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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

No. 6:25-cv-01748-AA

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITIES

The Plaintiff States respectfully submit this notice to bring the Court's attention to the attached decisions in the following matters, issued after Plaintiff States filed their Reply in Support of Motion for Preliminary Injunction. These supplemental authorities are submitted in support of the Plaintiff States' arguments regarding the Tucker Act, final agency action, contrary to law and arbitrary and capricious claims under the Administrative Procedure Act, and the Spending Clause.

1. Order Denying Defendants' Motion to Dismiss issued on October 21, 2025 in *State of Washington v. United States Department of Education*, Case No. C25-1228-KKE (W.D. Wash. Oct. 21, 2025) (submitted for its discussion of the Tucker Act) (**Attachment 1)**; and

2. Order Granting Motion for Preliminary Injunction issued on October 22, 2025 in *State of Washington v. United States Department of Commerce*, Case No. C25-1507-MJP (W.D. Wash. Oct. 22, 2025) (submitted for its discussion of the Tucker Act, final agency action, contrary to law and arbitrary and capricious claims under the Administrative Procedure Act, and the Spending Clause) (**Attachment 2)**.

DATED this 23rd day of October 2025.

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Attachment 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al., Plaintiff(s), v. UNITED STATES DEPARTMENT OF EDUCATION, et al., Defendant(s).	CASE NO. C25-1228-KKE ORDER DENYING DEFENDANTS' MOTION TO DISMISS

In 2018 and 2020, Congress established and funded two grant programs via the United States Department of Education ("the Department") to support mental health services at elementary and secondary schools throughout the country. Recognizing the prevalence of violence and traumatic crises in schools, and the negative impact of these disruptions on the learning environment, Congress allocated appropriations to the Department to "support learning environments where students feel safe, supported, and ready to learn." Dkt. No. 1 ¶ 44 (citation modified). The Department funded hundreds of multi-year grants via these programs.

But in April 2025, the Department notified certain grant recipients that their funding would not be renewed at the end of their current budget period, which expires December 31, 2025. Sixteen states filed this lawsuit against the Department and its secretary to challenge the Department's decision to discontinue funding to their grantees, seeking a court order that would enjoin implementation of that decision and require the Department to issue legally compliant continuation decisions before the next budget period. Dkt. No. 1 at 44–45.

Defendants filed a motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim. Dkt. No. 161. After considering the parties' briefing, the relevant record, and the oral argument of counsel, the Court finds that the complaint's allegations are sufficient to withstand a challenge to Plaintiffs' standing as well as to this Court's subject matter jurisdiction. Therefore, the Court will deny Defendants' motion to dismiss.

I. BACKGROUND

A. Congress Identified the Need to Increase School-Based Mental Health Services.

In 2018, following the tragic shooting deaths of 14 students and three staff members at Marjory Stoneman Douglas High School in Parkland, Florida, Congress created the Mental Health Service Professional Demonstration Grant Program ("MHSP") in the Department to increase the number of mental health professionals serving the nation's public schools. Dkt. No. 1 ¶ 41. Congress appropriated no more than $10 million to this program to

> test and evaluate innovative partnerships between institutions of higher learning and States or high-need local educational agencies to train … mental health professionals qualified to provide school-based mental health services, with the goal of expanding the pipeline of these workers into low-income public elementary schools and secondary schools in order to address the shortages of mental-health service professionals in such schools.

Id. (quoting H.R. Rep. No. 115-952, at 543 (2018) (Conf. Rep.), *available at* https://www.congress.gov/115/crpt/hrpt952/CRPT-115hrpt952.pdf).

Shortly thereafter, President Trump established a Federal Commission on School Safety to make recommendations for improving school safety. Dkt. No. 1 ¶ 42 (citing Applications for New Awards; Mental Health Service Professional Demonstration Grant Program, 84 Fed. Reg. 29180, 29181 (June 21, 2019)). Noting the lack of access to mental health professionals in high-poverty districts and schools where needs are the greatest, this commission made a series of recommendations, including expanding access to mental health care services in schools, where treatment is much more likely to be effective and completed. *Id.* (citing Betsy DeVos, et al., Federal Commission on School Safety, Final Report of the Federal Commission on School Safety 37 (Dec. 18, 2018), *available at* https://www2.ed.gov/documents/school-safety/school-safety-report.pdf).

For fiscal year 2020, Congress expanded this effort and appropriated $10 million to establish the Department's School-Based Mental Health Services Grant Program ("SBMH"), to "increase the number of qualified, well-trained … mental health professionals that provide school-based mental health services to students." Dkt. No. 1 ¶ 44 (citing Explanatory Statement, DIVISION A-DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2020, at 134 (Dec. 16, 2019), *available at* https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-JES-DIVISION-A.pdf).

For fiscal year 2021, Congress maintained MHSP funding at $10 million and increased SBMH funding to $11 million. Dkt. No. 1 ¶ 45. In fiscal year 2022, Congress increased the appropriations for the MHSP to $55 million and for SBMH to $56 million. *Id.*

In May 2022, school violence again shook the nation as a former student shot and killed 19 students and two teachers at an elementary school in Uvalde, Texas. Dkt. No. 1 ¶ 46. In response, Congress dramatically increased the funding for both programs, appropriating an additional $100 million per year for each program for fiscal years 2022 through 2026 via the Bipartisan Safer Communities Act. *Id.* ¶ 47.

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B. The Department Established Grant Program Priorities and Awarded Multi-Year Grants.

Beginning in 2019 and 2020, when the first MHSP and SBMH grant applications were invited (respectively), and in subsequent years when grant applications were solicited, the Department set forth in the Federal Register the priorities that would be used to judge grant applications for that year. Dkt. No. 1 ¶¶ 58–66. Each set of priorities was published only after completing notice-and-comment rulemaking, as required by statute. *Id.* ¶¶ 50–51.

The 2019 notice published for the MHSP grant competition stated one "absolute priority" that all applicants were required to meet:

> Expand the capacity of high-need [local educational agencies ("LEAs")] in partnership with [institutes of higher education ("IHEs")] to train school-based mental health services providers … with the goal of expanding the pipeline of these professionals into high-need public elementary schools and secondary schools in order to address the shortages of school-based mental health service providers in such schools.

Dkt. No. 1 ¶ 59 (quoting 84 Fed. Reg. 29180, 29181 (June 21, 2019)). In 2022, the Department again engaged in rulemaking to establish priorities for future MHSP grants. After providing notice and reviewing comments, the Department announced four final priorities:

> (1) expand the number of school-based mental health services providers in high-need LEAs through partnerships with IHEs, wherein IHE graduate students would be placed in high-need LEAs; (2) increase the number of school-based mental health services providers in high-need LEAs that reflect the diverse communities served by the high-need LEAs; (3) provide evidence-based pedagogical practices in mental health services provider preparation programs or professional development programs that are inclusive and that prepare school-based mental health services providers to create culturally and linguistically inclusive and identity-safe environments for students when providing services; and (4) partner with historically black colleges and universities; tribal colleges and universities; and minority-serving institutions.

Id. ¶ 61 (citing 87 Fed. Reg. 60083 (Oct. 4, 2022)).

The Department engaged in the same priority-setting process for the SBMH, beginning in 2020 and again in 2022. The four "final priorities" announced in 2022 were:

> (1) proposals from [state educational agencies ("SEAs")] to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need through recruitment and retention; (2) proposals from LEAs with demonstrated need to increase the number of credentialed school-based mental health services providers through recruitment and retention; (3) proposals prioritizing respecialization, professional retraining, or other preparation plan that leads to a state credential as a school-based mental health services provider and that is designed to increase the number of services providers qualified to serve in LEAs with demonstrated need; and (4) proposals to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need who are from diverse backgrounds or who are from communities served by the LEAs with demonstrated need.

Dkt. No. 1 ¶ 65 (citing 87 Fed. Reg. 60092, 60097 (Oct. 4, 2022)).

When the Department awarded new MHSP/SBMH grants, it approved them for a five-year project period: providing funds for the first year and stating its intention to fund the remainder of the project through one-year continuation awards. Dkt. No. 1 ¶ 4. Department regulations provide that grantees approved for multi-year projects do not apply and compete to receive continuation awards after that first year; instead, the Department reviews information relevant to a grantee's performance for that year to evaluate whether the project made substantial progress. *Id.* ¶ 55. According to Department regulations, priority should be given to funding continuation awards over new grant applications. *Id.* ¶ 113.

C. The Department Awarded Multi-Year MHSP and SBMH Grants in Plaintiff States.

Plaintiffs are 16 states whose elementary and secondary schools have offered mental health services supported by grants awarded via the MHSP and the SBMH. In furtherance of the priorities published by the Department, grantees in Plaintiff States ("Grantees") applied for and were awarded multi-year MHSP/SBMH grants. For example, the Department awarded a five-year SBMH grant to Educational Service District 189 ("NWESD"), an LEA that serves as regional liaison between Washington state and 35 school districts in northwest Washington. Dkt. No. 1 ¶ 70. Forty percent of NWESD's schools were unable to access critical mental health services for students due to barriers such as high student-to-provider ratios, attrition, complexity and intensity of mental health challenges, and geographic isolation. *Id*. Notably, two of the counties in NWESD's service area are located on islands and three other counties are in remote mountain areas far from urban corridors. *Id.* NWESD was able to use the SBMH grant to develop a recruiting package that allowed it to fill positions more quickly than anticipated. *Id.* ¶ 72. By the second year of its five-year project, NWESD had exceeded its early recruitment and retention goals. *Id*. The increase in staffing has already allowed NWESD to improve its mental health provider-to-student ratio by 60%—from 1:1,160 to 1:656. *Id.*

Similarly, the Department awarded a five-year MHSP grant to the University of Washington's SMART Center for its Workforce for Student Well-Being Initiative ("WSW"). Dkt. No. 1 ¶ 74. The WSW funds competitive conditional scholarships to graduate students enrolled in six schools of social work across Washington, and requires these students to work in a high-need school district in Washington for a minimum of two years after graduation. *Id.* ¶¶ 75–76. As of halfway through the third year of the grant program period, the WSW project has recruited and trained 27 graduate students committed to maintaining employment as school social workers in high-need school districts across Washington state. *Id.* ¶ 77.

