R]elief may be based on a theory of recovery only if the theory was presented in the pleadings or tried with the express or implied consent of the parties.”); *Cioffe v. Morris*, 676 F.2d 539, 541 (11th Cir. 1982) (“[J]udgment may not be based on issues not presented in the

pleadings and not tried with . . . consent of the parties.”).

No party sued Bridgeland, and there are no causes of action against Bridgeland. No party sought any relief that would require Bridgeland to stop “slant-drilling,” and Bridgeland has not consented to any such relief being considered. Accordingly, there is no jurisdiction for the Court to issue the Modified Injunction against Bridgeland.

**B. No Party Sought the Injunction, and It Does Not Remedy Any Harm Alleged**

It is an abuse of discretion to issue an injunction that is neither sought by the parties nor tailored to remedy the harm alleged. “Injunctive relief must be tailored to remedy the specific harm alleged. An overbroad injunction is an abuse of discretion.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (citation and quotations omitted); *see also Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (“injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs”). Permanent injunctions “must be narrowly tailored to give only the relief to which plaintiffs are entitled.” *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir. 1990); *see also Clark v. Coye*, 60 F.3d 600, 604 (9th Cir. 1995) (reviewing court will “scrutinize the injunction closely to make sure that the remedy protects the plaintiffs’ [] rights but does not require more of [defendants] than is necessary”).

In *Stormans*, for instance, the district court abused its discretion by entering an “overbroad injunction” that applied to conduct and persons no party had sought to enjoin. *Stormans*, 586 F.3d at 1140. Similarly, in *LA Alliance for Human Rights*, the district court abused its discretion by issuing an injunction “based on claims not pled in the complaint” and “supported by novel legal theories that Plaintiffs did not argue” and “against Defendants against whom the claim was not pled.” *LA All. for Hum. Rts.*, 14 F.4th at 957.

Here, no party sought the Modified Injunction, and it does not remedy any harm alleged. The Plaintiffs asserted causes of action against the Federal Defendants only, and there are no causes of action or relief sought against Bridgeland. To the extent Plaintiffs seek injunctive relief concerning Bridgeland’s operations at all, it is against the Federal Defendants *only* to enjoin them from “executing and maintaining” agreements. 7-ER-1851 (First Am. Compl., Prayer ¶ G). The harm the Plaintiffs sought to remedy—the Federal Defendants’ entry into unlawful leases—is not addressed by the Modified Injunction’s requirement that Bridgeland cease “slant drilling.”

Further, the Modified Injunction is unnecessary to enforce the district court’s post-trial findings. The district court determined that Bridgeland’s Revocable License is “void and terminated.” 1-ER-68–69. This determination, although erroneous, does not mandate any injunction against Bridgeland. The Court did not

find that it is unlawful for Bridgeland to operate or maintain Sawtelle-2 or any other well, and no such evidence was proffered. In fact, the evidence at trial was *to the contrary*. The district court found that Sawtelle-2 operated for 15 years without a written agreement. *See* 1-ER-68 (“For fifteen years, oil companies slant drilled private oil lands from a drill site located on VA property without any authorization.”). And the un rebutted evidence showed that Bridgeland may unitize or pool its subsurface BLM leases with its private leases and thereby render the Revocable License unnecessary. *See* 3-ER-500:1–20. Accordingly, an injunction requiring Bridgeland to “stop slant drilling” is unnecessary and not “narrowly tailored” to the Court’s findings or the requested relief. *Orantes-Hernandez*, 919 F.2d at 558.

**C. There Are No Factual Findings Supporting the Injunction**

The district court also erred in issuing the Modified Injunction without making any of the required factual findings to support injunctive relief.

To obtain a permanent injunction, a “plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391

(2006).

An “injunction should issue only if the traditional four-factor test is satisfied.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010) (reversing injunction where none of the four factors supported issuance). A district court “necessarily abuses its discretion” when it fails to consider each of the required four factors. *Baird v. Bonta*, 81 F.4th 1036, 1041 (9th Cir. 2023) (reversing order denying injunction where district court “declined to undertake *any* analysis of Appellants’ likelihood of success on the merits of their claim”).

