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10
11 THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF NEVADA

13 ALICE M. GLADWILL, an individual,

14 CASE NO.: 3:11-cv-00251-RCJ-WGC

15 Plaintiff,

16 v.

17 RUBY PIPELINE, LLC, a Delaware Limited
18 Liability Company; DOES I through X; and
19 ROE CORPORATIONS I through X,

20
21 Defendants.

22 FINDINGS OF FACT AND
23 CONCLUSIONS OF LAW

24 This matter came on for trial before this Court on September 18 and 19, 2012. The case
25 was tried to the Court without a jury. Plaintiff Alice M. Gladwill was represented at trial by
26 Robert Story of the STORY LAW GROUP. Defendant Ruby Pipeline, LLC was represented by J.
27 Robert Smith of HOLLAND & HART, LLP. Having heard and carefully considered the evidence
28 adduced by the parties, the arguments of counsel, and good cause appearing, the Court makes
the following findings of fact and conclusions of law:

29 I. FINDINGS OF FACT

30 1. Plaintiff Alice Gladwill ("Gladwill") is the owner of a cattle ranch in Northern
31 Nevada.
32 2. Defendant Ruby Pipeline, L.L.C. ("Ruby") is the owner and operator of a newly

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1 constructed interstate natural gas pipeline extending from Wyoming to Oregon (the
2 "Pipeline").

3 3. On April 5, 2010, Ruby was issued a Certificate of Public Convenience and
4 Necessity by the Federal Energy Regulatory Commission ("FERC") to construct a 680 mile
5 natural gas pipeline and related facilities in Wyoming, Utah, Nevada, and Oregon
6 ("Certificate").

7 4. As the holder of the Certificate, Ruby was expressly authorized by FERC to,
8 among other things, construct and operate the Pipeline.

9 5. Prior to construction, Ruby sought out each of the landowners over whose
10 property the Pipeline would cross in an effort to negotiate the purchase of temporary
11 construction and permanent pipeline easements, as well as to pay for any related damages
12 caused by the construction of the Pipeline.

13 6. One of the landowners with whom Ruby negotiated such easements was
14 Gladwill.

15 7. On May 21, 2009, Ruby and Gladwill executed a Letter Agreement which
16 identified the amount of money Ruby would pay Gladwill for the easements, as well as for
17 damages and related items.

18 8. Pursuant to that Letter Agreement, Ruby agreed to pay Gladwill \$22,226.00 for
19 a temporary and permanent Right-of-Way easement across her property.

20 9. The Letter Agreement provided that "[a]fter construction of the project the
21 disturbed right-of-way will be appropriately graded, contours re-established and reseeded."

22 10. On May 27, 2009, Gladwill also executed a Right-of-Way and Easement
23 Agreement ("Right-of-Way Agreement"), granting Ruby a permanent easement across her
24 property.

25 11. The Right-of-Way Agreement also required Ruby to:

26 [T]ake all necessary measures to maintain proper drainage to
27 prevent erosion of the surface of such easement premises, and

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1 further at the completion thereof to re-contour and re-seed all
2 disturbed areas with seed mixture recommended by Owner and/or
3 appropriate agencies.

4 12. The Right-of-Way Agreement is unambiguous.

5 13. During construction, snowmelt and rainfall runoff caused water to flood parts of
6 the Right-of-Way and erode some soil from the Right-of-Way onto Gladwill's property.

7 14. Ruby paid Gladwill \$12,250.00 for damages related to soil eroding from the
8 Right-of-Way onto her property.

9 15. Over the next several months, and while construction was still ongoing,
10 Gladwill identified several issues with the construction, including the placement of a temporary
11 12 inch water line and the condition of a spring that she alleged Ruby damaged.

12 16. Ruby subsequently installed several crossings over the temporary water line to
13 allow Gladwill's vehicles and cattle to more easily cross over the water line.

14 17. Ruby also retained AMEC Engineering to review the spring identified by
15 Gladwill.

16 18. The geologist with AMEC conducted an inspection and noted that it was likely
17 a seep rather than a spring, and that the ground-water discharge did not likely persist
18 throughout the summer.

19 19. According to AMEC's geologist, the seep was likely fed by snowmelt on a
20 gentle slope a short distance north of the spring.

21 20. Based on the recommendations from the geologist, as well as input from
22 Gladwill, Ruby paid for the geologist to oversee the construction of a retention pond for the
23 seep to collect water for Gladwill's cattle to drink.

24 21. On July 11, 2011, AMEC's geologist oversaw the installation of the retention
25 pond.

26 22. Approximately one foot of water had accumulated in the pool by the morning of
27 July 12, 2011.

28 23. Ruby did not perform any additional construction near the seep after July 12,
29 2011.

1 24. After the seep was improved and the other conditions resolved, Gladwill
2 identified several new issues that she wanted Ruby to take care of, including placing rip rap
3 rock in the drainage ditches and replacing fences.