The complaint also describes grant-funded programs in other Plaintiff States. For example, the Michigan Department of Education was awarded a five-year MHSP grant. Dkt. No. 1 ¶ 78. This grant funded the Michigan Earn, Learn, and Serve in Schools program, which aims to create jobs for 165 new school mental health providers working in high-need schools across Michigan to combat a critical shortage of school-based mental health professionals. *Id.* Similarly, Oregon State University received grant funds to train school counselors in partnership with four central Oregon school districts that had experienced a significant decline in available mental health services. *Id.* ¶ 93. The complaint further alleges multiple grant programs in California, including partnerships between numerous county offices of education and local agencies, the University of California, and five California State University campuses aimed at increasing the availability of mental health professionals serving California communities. *Id.* ¶¶ 88–91.

The complaint alleges these programs have been successful at increasing school-based mental health services across the Plaintiff States. Dkt. No. 1 ¶ 79. Specifically, Plaintiffs cite a finding from the National Association of School Psychologists that "during the Programs' first year under Congress's transformative funding appropriation, grantees served nearly 775,000 elementary and secondary students and hired nearly 1,300 school mental health professionals." *Id.* Plaintiffs further allege these programs have resulted in decreased suicide risk, absenteeism and behavioral issues at high-need schools; significantly reduced student wait time for services; and allowed schools to successfully recruit and retain mental health professionals in underserved communities throughout Plaintiff States. *Id.* ¶ 5.

D. The Department Notified Grantees of Discontinuation.

On April 29, 2025, the Department notified "most or all" Grantees in Plaintiff States that their grants (hereinafter "Grants") would be discontinued at the end of the current budget period (December 31, 2025). Dkt. No. 1 ¶ 80. Plaintiff States allege the discontinuation notices were identical and stated:

> This letter provides notice that the United States Department of Education has determined not to continue your federal award, S184xxxxxxx, in its entirety, effective at the end of your current grant budget period. See, inter alia, 34 C.F.R. § 75.253(a)(5) and (f)(1). …
>
> The Department has undertaken a review of grants and determined that the grant specified above provides funding for programs that reflect the prior Administration's priorities and policy preferences and conflict with those of the current Administration, in that the programs: violate the letter or purpose of Federal civil rights law; conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; undermine the well-being of the students these programs are intended to help; or constitute an inappropriate use of federal funds.

> The grant is therefore inconsistent with, and no longer effectuates, the best interest of the Federal Government and will not be continued.

Id. In conjunction with sending the notices, the Department informed Congress that it was discontinuing approximately $1 billion in awards, and that it planned to re-compete those funds with different priorities. *Id*. ¶¶ 6, 81.

Plaintiff States filed this action on June 30, 2025, claiming that the Department did not comply with its own regulations or the Administrative Procedure Act ("APA") in discontinuing the Grants, and that its actions also violate the Constitution's Spending Clause and Separation of Powers and are *ultra vires*. Dkt. No. 1. Specifically, Plaintiff States allege the discontinuation "notices providing the same boilerplate explanations untethered to specific grants and the performance of specific grantees" lack the reasoned explanation required by the APA. *Id.* ¶¶ 100, 103. Plaintiff States further allege that the Department violated the APA by implementing new priorities without engaging in the statutorily required notice-and-comment rulemaking, and that the Department acted contrary to its regulations by failing to consider grantee performance in making continuation awards, failing to prioritize continuation awards over new grants, and retroactively applying new priorities to previously approved grants. *Id.* ¶¶ 104, 111–13. The same allegations form the basis for Plaintiff States' constitutional and ultra vires claims. *Id*. ¶¶ 130–56.

Plaintiff States subsequently filed a motion for preliminary injunction. Dkt. No. 49. After the briefing on the motion was complete, the parties filed notices of supplemental authority, and the Court ordered the parties to provide supplemental briefing. Dkt. Nos. 154, 155, 156, 157, 158, 159. The Court held oral argument on the motion for preliminary injunction, during which the Department's counsel indicated that Defendants would be filing a motion to dismiss later that day. Dkt. No. 167 at 24.

Defendants indeed filed a motion to dismiss, and the Court held oral argument on that motion after the close of briefing. Dkt. Nos. 161, 172, 187. The motion to dismiss is now ripe for resolution and will be denied for the following reasons.

II. ANALYSIS

A. The Complaint's Allegations Establish That Plaintiff States Have Standing and the Authority to Bring the Claims Asserted.

Article III of the United States Constitution limits the jurisdiction of federal courts to deciding "Cases" and "Controversies," which in turn requires that "at least one plaintiff must have standing to sue." *Dep't of Com. v. New York*, 588 U.S. 752, 766 (2019). "To have standing, a plaintiff must allege an injury in fact 'that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling.'" *Id*. (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008)). Requiring a plaintiff to establish an injury in fact "helps to ensure that the plaintiff has a 'personal stake in the outcome of the controversy.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

A defendant may challenge a plaintiff's lack of standing via a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1142–43 (9th Cir. 2024). Where, as here, a defendant brings a facial attack on jurisdiction in a Rule 12(b)(1) motion, the court is confined to resolving the motion based on the allegations in the complaint. *Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cnty.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party." *Warth,* 422 U.S. at 501.

Defendants claim Plaintiff States lack standing to challenge the discontinuation decisions. Dkt. No. 161 at 7–8. They contend that only two paragraphs in the complaint describe the relationship between Plaintiff States and Grantees:

> Defendants' unlawful actions have already caused and will cause immediate and devastating harm to Plaintiffs. Starting this fall, many schools in Plaintiff states will no longer be able to reliably provide mental health services to kids that need them most. These discontinuances threaten the very purpose of these Programs—to protect the safety of our children by permanently increasing the number of mental health professionals providing mental health services to students in low-income and rural schools.
>
> If the discontinuances are not rescinded, Plaintiff educational agencies will be forced to lay off the very same professionals they recruited and hired to provide mental health services at their rural and low-income schools using Program funds. Plaintiff institutes of higher education will be forced to terminate financial support for graduate student internships to provide mental health services to rural and low-income schools. As a result, hundreds of graduate students will make the difficult choice whether they should enter or continue a graduate program no longer able to offer tuition assistance—drying up a workforce pipeline Congress recognized needed development.

Dkt. No. 1 ¶¶ 15–16. In their briefing, Defendants argue that these allegations are insufficient to establish that any Plaintiff State has standing to represent the interest of any Grantee. Dkt. No. 161 at 7–8. Defendants note that although the complaint references "Plaintiff educational agencies" and "Plaintiff institutes of higher education," Plaintiffs are in fact states rather than educational agencies or institutes of higher education. *Id*. Defendants also question whether the attorneys general for Plaintiff States may pursue an action on behalf of "unnamed third parties" that are merely located in those states without an official connection to them. *Id*. at 9.

Notwithstanding these arguments, Defendants clarified at oral argument that they do not challenge Plaintiff States' standing as to their own state-component Grantees, such as the University of Washington or the Michigan Department of Education. The Department's concession that Plaintiff States have standing via their instrumentalities is fatal to Defendants' motion to dismiss for want of standing. The Ninth Circuit recognizes that "[a]s a general rule, in an injunctive case this court need not address standing of each plaintiff if it concludes that one plaintiff has standing." *Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009) (citing *Preminger v. Peake*, 552 F.3d 757, 764 (9th Cir. 2008)). The Ninth Circuit has also held, more broadly, that "[t]he general rule applicable to federal court suits with multiple plaintiffs is that once the court determines that one of the plaintiffs has standing, it need not decide the standing of the others." *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993). Thus, Defendants' concession that Plaintiff States have standing via their instrumentalities is sufficient to permit this case to proceed.

Even if Defendants had not so conceded, the Court finds that the complaint adequately pleads a fiscal harm to *each* Plaintiff State resulting from Defendants' actions, even as to Grantees that are not instrumentalities of Plaintiff States, such as private universities training mental health providers to work in public schools. *See, e.g.*, Dkt. No. 1 ¶ 94. While Defendants argue that Plaintiff States have neither standing nor authority to bring claims on behalf of non-State entity Grantees, at oral argument, counsel for Plaintiff States emphasized that they are not bringing claims "on behalf of" third-party Grantees at all, but rather, the States are suing to protect their *own interests* in light of the harm that results to them due to the discontinuation decisions. For example, the complaint alleges that:

> If Defendants are not enjoined from implementing the Non-Continuation Decision, [G]rantees in Plaintiff states will be forced to lay off school-based mental health service providers, reducing access to much-needed mental health services to their rural and low-income schools. These [G]rantees will lose qualified mental health service providers; and the benefits of the relationships their students have developed with these providers. The spillover effect of students turning to community mental health services—to the extent they are available—will tax Plaintiffs' already-strained mental health care system.