Here, no party has made the requisite showing to obtain the Modified Injunction. There was no evidence that anyone will suffer irreparable harm absent the Modified Injunction, or that the equities or public interest support it.

Further, although Plaintiffs prevailed at trial, they have no claims against Bridgeland, so they cannot possibly have shown “actual success” on a claim justifying injunctive relief against Bridgeland or the Modified Injunction.

Accordingly, the district court made none of the factual findings necessary to support the Modified Injunction, rendering it improper. *See Monsanto Co.*, 561 U.S. at 157; *Baird*, 81 F.4th at 1041.

### **III. The District Court Erred in Holding that the Federal Defendants Owed Enforceable Fiduciary Duties**

When it granted partial summary judgment to Plaintiffs on their charitable

trust claims, the district court erred in concluding that the 1888 Deed created a charitable trust imposing enforceable duties on the government, and finding that the government accepted enforceable fiduciary obligations through the Leasing Act. It also erred in finding that the Plaintiffs have standing to enforce any charitable trust obligations on the government.

**A. Plaintiffs Lack Standing to Enforce Charitable Trust Obligations on the Federal Government**

“As a general rule, no private citizen can sue to enforce a charitable trust merely on the ground that he believes he is within the class to be benefited by the trust and will receive charitable or other benefits from the operation of the trust.” Ronald Chester *et al.*, Bogert’s The Law of Trusts and Trustees (Bogert’s) § 414 (July 2024); *see* Restatement (Third) of Trusts § 94 cmt. g (Am. Law Inst. 2012). Instead, the attorney general of a state under whose law a charitable trust is created— the legal representative of the members of the public in that state—is generally the party who can sue to enforce the trust obligation. Bogert’s § 411; *see* Restatement (Third) of Trusts § 94(2).

“[C]ourts have recognized exceptions to the general rule when an individual seeking to enforce the trust has a ‘special interest’ in the trust, or is a member of a ‘small and distinct’ beneficiary class.” *He Depu v. Yahoo! Inc.*, 306 F. Supp. 3d 181, 189 (D.D.C. 2018); *see* Restatement (Third) of Trusts § 94 cmt. g(1). But the

class of people intended to benefit from the donation of the WLA Grounds was not small: It includes all veterans, or at least all veterans in the western United States.

*See* 1-ER-7-9.

“The misuse of property donated to charity is in essence an injury to the community as a whole, not one concrete or particularized to the donor,” much less to every member of a broad class of beneficiaries. *Pinkert v. Schwab Charitable Fund*, 48 F.4th 1051, 1059 (9th Cir. 2022) (Bress, J., concurring in part and in the judgment). For that reason, members of a broad beneficiary class, such as the Plaintiffs, lack an Article III injury sufficient to establish standing. Their interest is not the sort of “harm traditionally recognized as providing a basis for a lawsuit in American courts.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021).

**B. No Fiduciary Duties Were Created by the 1888 Deed**

The district court erred in concluding that the 1888 Deed created a charitable trust. The district court relied on language of the 1888 Deed stating that the land on which the WLA Grounds now sits was given to the National Home for Disabled Volunteer Soldiers for a branch home to be “locat[ed], establish[ed], construct[ed] and permanently maintain[ed]” there. 1-ER-162; 1-ER-79 (finding Nos. 1, 3).

But unless a transferor “manifests an intention to impose enforceable duties on the transferee, the intention to create a trust is lacking and no trust is created.” Restatement (Third) of Trusts § 13 cmt. (d) (Am. Law Inst. 2003).

Here, the language of the 1888 Deed includes no language demonstrating intent to create a trust or impose perpetual enforceable duties. *See* 4-ER-828–30.