4 25. Gladwill also requested that because soil had eroded from the Right-of-Way
5 during construction that Ruby add more topsoil to a section of the Right-of-Way that she
6 alleged was lower than the surrounding ground.

7 26. Ruby agreed to Gladwill's request to bring in more topsoil.

8 27. The parties then entered into a Surface Lease and Material Site Agreement with
9 respect to the topsoil, which required Ruby to take and haul topsoil from one area of Gladwill's
10 ranch to the Right-of-Way.

11 28. Ruby paid Gladwill another \$40,875.00 for the topsoil pursuant to the Surface
12 Lease and Material Site Agreement.

13 29. After the Pipeline was installed on Gladwill's property, the surface of the Right-
14 of-Way was graded and the contours re-established.

15 30. The evidence establishes that the re-contouring of the Right-of-Way was almost
16 level.

17 31. There is no proof that Ruby inappropriately contoured the Right-of-Way.

18 32. Instead, the evidence establishes that Ruby properly graded and contoured the
19 Right-of-Way on Gladwill's property.

20 33. Ruby's work in grading and contouring the Right-of-Way on Gladwill's
21 property was also required in the FERC approval documents.

22 34. In addition, FERC makes routine inspections.

23 35. FERC recently conducted an annual inspection on June 11-13, 2012 of the
24 entire Pipeline route, which included a review of the Right-of-Way on Gladwill's property.

25 36. On July 30, 2012, FERC prepared a report of its inspection, which included
26 Gladwill's property.

27 37. FERC did not find any issues or problems with the Right-of-Way on Gladwill's
28 property, other than patchy revegetation indicative of the majority of the Pipeline route.

1 38. There is no evidence of any violation of FERC requirements.

2 39. There is no proof that Ruby varied from any FERC requirement.

3 40. As the project came to an end, Gladwill informed Ruby that she wanted to do
4 the final re-seeding on the lower part of the Right-of-Way, place the rip rap rock and install the
5 fencing. Ruby agreed to allow Gladwill to complete these tasks.

6 41. Ruby then purchased and provided the seeds and fencing material to Gladwill.

7 42. Ruby re-seeded the upper part of the Right-of-Way.

8 43. Despite being paid by Ruby to reseed the lower part of the Right-of-Way,
9 Gladwill never reseeded the lower part of the Right-of-Way.

10 44. Gladwill also did not place the rip rap rock in the ditches as she was paid to do.

11 45. Vegetation along the Right-of-Way helps to protect against erosion.

12 46. Rip rap rock also helps protect against erosion.

13 47. Since the completion of construction, no soil has eroded from the Right-of-Way.

14 48. Since the completion of construction, the ditches constructed across the Right-
15 of-Way by Ruby have not failed.

16 49. There is no evidence that Ruby did not comply with the Right-of-Way and
17 Letter Agreements.

18 50. There is also no proof that Ruby inappropriately reseeded the Right-of-Way or
19 inappropriately placed rock on the Right-of-Way.

20 51. There is also no proof that Gladwill suffered any damage related to the
21 construction of the Right-of-Way since the completion of the Right-of-Way.

22 52. The spring that Gladwill alleges Ruby damaged is likely a seep rather than a
23 spring.

24 53. Ruby improved the seep in July 2011 by constructing a retention pond.

25 54. Immediately after the improvement, water was observed in the retention pond.

26 55. Ruby did not perform any additional construction near the seep after it
27 improved the seep and observed water in the retention pond it had constructed.

28 56. Ruby's expert testified that spring was a seasonal or semi-seasonal seep that

1 results from hardpan snowfall or precipitation above the seep.

2 57. The winter of 2011-2012 was unusually dry.

3 58. Gladwill presented no proof of any damage for the loss of the seep/spring.

4 59. The loss of the seep/spring also could have been prevented by Gladwill.

5 60. Gladwill was paid for the easement and an anticipated damage amount.

6 61. It would be anticipated that there would be damage to anything that stands
7 directly in the way, including ledges or rock formations, of the Pipeline.

8 62. Gladwill also anticipated that there would be dynamite near the seep/spring, and
9 that the rock formations in the location of the seep/spring would be subject to explosives.

10 63. In addition, Gladwill had notice on several occasions of where the Pipeline was
11 going, including from the initial Pipeline route, the preparation of the Environmental Impact
12 Statement, her son working on the Pipeline, and stakes in the ground.

13 64. Ruby did nothing in the area of the seep/spring other than what it was given
14 permission to do.

15 65. Ruby did not cause any unanticipated damage, nor is Ruby responsible for the
16 loss of the spring.

17 66. There is no evidence that Ruby damaged the seep/spring.

18 67. Ultimately, there is no proof of any breach of contract.

19 68. And there is no proof of any damages.

20 69. Mr. Gary Gladwill reconfigured the water flow on Gladwill's property for good
21 and appropriate reasons.

22 70. Mr. Gladwill sent water across the newly existing Right-of-Way.

23 71. If Gladwill wants to protect or change the water flow, Mr. Gladwill is the one
24 who has to do it.

25 72. Ruby has continuing obligation to maintain and repair the Right-of-Way.