Dkt. No. 1 ¶ 86. This allegation adequately identifies a fiscal harm to Plaintiff States that will flow from Defendants' actions: whether a particular Grantee is a State entity or not, the discontinuation of any Grant will decrease student access to school-based services and lead students in each Plaintiff State to seek needed mental health services elsewhere, namely "Plaintiffs' already-strained mental health care system." *Id.* The complaint further alleges that the discontinuation of the Grant-funded partnerships in Plaintiff States will dry up the pipeline of trained mental health providers willing to work in rural and low-income communities, and that "Plaintiffs' relationships with community partners will be irreparably damaged because Plaintiffs can no longer honor the commitments they made to provide mental health services to the children in these communities." *Id.* ¶ 87.

Defendants characterize these allegations as conclusory or speculative (Dkt. No. 180 at 4), but "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)). The Court finds that Plaintiff States' allegations adequately identify a general injury to the States that logically follows from the discontinuation of any Grantee's funding. *See Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1175 (9th Cir. 2024) (noting that while an "injury need not be direct, there must be a strong 'causal chain' that 'links' the federal action to the alleged harm" (quoting *California v. Azar*, 911 F.3d 558, 571–72 (9th Cir. 2018)); *see also Diamond Alt. Energy, LLC v. Envt'l Prot. Agency*, 606 U.S. __, 145 S. Ct. 2121, 2136 (2025) (explaining that where standing depends on "predictable" behavior of third parties, "commonsense inferences may be drawn"). Because Grantees generally seek to provide mental health services for students with high need in low-income and rural areas, any services students seek after discontinuation of school-based services will likely be provided by Plaintiff States, where those services are available at all. *See* Dkt. No. 1 ¶¶ 86, 89, 94. As the students who would benefit from continuation of the Grants are currently receiving services and have therefore demonstrated a need for them, and are also located in rural or low-income areas with few (if any) private providers available to them, there is only one link in the chain between discontinuing Grants and an increased use of State-funded providers. *Id.* The Court does not find this link to be so attenuated or unpredictable that a reasonable inference cannot be drawn.

Finally, the complaint also alleges that each Plaintiff State's attorney general has authority to bring this action to redress harms suffered by Plaintiff States. Dkt. No. 1 ¶¶ 21–36. Therefore, because the complaint adequately alleges an injury to Plaintiff States, and the authority of the attorneys general to bring claims to redress those injuries, the Court denies Defendants' motion to dismiss the complaint for want of standing.

B. The Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction Is Denied.

A complaint must be dismissed under Rule 12(b)(1) if the court lacks subject matter jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In this case, Defendants contend that the Court lacks subject matter jurisdiction over Plaintiff States' claims because they are contract-based and jurisdiction lies only in the Court of Federal Claims. Dkt. No. 161 at 10–19.

"Sovereign immunity shields the United States from suit absent a consent to be sued that is 'unequivocally expressed.'" *United States v. Bormes*, 568 U.S. 6, 9–10 (2012) (quoting *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33–34 (1992)). "Congress has enacted several broad waivers of the United States' sovereign immunity." *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1168 (9th Cir. 2017). A plaintiff "may sue the United States only if Congress has waived sovereign immunity for the lawsuit, and may bring its claim in federal district court only if Congress has provided for jurisdiction there." *North Star Alaska v. United States*, 9 F.3d 1430, 1432 (9th Cir. 1993) (en banc). The APA waives sovereign immunity for suits "seeking relief other than money damages" against a federal agency, so long as no other statute "expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702.

Even if an APA action does not seek money damages, it may nonetheless contain a contract claim mischaracterized as an APA claim, which would fall outside the APA's waiver of sovereign immunity. *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 606 U.S. __, 2025 WL 2415669 (2025); *Dep't of Educ. v. California*, 604 U.S. 650, 651 (2025). Per the Tucker Act, the exclusive jurisdiction for such claims is found in the Court of Federal Claims:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1). But the Tucker Act "'impliedly forbid[s]' an APA action seeking injunctive and declaratory relief only if the action is a 'disguised' breach-of-contract claim." *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982)).

The Tucker Act likewise deprives district courts of jurisdiction to hear contract claims disguised as constitutional claims. *Tucson Airport Auth. v. Gen. Dynamics Corp.*, 136 F.3d 641, 647–48 (9th Cir. 1998). Although sovereign immunity does not bar claims against federal officials whose actions "go beyond limitations" on "powers [] limited by statute" or the Constitution, that *ultra vires* exception to sovereign immunity does not apply to contract-based claims. *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689, 704 (1949) ("The Government as representative of the community as a whole, cannot be stopped in its tracks by any plaintiff who presents a disputed question of property or contract right.").

Courts, including those in the Ninth Circuit, look to factors first identified in *Megapulse* to determine whether a claim against the United States is a contract claim in disguise:

> The classification of a particular action as one which is or is not "at its essence" a contract action depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought (or appropriate). Where … there is a possible alternative basis for jurisdiction independent of the Tucker Act, such as is arguably the case before us, we must be more deliberate in our examination. Although it is important on the one hand to preserve the Tucker Act's limited and conditioned waiver of sovereign immunity in contract actions, we must not do so in terms so broad as to deny a court jurisdiction to consider a claim that is validly based on grounds other than a contractual relationship with the government.

672 F.2d at 968. Post-*Megapulse*, the Supreme Court explained that a district court has jurisdiction to set aside an agency action under the APA, even if that judgment eventually results in the agency paying sums of money, if that "outcome is a mere by-product of that court's primary function of reviewing the Secretary's interpretation of federal law." *Bowen v. Massachusetts*, 487 U.S. 879, 910 (1988).

In this case, Defendants contend that Plaintiff States' APA and constitutional claims are contract claims in disguise, seeking to enforce the Grants as contracts in order to compel the Department to continue funding the Grants. Dkt. No. 161 at 13. But for their part, Plaintiff States insist that their injury arises from violations of statutes, regulations, and the Constitution, rather than any breach of the Grant terms, and note that their complaint does not "seek an order requiring Defendants pay pursuant to their grants." Dkt. No. 174 at 23. Plaintiff States point to their complaint's prayer for relief, seeking a procedural rather than a contractual remedy: new decisions on continuation that comply with both the APA and the Constitution. *Id*. (citing Dkt. No. 1 at 44–45). Plaintiff States also emphasize that the Grants will be discontinued in the future rather than terminated, and that the Grantees are still receiving funds (for now), and thus no contract to pay has been breached. *Id*.

The Court agrees that none of Plaintiff States' claims sounds in contract, considering first the source of their claims. Plaintiff States' claims allege violations of the APA, the Department's regulations, and the Constitution, without any reference to the terms of the Grants. Specifically, Plaintiffs allege that the Department adopted new regulatory priorities without engaging in notice and comment rulemaking as required by the General Education Provisions Act (20 U.S.C. §§ 1221e-4, 1232(a)(2), (d)) and then retroactively applied the new priorities to discontinue the existing programs in Plaintiff States. Dkt. No. 1 ¶¶121-129. Plaintiffs further allege that Defendants violated Department regulations by unlawfully relying on the new priorities in making continuation decisions and failing to give priority to continuation awards over new grants. *Id.* ¶¶ 112-113. The Ninth Circuit recently found similar allegations to present statutory, not contract, claims.[1] *See Cmty. Legal Servs. in E. Palo Alto v. U.S. Dep't of Health & Human Servs.*, __ F.4th __, 2025 WL 2884805, at *4-6 (9th Cir. Oct. 10, 2025) ("Plaintiffs advance standard APA claims that the Government violated statutory (TVPRA) and regulatory (Foundational Rule) obligations and acted arbitrarily and capriciously by changing position without reasoned explanation.");[2] *see also*, *e.g.*, *Maryland v. Corp. for Nat'l & Cmty. Serv.,* 785 F. Supp. 3d 68, 105 (D. Md. 2025) ("The source of the rights for the States' notice-and-comment claims is a federal statute, not the grants.").

Moreover, Plaintiffs do not allege a violation of any grant term, either as the source of their claims or in their request for relief. That the Department continues to pay out on the Grants and did not terminate them also undermines the availability of contract remedies. Finally, though many Grantees are state instrumentalities, some are not. As the Ninth Circuit recently reiterated, where

[1] Moreover, such a challenge could be analogized to the vacatur of agency guidance in *NIH*, which was not at issue in the Supreme Court's order. *See NIH*, 2025 WL 2414669, at *2–3 (Barrett, J., concurring). As Justice Barrett explained there, "[v]acating [internal agency guidance explaining new priorities for awarding grants] does not reinstate terminated grants[,]" and therefore a challenge to that agency guidance would not necessarily be funneled to the Court of Federal Claims as a disguised contract claim. *Id*.

[2] Defendants argue that the Supreme Court's interim decisions in *California* and *NIH* undermine this Court's jurisdiction. As the Ninth Circuit has now interpreted both *California* and *NIH* to permit a district court's exercise of jurisdiction over APA claims arising from grant-related scenarios similar to the Grants at issue here, this Court is required to do the same. *See Yong v. I.N.S.*, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000) ("[O]nce a federal circuit court issues a decision, the district courts within that circuit are bound to follow it[.]").

no privity exists between the plaintiffs and the government, "the Court of Federal Claims's jurisdiction does not cover this dispute." *Cmty. Legal Servs.*, WL 2884805, at *7. Under these circumstances, the Court finds that the source of Plaintiff States' claims supports the exercise of jurisdiction.