In finding a charitable trust, the district court also cited an 1866 Act under which the National Home for Disabled Volunteer Soldiers was authorized to receive donations. *See* 1-ER-162. But the district court failed to acknowledge that the language in the 1888 Deed merely parroted the statute that authorized and directed the National Home to establish its Pacific Branch, thereby explaining the basis for the parties’ transaction. *See* Act of Mar. 2, 1887, ch. 316, § 1, 24 Stat. 444; 4-ER-828–30. This is not an indication of an intent to create an enforceable charitable trust.

The district court also ignored the fact that the 1866 Act made clear that the National Home was authorized “to hold or *dispose of* the” (emphasis added) donated property for the National Home’s “sole and exclusive use.” 24 U.S.C. § 111, Act of Mar. 21, 1866, ch. 21 § 5, 14 Stat. 10 (repealed 1959).

**C. Even if the 1888 Deed Created a Trust, Fiduciary Duties Are Unenforceable**

Even if the 1888 Deed had created a trust, any duties associated with the trust are unenforceable. Fiduciary duties enforceable against the federal government arise only when the government indicates agreement, via statute, to assume enforceable duties. Restatement (Second) of Trusts § 378(2) (Am. Law

Inst. 1959) (“The United States or a State has capacity to take and hold property upon a charitable trust, but in the absence of a statute otherwise providing the charitable trust is unenforceable against the United States or a State.”). Such statutory agreement must be unambiguous. *Cf. Arizona v. Navajo Nation*, 599 U.S. 555, 564 (2023) (federal government owes enforceable trust duties to a tribe “only to the extent it expressly accepts those responsibilities” (quotation marks omitted)); *Story v. Snyder*, 184 F.2d 454, 456 (D.C. Cir. 1950) (holding that gifts to the United States do not create enforceable trust duties unless Congress has “gone farther” than accepting the gift and requiring the government to “observe the terms and conditions of the gift” by “provid[ing] means whereby the donor can through court action compel the administering official or agency to observe the terms and conditions of an accepted gift”).

Congress enacted no such legislation concerning the WLA Grounds donation. Indeed, in analyzing this exact issue, the district court in *Valentini*<sup>17</sup> held that trust duties pertaining to the WLA Grounds were unenforceable because the 1866 Act indicated no such intent. *See Valentini*, 860 F. Supp. 2d 1079. That court held that the 1866 Act’s language authorizing the government to “receive all

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<sup>17</sup> The *Valentini* court subsequently vacated its opinion and judgment at the request of the parties following settlement. *See Valentini v. McDonald*, 2015 WL 14020677, at \*1 (C.D. Cal. Feb. 17, 2015); 1-ER-12–13 (describing the history of the *Valentini* litigation).

donations of money or property made by any person or persons for the benefit of the [National Home], and to hold or dispose of the same for its sole and exclusive use” failed to create an “enforceable promise,” thus requiring dismissal of the plaintiff’s claims for breach of charitable trust duties. *Id.* at 1107–11.

The district court here reached a contrary conclusion by reasoning that the Leasing Act makes enforceable the obligations purportedly created by the 1888 Deed. The district court reasoned that “[b]y codifying” the Leasing Act’s obligations concerning the use and management of the WLA Grounds, “Congress signaled its intent that the VA assume the duties set out in the 1888 Deed and deliver on its century-old obligations to disabled veterans.” 1-ER-164. But the Leasing Act simply authorizes the VA to enter leases on certain terms, and to apply revenues from those leases toward certain purposes on the WLA Grounds. There is no language in the Leasing Act “going farther” and “expressly” providing the means for anybody to sue to enforce fiduciary duties against the federal government. *See Navajo Nation*, 599 U.S. at 564; *Story*, 184 F.2d at 456. The Leasing Act’s requirements cannot be transformed into enforceable trust duties by the 1888 Deed—a document to which the Leasing Act makes no reference, and which predated the Leasing Act by more than 125 years.

Accordingly, the district court erred in holding that the federal government violated fiduciary duties in entering into the Revocable License and in

consequently holding the Revocable License “void and terminated.” 1-ER-68.