The Court reaches a similar conclusion after considering the type of relief Plaintiff States seek. Defendants' repeated characterizations in briefing and at oral argument notwithstanding, the complaint does not seek monetary relief either explicitly or implicitly. *See* Dkt. No. 1 at 44–45. Instead, Plaintiff States seek an injunction setting aside the discontinuation decisions based upon the new priorities, preventing the Department's re-competing of the Grant funds, and requiring the Department to make new continuation decisions consistent with 34 C.F.R. § 75.253(b) before the next budget period. *Id*. Plaintiff States acknowledge that new decisions must be made, but seek only to require the Department to make "lawful" decisions, rather than to require continuation of Grantee funding. *See* Dkt. No. 167 at 51–52. The Ninth Circuit has characterized such claims as "garden-variety APA claims." *See Cmty. Legal Servs.*, 2025 WL 2884805, at *3.

Further, even if some or all of the Grantees' funding would be continued via new decisions, that would not transform Plaintiff States' claims into claims for "money damages" under discontinued Grant contracts. *See, e.g.*, *Perry Cap. LLC v. Mnuchin*, 864 F.3d 591, 619 (D.C. Cir. 2017) (finding that where plaintiffs seek relief that "would not be determined by reference to the terms of the contract[,]" the claims are not in essence contract claims). Thus, because Plaintiff States request that Defendants issue new continuation decisions consistent with their statutory, regulatory, and constitutional obligations, rather than seeking to enforce any particular term of the Grants themselves, the Court finds that the relief sought by Plaintiff States confirms the Court's jurisdiction here. *See Cmty. Legal Servs.*, 2025 WL 2884805, at *6–7 (discussing the second

Megapulse prong). Because both *Megapulse* prongs favor the Court's exercise of jurisdiction, the Court will deny Defendants' motion for lack of subject matter jurisdiction.

In so doing, the Court acknowledges that Defendants cite two recent cases where courts have found, in grant-related scenarios, that plaintiffs' APA claims were in fact contractual in nature and therefore forbidden under the Tucker Act. Dkt. No. 161 at 15 (citing *Climate United Fund v. Citibank, N.A.*, __ F.4th __, 2025 WL 2502881 (D.C. Cir. Sep. 2, 2025); *Sustainability Inst. v. Trump*, No. 25-1575, 2025 WL 1587100 (4th Cir. June 5, 2025)). These out-of-circuit decisions are not binding on this Court and are, moreover, distinguishable as involving terminated grants that plaintiffs sought to reinstate, rather than future discontinuances that plaintiffs sought to set aside. Here, where Plaintiff States request "a process correction, not a payment direction" (Dkt. No. 167 at 16), the Court finds that, under binding Ninth Circuit authority, Plaintiff States' claims "fall outside the jurisdictional bounds of the Tucker Act[.]" *Cmty. Leg. Servs.*, 2025 WL 2884805, at *8.

C. The Defendants' Motion To Dismiss for Failure to State a Claim is Denied.

Defendants' motion seeks dismissal on two additional grounds under Federal Rule of Civil Procedure 12(b)(6): (1) that the Grantees, rather than Plaintiff States, are the real parties in interest; and (2) the Department's discontinuation decision is not subject to judicial review.

In deciding a motion to dismiss under Rule 12(b)(6), a court examines the complaint to determine whether, if the facts alleged are true, the plaintiff has stated "a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To state a plausible claim, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The Court will address each of Defendants' arguments in turn.

1. Plaintiff States Are the Real Parties in Interest.

Federal Rule of Civil Procedure 17(a)(1) requires that an action "must be prosecuted in the name of the real party in interest." Defendants' motion argues that Grantees, rather than Plaintiff States, are the real parties in interest here, although they note that "[t]he federal rules do not contain a specific procedure for raising an objection that a plaintiff is not a real party in interest." Dkt. No. 161 at 6.

Defendants' concession at oral argument that Plaintiff States have standing to seek redress of injuries flowing from the discontinuation of grants to State instrumentalities guts most of Defendants' "real party in interest" argument. Plaintiff States are the real party in interest when their instrumentalities have been injured. *See State of Alaska v. Chevron Chem. Co.*, 669 F.2d 1299, 1302 (9th Cir. 1982) (rejecting a "real party in interest" challenge where a state attorney general was authorized to bring a suit on behalf of state instrumentalities); *Corp. for Nat'l & Comm. Serv.*, 785 F. Supp. 3d at 98 (finding that states have standing to challenge the "loss of federal funding for grants awarded to state service commissions and state instrumentalities").

Moreover, because the Court has found that the complaint alleges that Plaintiff States will suffer fiscal harm via their State-funded mental health services due to Defendants' discontinuation of any Grant, Plaintiff States seek to redress their own harms in this action with respect to Grantees that are not State instrumentalities as well. Accordingly, the Court will deny Defendants' motion to dismiss this action for lack of a real party in interest.

2. The Non-Continuation Decision is Reviewable Under the APA.

Defendants raise an additional challenge to the Court's exercise of jurisdiction here, contending that the Department's decision to discontinue the Grants constitutes a discretionary agency decision not subject to judicial review. Dkt. No. 147 at 14–16, Dkt. No. 161 at 3. Defendants' argument relies on *Lincoln v. Vigil*, 508 U.S. 182 (1993), which involved yearly lump-sum appropriations from Congress to the Indian Health Service ("IHS"). From 1978 to 1985, IHS funded the Indian Children's Program ("ICP") using those appropriations, but in 1985 announced that it would discontinue funding ICP's direct clinical services in favor of funding nationwide treatment efforts. *Id*. at 187–88. Children eligible for ICP services sued, arguing that IHS' "decision to discontinue direct clinical services" violated several statutes (including the APA), regulations, and the Due Process Clause of the Fifth Amendment to the United States Constitution. *Id*. at 189. The Supreme Court reasoned that "[t]he allocation of funds from a lump-sum appropriation is [an] administrative decision traditionally regarded as committed to agency discretion" because "the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way." *Id*. at 192. Accordingly, the *Lincoln* court concluded that judicial review of IHS' decision under the APA was unavailable. *Id*. at 193–94.

Although Defendants urge the Court to find that *Lincoln* is analogous, the Court finds the facts here distinguishable because, as even Defendants acknowledge, *Lincoln* did not involve grants with regulatory criteria for continuation. Accordingly, this case does not present the "rare circumstance[]" at issue in *Lincoln* where a court would have "no meaningful standard against which to judge the agency's exercise of discretion." *Lincoln*, 508 U.S. at 191. The Department must comply with its own regulations when determining whether to renew a grant award for another budget year. *Confederated Tribes & Bands of Yakima Indian Nation v. Fed. Energy Reg. Comm'n*, 746 F.2d 466, 474 (9th Cir. 1984) ("It is a well-known maxim that agencies must comply with their own regulations."). The existence of these regulations means that, unlike the IHS in *Lincoln*, the Department does not have unfettered discretion to discontinue grant funding for any reason or no reason at all, but that it must comply with regulatory requirements. *See* 34 C.F.R. § 75.253(a). Because this regulation cabins the Department's authority to discontinue funding, *Lincoln* is distinguishable. *See, e.g.*, *Planned Parenthood of Greater Wash. & N. Idaho v. U.S. Dep't of Health & Hum. Servs.*, 328 F. Supp. 3d 1133, 1147 (E.D. Wash. 2018) (finding that 34 C.F.R. § 75.253(a) governs an agency's ability to terminate a grant and therefore creates "a meaningful standard of review" under the APA). Accordingly, the Court rejects Defendants' argument that the discontinuation decisions are not subject to judicial review.

III. CONCLUSION

For these reasons, the Court DENIES Defendants' motion to dismiss. Dkt. No. 161. The Courtroom Deputy is directed to issue an order requiring the parties to file a joint status report to assist in setting a case schedule no later than October 31, 2025.

Dated this 21st day of October, 2025.

Kymberly K. Evanson
United States District Judge

Attachment 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, Plaintiff, v. U.S. DEPARTMENT OF COMMERCE; HOWARD LUTNICK; NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; and LAURA GRIMM, Defendants.	CASE NO. C25-1507 MJP ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiff's Motion for Preliminary Injunction. (Dkt. No. 6.) Having reviewed the Motion, Defendants' Opposition (Dkt. No. 23), the Reply (Dkt. No. 25), and all supporting materials, the Court GRANTS the Motion and issues the Preliminary Injunction as outlined in the Conclusion, below. The Court finds this matter suitable for determination without oral argument, as Defendants have been given notice and an opportunity to be heard, the Parties have provided robust briefing, and counsel for Defendants has been furloughed and is unavailable for a hearing.

BACKGROUND

The State of Washington challenges the termination of over $9 million in two cooperative agreements that the Department of Commerce and the National Oceanic and Atmospheric Administration issued in 2023 and 2024 to "help [Washington] communities disproportionately exposed to the adverse effects of climate change become more resilient." (Complaint ¶ 3 (Dkt. No. 1).) Washington claims that the termination of the two cooperative agreements (the "Awards") was arbitrary and capricious, ultra vires, and unconstitutional. It has filed suit against the Department of Commerce and its Secretary, Howard Lutnik, as well as the NOAA and its Acting Administrator, Laura Grimm. The Court reviews the two Awards, the relevant facts surrounding the terminations, and the regulatory framework.

A. NOAA Awards

In 2022 and 2023, "Washington applied for and received federal funding for two proposals to strengthen Washington's climate resilience with a focus on disproportionately affected communities." (Compl. ¶ 36.) "NOAA awarded Washington funding for (a) the Washington State Department of Ecology's Advancing an Equitable Framework for Coastal Resilience in Washington State, a Coastal Zone Management Project of Special Merit funded by the Coastal Zone Management Act, and (b) the Washington State Board of Community and Technical Colleges' Tribal Stewards: Cultivating Tribal Leadership & Equity in Natural Resource Stewardship & Climate Resilience, a Climate Ready Workforce Initiative project funded by the Inflation Reduction Act and National Sea Grant College Act." (Id.) The Court refers to the first award as the EFCR Award and the second as the Tribal Stewards Award.

In 2023, the Department of Commerce approved the $250,000 EFCR Award to the State of Washington Department of Ecology as a "financial assistance award" marked as a "cooperative agreement," not a "grant." (Ex. C to the Declaration of Michelle Gostic (Dkt. No. 7-3).) The Award explains that it "is a cooperative agreement as described in 2 C.F.R. § 200.1, meaning that the NOAA is 'substantially involved' in the project" by providing technical assistance and guidance and to "participate in programmatic activities beyond normal stewardship responsibilities in the administration of the award." (Id. at 2-3.) In August 2024, NOAA approved a no-cost extension of the Award, which again confirmed that this was a cooperative agreement to run to the end of March 2026. (Gostic Decl. ¶ 15 & Ex. E.)

In 2024, the Department of Commerce and NOAA approved the Tribal Stewards Award to the Washington State Board for Community and Technical Colleges (SBCTC) as a "cooperative agreement" that was to run from August 2024 to the end of July 2028. (Ex. A to the Declaration of Maya Esquivido (Dkt. No. 10-1).) The Award identified the "Federal Share of Cost" as $9,257,231, and the recipient's costs as $0. (Id.) The Award specifically noted that it was a "Cooperative Agreement . . . between" NOAA, the National Sea Grant Office, and Washington SBCTC. (Id. at 7.) The Award document explains that "[t]he substantial involvement between the Federal Agency and the recipient during performance of the activity includes working with their Federal Program Officer in the National Sea Grant Office to facilitate strategic engagement and project evaluation." (Id.)

B. Termination of the Awards

On May 5, 2025, the Acting Director of NOAA Grants Management sent nearly identical letters to the Department of Ecology and the Washington SBCTC to inform them that Commerce was terminating the Awards "[a]s part of efforts to streamline and reduce the cost and size of the

Federal Government." (Esquivido Decl. Ex. E (Dkt. No. 10-5); Gostic Decl. Ex. F (Dkt. No. 7-6).) The letters explained that "the Department is reprioritizing funding and staff to support only those activities directly related to its current programmatic goals and mission priorities" and that the Awards "activities are no longer aligned with effectuating these undertakings, nor relevant to the current focus of the Administration's objectives." (Id.) As to the EFCR Award, the termination letter states that "NOAA has concluded that this project proposed yet another layer of planning and outreach despite the existence of several prior state- and federally-funded initiatives that already identified the same needs" and that "[a]dditional funding should go toward implementation, not repeated strategy development." (Dkt. No. 7-6.) As to the Tribal Stewards Award, the letter noted that "NOAA has concluded that though the program promises 'robust assessment' and dissemination of findings, it lacks specific performance indictors, timelines, or mechanisms for evaluating success," and that "NOAA priorities include supporting outcome-based projects with clear deliverables, not projects with undefined long-term sustainability or effectiveness, such as this." (Dkt. No. 10-5). Both letters terminated the Awards effective May 5, 2025, and noted that Commerce was invoking 2 C.F.R. § 200.340(a)(4) (2024) as to the Tribal Steward Award and 2 C.F.R. § 200.340(a)(2) (2021) as to the EFCR Award. (Dkt. Nos. 7-6 & 10-5.) This federal regulation states that a federal award may be terminated "By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4).

Washington notes that the termination of the Awards align with various Executive Orders targeting funding for diversity, equity, and inclusion (DEI), efforts to fight climate change, and environmental justice. In Executive Order 14151, President Trump "mandated agencies to, among other things, provide to the Director of the U.S. Office of Management and Budget a list of all 'grantees who received Federal funding to provide or advance DEI, DEIA, or "environmental justice" programs, services, or activities since January 20, 2021,' and to terminate all '"equity-related" grants.'" (Compl. ¶ 4 (quoting Exec. Order 14,151, 90 Fed. Reg. 8339, 8339-40 (Feb. 26, 2025).) Similarly, President Trump directed agencies to terminate federal funding to reduce federal spending or "reallocate spending to . . . advance the policies of [his] Administration." Exec. Order No. 14,222, 90 Fed. Reg. 11095, 11096 (Feb. 26, 2025). And in "April 2025, the President took aim at states' attempts to address climate change within their own borders, describing such efforts as 'burdensome and ideologically motivated' and going so far as to direct the Attorney General of the United States to identify 'State laws purporting to address "climate change" or involving "environmental, social, and governance" initiatives, "environmental justice," carbon or "greenhouse gas" emissions' and take action to 'stop the enforcement of [those] laws.'" (Compl. ¶ 6. (quoting Exec. Order No. 14,260, 90 Fed. Reg. 15513, 15514 (April 8, 2025)).)

As is relevant to the finality of this agency action, NOAA confirmed that it would not accept an appeal of the termination decision of the Tribal Steward Award. (Esquivido Decl. Ex. H (Dkt. No. 10-8).) There is no similar statement regarding the EFCR Award in the record.

C. Regulatory Framework

The Awards are governed by OMB regulations, codified at 2 C.F.R. Part 200. See 2 C.F.R. § 1327.101. These regulations in force at the time the Awards were made stated that the "Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section." 2 C.F.R. § 200.340(b) (2021). This is relevant to the fact that OMB general guidance referenced in 2020 emphasizes that agencies should set priorities and establish goals and objectives "before the applications are solicited." 85 Fed. Reg. at 49507; see also 2 C.F.R. § 200.202

NOAA invoked 2 C.F.R. § 200.340(a) as the basis for termination of the Awards. This provision states that "The Federal award may be terminated in part or its entirety . . . (4) [b]y the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4) (2024). OMB's Guidance issued with the 2024 amendments, noted that Section 200.340(a)(4) allows a federal award to "include a term and condition allowing termination by the Federal agency or pass-through entity, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." Guidance for Federal Financial Assistance, 89 Fed. Reg. 30046-01, 30089 (Apr. 22, 2024). OMB further explained that it "f[ound] the final version of the guidance provides greater clarity on the policy for termination of awards by the Federal agency or pass-through entity by underscoring the need for agencies and pass-through entities to clearly and unambiguously communicate termination conditions in the terms and conditions of the award." Id.

D. Preliminary Injunction

Washington has moved for a preliminary injunction to enjoin Defendants from terminating the Awards and "impeding Washington's access to the full amount of funds obligation to Washington through" the awards." (Proposed Order at 1-2 (Dkt. No. 6-1).) Washington asks the Court to order Defendants to take every step to effectuate the injunction, and to excuse Washington from posting a bond. (Id.)

ANALYSIS

A. Subject Matter Jurisdiction

Defendants assert that the Court lacks subject matter jurisdiction because this case merely presents a contractual dispute over which the Court of Federal Claims has exclusive jurisdiction per the Tucker Act. The Court disagrees.

1. Applicable Law

Washington asserts that the Court has jurisdiction under the Administrative Procedures Act. The APA waives the United States' sovereign immunity and confers jurisdiction over claims brought by a person adversely affected by final agency action. 5 U.S.C. §§ 702, 704. "That waiver, however, is subject to three limitations: (1) the plaintiff must 'seek[ ] relief other than money damages'; (2) the plaintiff must have 'no other adequate remedy'; and (3) the plaintiff's action must not be 'expressly or impliedly forbid[den]' by 'any other statute.'" United Aeronautical Corp. v. United States Air Force, 80 F.4th 1017, 1022 (9th Cir. 2023) (quoting 5 U.S.C. S §§ 702, 704 & citing Tucson Airport Auth. v. Gen. Dynamics Corp., 136 F.3d 641, 645 (9th Cir. 1998)). "Where a statute vests exclusive jurisdiction over a category of claims in a specialized court (e.g., the Court of Federal Claims), it 'impliedly forbids' an APA action brought in federal district court." Id. (citing Tucson, 136 F.3d at 646).

Defendants contend that the Tucker Act vests exclusive jurisdiction over Washington's claims in the Court of Federal Claims because they are simply contractual claims disguised as APA claims. The Tucker Act gives the Court of Federal Claims jurisdiction "to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). "Because this statute 'grants consent to suit' and 'impliedly forbids' declaratory and injunctive relief, it precludes bringing contract claims against the United States in federal district court pursuant to the APA's waiver of sovereign immunity." Thakur v. Trump, 148 F.4th 1096, 1103 (9th Cir. 2025) (quoting 5 U.S.C. § 702 and citing Tucson, 136 F.3d at 645–46). "In other words, for contract claims against the United States seeking more than $10,000, the Tucker Act confers exclusive jurisdiction on the Court of Federal Claims." Id.

But the Tucker Act "'impliedly forbid[s]' an APA action seeking injunctive and declaratory relief only if that action is a 'disguised' breach-of-contract claim." United Aeronautical, 80 F.4th at 1026 (9th Cir. 2023) (quoting Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982)). "To determine whether a claim is a disguised breach-of-contract claim, we apply the Megapulse test, which considers: (1) the source of the rights upon which the plaintiff bases its claims and (2) the type of relief sought (or appropriate)." Thakur, 148 F.4th at 1103. If the plaintiff's rights and remedies, as alleged, "are statutorily or constitutionally based, then district[ ] courts have jurisdiction," but if those rights and remedies "are contractually based then only the Court of Federal Claims does." United Aeronautical, 80 F.4th at 1026 (emphasis in original).