**IV. The District Court Erred in Holding the Revocable License Violates the APA**

Under the APA, a court may set aside agency actions that are “not in accordance with law.” 5 U.S.C. § 706. “Agency action is not in accordance with the law when it is in conflict with the language of the statute.” *Nw. Env’t Advocs. v. U.S. E.P.A.*, 537 F.3d 1006, 1014 (9th Cir. 2008) (quotation marks omitted).

The district court’s analysis of the Plaintiffs’ APA claim was predicated on the district court’s misinterpretation of the Leasing Act. *See* 1-ER-75–76.

Accordingly, because the Revocable License complies with the Leasing Act when properly construed, as explained above, the district court erred in holding that the Revocable License violates the APA.

**CONCLUSION**

For the foregoing reasons, the judgment against Bridgeland should be reversed, the Modified Injunction should be vacated, and the case should be remanded.

DATED: January 17, 2025

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6**

**9th Cir. Case Number - 24-6578**

The undersigned attorney certifies that there are additional related cases.

The case number and name of each related case and its relationship to this case are as follows:

1. *Jeffrey Powers et al. v. Denis Richard McDonough et al.*, No. 24-6576  
(appeal from judgment and orders in the same district court action by “Federal Defendants” Denis Richard McDonough, Steven Braverman, Keith Harris, and Marcia L. Fudge)
2. *Jeffrey Powers et al. v. Denis Richard McDonough et al.*, No. 24-6888  
(appeal from judgment and orders in the same district court action by Intervenor Brentwood School)
3. *Jeffrey Powers et al. v. Denis Richard McDonough et al.*, No. 24-6338  
(appeal from judgment and orders in the same district court action by Non-Party Regents of the University of California)
4. *Jeffrey Powers et al. v. Denis Richard McDonough et al.*, No. 24-6603  
(appeal from judgment and orders in the same district court action by Non-Party Regents of the University of California)

DATED: January 17, 2025

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

**9th Cir. Case Number - 24-6578**

I am the attorney of record for Appellant Bridgeland Resources, LLC.

This brief contains 12,266 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief complies with the word limit of Cir. R. 32-1.

DATED: January 17, 2025

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**STATUTORY ADDENDUM**

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**WEST LOS ANGELES LEASING ACT OF 2016**  
**(Pub. L. 114-226)**

**SEC. 2. AUTHORITY TO ENTER INTO CERTAIN LEASES AT THE DEPARTMENT OF VETERANS AFFAIRS WEST LOS ANGELES CAMPUS.**

(a) **IN GENERAL.**—The Secretary of Veterans Affairs may carry out leases described in subsection (b) at the Department of Veterans Affairs West Los Angeles Campus in Los Angeles, California (hereinafter in this section referred to as the “Campus”).

(b) **LEASES DESCRIBED.**—Leases described in this subsection are the following:

(1) Any enhanced-use lease of real property under subchapter V of chapter 81 of title 38, United States Code, for purposes of providing supportive housing, as that term is defined in section 8161(3) of such title, that principally benefit veterans and their families.

(2) Any lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit veterans and their families and that are limited to one or more of the following purposes:

(A) The promotion of health and wellness, including nutrition and spiritual wellness.

(B) Education.

(C) Vocational training, skills building, or other training related to employment.

(D) Peer activities, socialization, or physical recreation.

(E) Assistance with legal issues and Federal benefits.

(F) Volunteerism.

(G) Family support services, including child care.

(H) Transportation.

(I) Services in support of one or more of the purposes specified in subparagraphs (A) through (H).

...

(I) **PRINCIPALLY BENEFIT VETERANS AND THEIR FAMILIES DEFINED.**—In this section the term “principally benefit veterans and their families”, with respect to services provided by a person or entity under a lease of property or land-sharing agreement—

(1) means services—

(A) provided exclusively to veterans and their families; or

(B) that are designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families; and

(2) excludes services in which the only benefit to veterans and their families is the generation of revenue for the Department of Veterans Affairs.

...