2. Washington's APA Claims Not Preempted by Tucker Act

Applying the Megapulse test, the Court finds Washington's APA claims are not disguised breach of contract claims impliedly preempted by the Tucker Act.

First, applying the Megapulse test, the source of the rights Washington seeks to vindicate are statutory and constitutional, not contractual. Specifically, Washington challenges Defendants' termination of the Awards as an arbitrary and capricious act that violates its rights under the APA and the Constitution. These rights are not contingent on any specific right granted by the Awards themselves, and they exist independent of the Awards. Such a finding is consistent with a recent Ninth Circuit determination that APA claims challenging the termination of similar federal agency grants using nearly identical reasoning were "not premised on any rights derived from their grants or any purported contract and thus resolving the claim does not require analyzing the terms of any grant or contract." Thakur, 148 F.4th at 1103. The Court explained that "[c]ontractual rights are not at issue," and that the APA claim was instead based on the agencies' failure to "provide a reasoned explanation for their actions." Id. That same logic applies here.

Second, under the second prong of the Megapulse test, the nature of the relief Washington seeks is not properly characterized as money damages, even though Washington seeks an injunction to obtain access to the Award funds. As the Ninth Circuit explained in similar circumstances, such a "request to effectively undo the grant terminations and return Plaintiffs to the status quo does not seek performance of a contractual obligation" and instead "seeks to ensure that the agencies' course of conduct complies with federal law." Thakur, 148 F.4th 1108 (citing Bowen, 487 U.S. at 905). The Court further noted that "[a]t this preliminary stage, it appears that any payments due under the grants are 'a mere by-product' of the district court's 'primary function of reviewing' the government's interpretation of its statutory obligations pursuant to the APA." Id. (quoting Bowen, 487 U.S. at 910). The Court similarly finds that the injunctive relief sought does not convert the APA claim into one for monetary damages.

In addition, Washington convincingly explains that cooperative agreements, such as the Awards here, are not enforceable under the Tucker Act because they do not confer a direct and tangible benefit to the Government. As explained in a similar case now on appeal, cooperative agreements do not satisfy Tucker Act jurisdiction because they "generally do not confer a 'direct' and 'tangible' benefit on the United States—a requirement for Tucker Act jurisdiction." Pacito v. Trump, 772 F. Supp. 3d 1204, 1215 (W.D. Wash. 2025) (appeal filed) (citing St. Bernard Par. Gov't v. United States, 134 Fed. Cl. 730, 735–36 (2017), aff'd, 916 F.3d 987 (Fed. Cir. 2019) (finding that cooperative agreement to provide hurricane relief in New Orleans provided no direct or tangible benefit to the Government). To this end, federal law explains that cooperative agreements are intended to be used by government agencies to create a collaborative relationship with a state or local government "to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government."31 U.S.C. § 6305(1). This contrasts with procurement contracts which is a "legal instrument" whose "principal purpose . . . is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government." 31 U.S.C. § 6303(1). Given this distinction, the Court of Federal Claims has consistently found that cooperative agreements lack a "money-mandating" feature that is necessary for Tucker Act jurisdiction. See Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008) ("[Plaintiff's] breach of contract claim arises from its cost-share agreement with the government; however, the cost-share agreement does not provide a substantive right to recover money-damages and [plaintiff] does not point to a money-mandating source of law[.]"); St. Bernard, 134 Fed. Cl. at 735 ("Since the Court construes the agreement between the [agency] and the [plaintiff] as a cooperative agreement, damages cannot be implied; therefore, the agreement is not money-mandating, unless the [plaintiff] can point to a specific provision mandating a monetary recovery."). This is another independent basis on which the Court rejects Defendants' jurisdictional arguments, and the Court notes that Defendants failed to provide any meaningful response on this issue.

3. Defendants' Countervailing Arguments Fail to Persuade

Defendants urge the Court not to follow Thakur, and instead construe two recent per curiam decisions from the Supreme Court as precedent requiring Washington's claims to be filed in the Court of Federal Claims under the Tucker Act. The Court disagrees.

First, Defendants invoke Department of Education v. California, where the Supreme Court issued a four paragraph per curiam opinion staying a TRO that enjoined the termination of education-related grants and required the government to pay all amounts due under the grants. Id., 604 U.S. 650 (2025). The Court concluded "the APA's limited waiver of immunity does not extend to orders 'to enforce a contractual obligation to pay money' along the lines of what the District Court ordered here." Id. at 651. At issue was a TRO that required "the Government to pay out past-due grant obligations and to continue paying obligations as they accrue[d].'" Id. at 650. But the Ninth Circuit has correctly noted that this decision has no application to claims like those presented here which seek to vacate the termination of a grant and do not request payment of specific amounts due from the federal government. Thakur, 148 F.4th at 1104. Here, Washington similarly asks the Court to vacate the termination of the Awards and does not request payment of specific sums. (See Proposed Order at 1-2). And while Washington seeks access to the Award funds, the Ninth Circuit found a similar request in Thakur not to contravene California. Thakur, 148 F.4th at 1104. There, the Ninth Circuit held that the request to "vacate the grant terminations and preliminarily enjoin Defendants from giving effect to those terminations" did not run afoul of California because the relief sought was "not based on any conditions or obligations under the grants" and did not seek any finding that the federal government owes any amount of money. Id. The Court also notes that the terse decision in California lacks the detail and reasoning necessary to support Defendants' argument that the decision forecloses the Court's jurisdiction. As Justice Kagan noted in her dissent, "the Court's reasoning is at the least under-developed, and very possibly wrong." California, 604 U.S. at 653 (2025) (Kagan, J., dissenting).

Second, Defendants invoke Nat'l Insts. of Health v. Am. Pub. Health Ass'n ("NIH"), another per curiam Supreme Court opinion that stayed an injunction barring termination of various research-related grants. 145 S. Ct. 2658 (2025). In relevant part, the terse, two-paragraph decision states in full: "The Administrative Procedure Act's 'limited waiver of [sovereign] immunity' does not provide the District Court with jurisdiction to adjudicate claims 'based on' the research-related grants or to order relief designed to enforce any """obligation to pay money""" pursuant to those grants.'" Id. (quoting California, 604 U.S. at 651). There is no reasoning in the decision to apply to the case before the Court, and no means of determining whether it has any application to the unique facts at issue in this case. Without any explication of the relevant facts and how they fit within the relevant legal framework, the per curiam decision does not support Defendants' position.

Defendants cite to a smattering of other cases that similarly do not convince the Court that it lacks jurisdiction. First, they cite to Climate United Fund v. Citibank, N.A., where the D.C. Circuit concluded that APA claims challenging the termination of $16 billion of grants from the EPA to nonprofits were actually breach of contract claims. Id., ___ F.4th ___, No. 25-5122, 2025 WL 2502881, at *7 (D.C. Cir. Sept. 2, 2025). The facts of this case do not align with those before the Court. In Climate United, the court applied the Megapulse test and held that the sole source of the rights at issue stemmed from the grants alone. Id., 2025 WL 2502881, at *5.

The Court also found that the injunction sought was merely a means for the grantees to obtain specific performance on the grants. Id., at *6. But the grants at issue were not cooperative agreements and the relief sought does not appear to be parallel with what is sought here. Moreover, this out-of-circuit decision appears not to abide by the Ninth Circuit's decision in Thakur, which is far more relevant given the nature of the Awards and the government's terminations. Second, Defendants invoke a Fourth Circuit decision, where the court invoked California to find a request to restore access to grant funds was merely an action to enforce contractual obligations to pay sums to non-profits and municipalities. Sustainability Inst. v. Trump, 2025 WL 1587100 (4th Cir. June 5, 2025). But as with Climate United, this case stands at odds with the outcome in Thakur, which is binding Ninth Circuit precedent that is far more factually aligned. The Court therefore rejects Defendants' arguments and finds that it has jurisdiction.

B. Preliminary Injunction

The Court finds that Washington is entitled to the preliminary injunction it seeks. The Court reviews the relevant facts and scope of the injunction in the subsections which follow.

1. Legal Standard

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." Farris v. Seabrook, 677 F.3d 858, 864 (9th Cir. 2012) (citing Winter v. NRDC, 555 U.S. 7, 20 (2008)). A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter, 555 U.S. at 22. And it is "never awarded as of right." Id. In each case, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Id.

The Ninth Circuit applies a "sliding scale" approach in considering the factors outlined in Winter. A stronger showing of one element may offset a weaker showing of another. All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131–32 (9th Cir. 2011). So "when the balance of hardships tips sharply in the plaintiff's favor, the plaintiff need demonstrate only 'serious questions going to the merits.'" hiQ Labs, Inc. v. LinkedIn Corp., 938 F.3d 985, 992 (9th Cir. 2019) (quoting All. for the Wild Rockies, 632 F.3d at 1135).

In considering the likelihood of success on the merits, the Court is not strictly bound by the rules of evidence, as the "preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981). Because of the extraordinary nature of injunctive relief, including the potential for irreparable injury if not granted, a court may consider evidence outside the normal rules of evidence, including: hearsay, exhibits, declarations, and pleadings. Johnson v. Couturier, 572 F.3d 1067, 1083 (9th Cir. 2009).

2. Likelihood of Success

Below, the Court reviews the likelihood of success of Washington's APA and Spending Clause claims.

a. APA Claims

Washington pursues two APA claims arising: the terminations of the Awards were: (1) contrary to law, and (2) arbitrary and capricious. The Court finds Washington is likely to succeed on both claims and that Defendants cannot hide behind the APA's exclusion for decisions committed to agency discretion.

As an initial matter, the Court notes that there is no dispute that the terminations constitute final agency actions. Washington has provided evidence that the terminations were intended to cease funding immediately, and, at least as to the Tribal Award, Defendants informed them that they had no right to appeal. (See Esquivido Decl. ¶ 38 & Ex. H.) These are final agency actions, as they mark the "consummation of the agency's decisionmaking process" and are ones "by which rights or obligations have been determined, or from which legal consequences will flow." Bennett v. Spear, 520 U.S. 154, 156, 177-78 (1997).

1. Contrary to Law

"The Administrative Procedure Act requires federal courts to set aside federal agency action that is 'not in accordance with law,' 5 U.S.C. § 706(2)(A)—which means, of course, any law, and not merely those laws that the agency itself is charged with administering." F.C.C. v. NextWave Pers. Commc'ns Inc., 537 U.S. 293, 300 (2003).

Washington convincingly argues that the terminations violate the OMB regulations and related guidance. Washington argues that the § 200.340(a)(4) only allows for terminations if the award, not the agency's priorities have changed. The Court agrees. The regulation states that the agency can terminate the award "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4). A plain reading of this provision demonstrates that termination is proper only when the "award itself no longer effectuates the program goals or agency priorities," and does not extend to changes in program goals or agency priorities. This makes abundant sense, because an award recipient will undertake efforts based on the articulated program goals at the time the agency requests proposals and awards the grants. This is also consistent with OMB guidance, which emphasizes that agencies should set priorities and establish goals and objectives "before the applications are solicited." 85 Fed. Reg. at 49507.

Defendants' reading of the regulations not only fails common sense, but would lead to absurd results. By allowing a change in an administration to upend multi-year grants would cause unnecessary chaos across the vast world of government-supported endeavors undertaken by states, universities, non-profits, and others. Instead, it makes far more common sense to construe the regulation as allowing termination only if the awardee fails to deliver on the program goals and agency priorities as they existed at the time the grant was awarded. Had the regulations been intended to allow for terminations based on changes in an administration's policy or priorities, they could easily have been drafted to state that a change in "program goals or agency priorities" alone can be a basis for termination. But they do not. And Defendants' contrary urging lacks any support in either the text of the regulations or common sense.

The Court also finds merit in Washington's argument that Defendants cannot even invoke the regulations on which they rely because the termination provision was not expressly included in the Awards. This argument flows from the fact that the current regulations require the award itself to "clearly and unambiguously" include all bases for potential termination in the awards. 2 C.F.R. § 200.211(c)(v); 2 C.F.R. § 200.340(b). Here, nothing in the Award documentation states that either may be terminated because the award no longer effectuates program goals or agency priorities. But Defendants correctly point out that the regulations in force when both awards were made merely stated that the award "should" but did not have to include a citation to § 200.340(a)(4) as a basis for termination. But even if the provision was not mandatory, Washington may well succeed in proving that the language should have been included. That said, Defendants might also convince a jury that the regulatory language was incorporated by reference. While the Court finds some merit in Washington's argument, it does not rely on this argument to reach the conclusion explained in the above paragraph that Washington has demonstrated a strong likelihood of success on the merits of its APA claim.

2. Arbitrary and Capricious

Agency actions are arbitrary and capricious when the explanation "'runs counter to the evidence before the agency.'" Organized Vill. of Kake v. USDA, 795 F.3d 956, 966 (9th Cir. 2015) (en banc) (quoting Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). "'Unexplained inconsistency' between agency actions is 'a reason for holding an interpretation to be an arbitrary and capricious change.'" Id. (quoting Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 981 (2005)). A Courts consider "whether the [agency] examined 'the relevant data' and articulated 'a satisfactory explanation' for [its] decision, 'including a rational connection between the facts found and the choice made.'" Dep't of Com. v. New York, 588 U.S. 752, 773 (2019) (quoting Motor Vehicle Mfrs. Ass'n., 463 U.S. at 43). Agency action is also arbitrary and capricious if the agency "offered an explanation for its decision that runs counter to the evidence before [it], or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Motor Vehicle Mfrs. Ass'n., 463 U.S. at 43.

The terminations here appear likely to have been arbitrary and capricious. First, as explained above, the terminations violate the applicable OMB regulations, which do not provide that a change in agency administration is a permissible ground for termination. Moreover, the OMB general guidance issued in 2020 emphasizes that agencies should to set priorities and establish goals and objectives "before the applications are solicited." 85 Fed. Reg. at 49507; see also 2 C.F.R. § 200.202. This supports Washington's view that a change in priorities after grant-making would run afoul of the regulations. Second, the brief termination letters fail to articulate what the new priorities and standards might be that would form a reasoned basis for termination. One is effectively left to guess at what the new priorities are and why the awards are now misaligned with them—this violates the APA. Third, Washington is likely to be able to demonstrate the falsity of Defendants' claims that the Tribal Steward Award "lacks specific performance indicators, timelines, or mechanisms for evaluating success," or their assertion that EFCR "proposes yet another layer of planning and outreach despite the existence of several prior state- and federally-funded initiatives that already identified the same needs." (Esquivido Decl. Ex. E.) As Washington points out, there are concrete performance indicators, timelines, and means of measuring success of the Tribal Stewards Awards. (Esquivido Decl. ¶¶ 18-24, 33-37.) As to the EFCR Award, Plaintiff points out that the scope of work includes novel work by Ecology that cannot be redundant given its unique scope. (Gostic Decl. ¶¶ 7, 25; Declaration of Joenne McGerr ¶¶ 21-22 (Dkt. No. 9).)

Accordingly, the Court finds that Washington is highly likely to succeed on its "arbitrary and capricious" APA claim.

3. APA's Exception for Discretionary Decisions Does Not Apply

Defendants argue the terminations are not reviewable under the APA because it is "committed to agency discretion by law" and therefore exempt under 5 U.S.C. § 701(a)(2). (Defs. Opp. at 10-12.) The Court disagrees.

"The Administrative Procedure Act embodies a 'basic presumption of judicial review,' Abbott Laboratories v. Gardner, 387 U.S. 136, 140, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967), and instructs reviewing courts to set aside agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' 5 U.S.C. § 706(2)(A)." Dep't of Com. v. New York, 588 U.S. 752, 771 (2019). "Most—but not all—final agency actions are reviewable," subject to two exceptions. Trout Unlimited v. Pirzadeh, 1 F.4th 738, 751 (9th Cir. 2021). Defendants highlight one exception to APA's presumption of judicial review—for "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2).

The Supreme Court has "read the § 701(a)(2) exception for action committed to agency discretion quite narrowly, restricting it to those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." Dep't of Com., 588 U.S. at 772 (citation and quotation omitted). The APA expressly contemplates judicial review of an agency's ordinary discretionary judgments by authorizing review of an agency's action for "abuse of discretion." 5 U.S.C. § 706(2)(A). The Section 701(a)(2) exception therefore applies only "if no judicially manageable standards are available for judging how and when an agency should exercise its discretion." Trout Unlimited, 1 F.4th at 751 (quoting Heckler v. Chaney, 470 U.S. 821, 830 (1985)). "Only where there is truly no law to apply have we found an absence of meaningful standards of review." Perez Perez v. Wolf, 943 F.3d 853, 861 (9th Cir. 2019) (internal quotation marks omitted). "So long as the regulations provide a 'meaningful standard' by which a court could review the [agency's] actions and our review of the agency's compliance with those regulations does not infring[e] any of the [agency's] prerogatives under the statute, then we have jurisdiction, pursuant to the APA, to review the agency's compliance with its own regulations." Trout Unlimited, 1 F.4th at 752 (citation and quotation omitted).

Judicially-manageable standards against which to measure agency action can derive from a variety of sources, not just regulations and statutes. "In order to assess whether the court has a meaningful standard against which to judge the agency's exercise of discretion[,] we first look at the statute itself." ASSE Int'l, Inc. v. Kerry, 803 F.3d 1059, 1069 (9th Cir. 2015) (cleaned up).

The Court may also look to agency regulations or agency practices to determine a meaningful standard against which to review its exercise of discretion. Id. at 1069 ("Even where statutory language grants an agency unfettered discretion, its decision may nonetheless be reviewed if regulations or agency practice provide a meaningful standard by which this court may review its exercise of discretion.").

Here, the regulations and Guidance set a meaningful standard of review against which to measure the Award terminations. The regulations clearly set forth the basis for terminations of cooperative agreements, such as the Awards at issue here. As is relevant here, the agency had the ability to terminate the Awards "pursuant the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4) (2024). As the Ninth Circuit has recently explained: "2 C.F.R. § 200.340(a) provides uniform administrative requirements for the termination of federal grants, including those an agency terminates because they 'no longer effectuat[e] . . . agency priorities.'" Thakur, 148 F.4th at 1105 (quoting 2 C.F.R. § 200.340(a)(4)). Citing Sections 200.340, 200.341, 200.343, and 200.345, the Court explained that "[t]hese regulations provide a meaningful standard by which courts may review the agencies' exercise of discretion." Id. at 1105-06. This fully undermines Defendants' position, which the Court rejects.

Defendants rely on Lincoln v. Vigil, 508 U.S. 182 (1993) to argue that the terminations are unreviewable. (Defs. Opp. at 10-11.) In Vigil, the Supreme Court held that "allocation of funds from a lump-sum appropriation is [an] administrative decision traditionally regarded as committed to agency discretion." 508 U.S. at 192–93. But the Court expressly limited its holding, clarifying that "an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." Id. at 193. As the Ninth Circuit in Thakur recognized, the operative regulations here do just that, rendering Vigil's limited holding inapposite.

b. Spending Clause Claim

Washington argues that Defendants' termination of the Awards also violates the Spending Clause of the U.S. Constitution by imposing conditions on the Awards well after they were granted. The Court finds that it is likely to succeed on the merits of this claim.

The Spending Clause provides that Congress has the power "to pay the Debts and provide for the common Defence and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. This power gives Congress the ability "to grant federal funds to the States, and [Congress] may condition such a grant upon the States' 'taking certain actions that Congress could not require them to take.'" Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 576 (2012) ("NFIB") (quoting Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 686, (1999)). "Though Congress' power to legislate under the spending power is broad, it does not include surprising participating States with post acceptance or 'retroactive' conditions." Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 25 (1981).

Washington argues that Defendants have violated the Spending Clause by using "new priorities" that are impermissibly vague. As the Supreme Court has explained, "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." Pennhurst, 451 U.S. at 17. From this statement, Washington reasons that any new administrative priority used to justify termination of the award is impermissibly vague. The Court finds merit in this argument, as permitting the reasoning advanced in the terminations here would allow any new executive administration to upend any multi-year cooperative agreement for whatever new priority it might identify. This is not a means of conducting the business of government, which requires predictability and consistency. Defendants' only real retort is to argue that the terminations did not impose any "condition" and merely followed the regulatory process outlined in the CFRs. This argument lacks any fealty to the regulations or any persuasive merit.

Washington also reasonably argues that the retroactive termination constitutes an impermissible condition that violates the Spending Clause. Defendants suggest that they merely followed the regulatory guidance and terminated the grants in accordance. But the regulations do not provide for the kind of post-hoc rationalization that Defendants urge. The Court sees little merit in this argument. Instead, the Court finds Washington likely to succeed in demonstrating that the terminations here are equivalent to impermissible post-hoc conditions because the original Awards had no provisions to allow new agency policies to upend existing awards.

3. Irreparable Harm

The Court finds that Washington faces irreparable harm without the injunction.

Irreparable harm is "harm for which there is no adequate legal remedy, such as an award for damages." Arizona Dream Act Coalition v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014). "For this reason, economic harm is not generally considered irreparable." E. Bay Sanctuary Covenant v. Biden, 993 F.3d 640, 677 (9th Cir. 2021). "But where parties cannot typically recover monetary damages flowing from their injury—as is often the case in APA cases—economic harm can be considered irreparable." Id. (citing California v. Azar, 911 F.3d 558, 581 (9th Cir. 2018)). "Intangible injuries may also qualify as irreparable harm, because such injuries 'generally lack an adequate legal remedy.'" Id. (quoting Brewer, 757 F.3d at 1068).

The record here is sufficient to show an irreparable harm. As Washington notes, both Awards are designed to help the State build climate resilience to reduce disparate health impacts of climate change on "overburdened communities." By removing the funding and collaborative guidance, the State is less able to protect these communities and prepare against the negative effects of climate change. These are the kinds of injuries that money cannot necessarily solve, as lost time itself can make future response to climate change yet more difficult. That alone is sufficient to find an irreparable harm. In addition, the State has provided detailed information of the harms caused by the loss of funding to both awards. As to the Tribal Stewards program, Washington points out that it is intended to create various partnerships and hundreds of co-steward positions. (Esquivido Decl. ¶¶ 21-26.) Without the funding, the State explains that it will be unable to build future partnerships with Tribes and community colleges, and the State will lose credibility in efforts to work collaboratively with the Tribes. (Id. ¶¶ 39-59.) As to the EFCR Award, the State explains that it will lose an opportunity to engage in equitable resource allocation to help vulnerable coastal communities, reduce effectiveness and coordination, increase decision-making uncertainty, and render Washington's investment in the program a sunk cost. (Gostic Decl. ¶¶ 28-32.) While it is true that the harm here stems from the lack of funds, the harms cannot be remedied solely with funds provided in the future. And the reputational damage and inability to build trust with the Tribes further supports a finding of irreparable harm.

Defendants argue that there is no evidence of irreparable harm because Washington waited three months to file suit after the Awards were terminated. (Defs. Opp. at 8 (citing N.L.R.B. v. Cal. Pac. Med. Ctr., 991 F.2d 536, 544 (9th Cir. 1993) (A "long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm."))).) But as the Ninth Circuit noted in the same case Defendants cite, "[d]elay by itself is not a determinative factor in whether the grant of interim relief is just and proper." N.L.R.B., 991 F.2d at 544 (citation and quotation omitted). Here, the delay is not dispositive. While Washington could have acted sooner, that fact alone does not undermine the evidence of irreparable injury. And full resolution of the claims advanced may take more than a year, and the programs at issue could long be dismantled and unable to recover without injunctive relief. Accordingly, the Court declines to adopt Defendants' position.

4. Balance of Equities and Public Interest

The final two Winter factors merge in cases where relief is sought from the government. Roman v. Wolf, 977 F.3d 935, 940-41 (9th Cir. 2020). When considering whether to grant a preliminary injunction, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief . . . [and] pay particular regard for the public consequences." Winter, 555 U.S. at 24. As the D.C. Circuit has explained, "[t]here is generally no public interest in the perpetuation of unlawful agency action." League of Women Voters of United States v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016). To the contrary, an injunction serves the interests of the general public where it ensures that federal agency actions "comply with the Constitution." See Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017).

The Court finds the final two Winter factors favor the issuance of an injunction. Allowing this kind of agency about-face, which appears likely to be found unlawful, would not serve any public interest. Preserving the status quo and allowing a complete resolution of the claims without the downstream harms to the underlying programs serves Washington's interest and the public's interest by ensuring an orderly administration of taxpayer funds.

The Court finds no merit in Defendants' contrary arguments. Defendants again invoke California and NIH to suggest that any frustration of the president's policies or payment of funds that cannot be clawed back outweighs any countervailing interest. (Defs. Opp. at 20.) But in California, the respondents had "not refuted the Government's representation that it is unlikely to recover the grant funds once they are disbursed." California, 145 S. Ct. at 969. Here, no such facts have been proposed. And the Court noted that the government had compellingly argued "respondents would not suffer irreparable harm[,]" explaining that respondents had "the financial wherewithal to keep their programs running" and could, if they prevailed, "recover any wrongfully withheld funds." Id. Here, no such facts are in evidence. Similarly, NIH has no persuasive application here. There, the Court opined that the inability of the government to recoup funds from the grantee would lead them to be "irrevocably expended." 2025 WL 2415669, at *1 (quotation omitted). But here, there are no facts to suggest that the funds could not be recouped or would be irrevocably expended. Neither case compels the Court to decline to issue the injunction, and the Court rejects Defendants' arguments premised on these cases.

C. Bond & Stay

The Court finds that Washington may proceed with payment of a nominal bond. Under Rule 65(c), "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). "Despite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, if any." Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009) (cleaned up). Defendants argue that the Court should require a bond because "any preliminary relief would potentially mandate that the Executive spend money that may be lost forever once distributed." (Defs. Opp. at 28.) But there is no evidence that the funds could not be recouped. And based on the record before the Court, the funds have already been appropriated by Congress. Thus, any "cost to the government, in the event it is found to have been wrongfully enjoined, would be minimal." Barahona-Gomez v. Reno, 167 F.3d 1228, 1237

(9th Cir. 1999). As such, the Court finds that only a nominal bond is necessary. The Court ORDERS Washington to deposit a cash bond in the amount of $100 into the Court's registry. See Fed. R. Civ. P. 67. These funds may not be withdrawn except by further order of the Court. See Fed. R. Civ. P. 67(b); 28 U.S.C. § 2042.

Defendants ask the Court to stay the injunction pending any appeal authorized by the Solicitor General, or at least administratively stay the case for seven days so the Government can consider an emergency stay from the Court of Appeals. The Court declines this request, as Defendants fail to identify the relevant standard, much less explain why such extraordinary relief should be issued.

CONCLUSION

The Court here finds that it has jurisdiction over the dispute and that Washington has demonstrated its entitlement to a preliminary injunction. Washington has demonstrated a likelihood of success on the merits of its APA and Spending Clause claims, irreparable harm, and reasons why the balance of equities and public interest favor injunctive relief. The Court therefore GRANTS the Motion and ORDERS as follows:

1. Defendants and all their respective officers, agents, servants, employees and attorneys, and any person in active concert or participation with them who receive actual notice of this Order are hereby ENJOINED from the following:

    a. Terminating the Washington State Department of Ecology's award with the Federal Award ID Number NA23NOS4190137 and the Washington State Board of Community and Technical Colleges' award with the Award Number NA24OARX417C0590, except in accordance with the requirements set forth in the 2 C.F.R. Part 200 and the express terms and conditions of each award; and

b. Impeding Washington's access to the full amount of funds obligated to Washington through each of the above referenced awards;

2. Defendants must immediately take every step necessary to effectuate this Order, including clearing any administrative, operational, or technical hurdles to implementation, and notifying the Washington State Department of Ecology and the State Board for Community and Technical Colleges that the terminations have been set aside;

3. Defendants' attorneys shall provide written notice of this Order to all Defendants and agencies and their employees or contractors with responsibility for administering the above referenced awards within five (5) days of this Order. Defendants shall file a copy of the notice on the docket at the same time;

4. Washington must deposit a $100 cash bond into the Court's registry; and

5. This preliminary injunction remains in effect pending further orders from this Court.

The clerk is ordered to provide copies of this order to all counsel.

Dated October 22, 2025.

Marsha J. Pechman
United States Senior District Judge