26 73. If it appears there is a natural gully down the easement, Ruby has the obligation
27 to maintain it.

28 74. Ruby, however, is not obligated to re-contour the Right-of-Way so that water

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1 flows onto entire property outside of the Right-of-Way to the satisfaction of the landowner.

2 75. The easement agreement is quite clear as to what Ruby is required to do. And
3 Ruby answered that call. Ruby paid for the dirt, and it appropriately re-contoured the Right-of
4 Way.

5 **II. CONCLUSIONS OF LAW**

6 On March 7, 2011, Gladwill filed suit against Ruby alleging Ruby breached the Letter
7 Agreement and Right-of-Way Agreement. Gladwill also sought a preliminary and permanent
8 injunction to prevent Ruby from: (1) placing a second, non-authorized water pipeline on the
9 Pipeline Easements and/or from otherwise trespassing on her property; (2) allowing erosion of
10 topsoil from the Right-of-Way; (3) allowing cattle to escape; and (4) using unauthorized,
11 illegal, and/or unworkmanlike construction practices.¹

12 With respect to her Breach of Contract Claim, Gladwill alleges that Ruby breached the
13 parties' Agreements by failing to use appropriate and workmanlike techniques in the
14 construction of the Right-of-Way, which has caused: (a) the Right-of-Way to become a conduit
15 for rain and snow melt run-off causing erosion of topsoil which is essential to sustain the
16 grazing land of Gladwill's cattle ranch; and (b) topsoil to bury land not part of the Right-of-
17 Way, thereby depriving Gladwill of an ability to graze her cattle and make a living. In
18 addition, although not alleged in her Complaint, Gladwill subsequently asserted that Ruby
19 damaged a spring near the Right-of-Way, causing it to stop working.

20 Regarding Gladwill's claims for Preliminary and Permanent Injunctions, Gladwill
21 asserts that soil eroding from the Right-of-Way is causing her harm and irreparable damage
22 that should also be enjoined. Although not set forth in her Complaint, Gladwill subsequently
23 asserted that Ruby failed to appropriately grade and re-establish contours of the Right-of-Way
24 to the land's preconstruction status, and the Court should therefore mandate that Ruby restore
25 the ranch to its preconstruction status by ordering Ruby to haul tens of thousands of yards of
26

27 ¹ Because the temporary water line was removed prior to completion of construction and no
28 cattle have escaped since completion of construction, Gladwill's request for injunctive relief
related to these issues became moot prior to trial.

1 topsoil from one area of Gladwill's ranch to the Right-of-Way, and then pay her for the topsoil.

2 **A. Gladwill's Breach of Contract Claim**

3 In order to prevail on a breach of contract claim, the plaintiff must establish (1) the
4 existence of a valid contract imposing obligations and duties; (2) material breach by the
5 defendant; and (3) damage as a result of the breach. *Saini v. Int'l Game Tech*, 434 F. Supp. 2d
6 913, 919-20 (D. Nev. 2006) (citing *Richardson v. Jones*, 1 Nev. 405 (1865)). A valid contract
7 exists between Gladwill and Ruby in the form of the Right-of-Way Agreement. Gladwill,
8 however, has failed to establish that Ruby materially breached the Right-of-Way Agreement
9 and has failed to establish she has suffered any damages.

10 **1. *Gladwill Has Failed To Prove Ruby Breached the Agreements By Not***
11 ***Properly Grading and Reestablishing the Contours of the Right-of-Way***

12 The Letter Agreement stated that “[a]fter construction of the project the disturbed right-
13 of-way will be appropriately graded, contours re-established and reseeded.” Similarly, the
14 Right-of Way-Agreement required Ruby to “take all necessary measures to maintain proper
15 drainage to prevent erosion of the surface of such easement premises, and further at the
16 completion thereof to re-contour and re-seed all disturbed areas with seed mixture
17 recommended by Owner and/or appropriate agencies.”

18 Gladwill alleges that Ruby breached the parties' Agreements by failing to use
19 appropriate and workmanlike techniques in the construction of the Right-of-Way, and in
20 particular failed to appropriately grade and re-establish the contours of the Right-of-Way,
21 which has caused: (a) the Right-of-Way to become a conduit for rain and snow melt run-off
22 causing erosion of topsoil which is essential to sustain the grazing land of Gladwill's cattle
23 ranch; and (b) topsoil to bury land not part of the Right-of-Way, thereby depriving Gladwill of
24 an ability to graze her cattle and make a living. Ruby denies such allegations.

25 The evidence establishes that Ruby used appropriate and workmanlike techniques in the
26 construction of the Right-of-Way. The evidence further establishes that Ruby properly graded
27 and re-established the contours of the Right-of-Way. Gladwill has failed to meet her burden
28 that Ruby materially breached the Agreements by failing to appropriately grade and reestablish

1 the contours of the Right-of-Way. Gladwill has also failed to present sufficient evidence that
2 she was damaged as a result of Ruby's actions and/or inactions. Gladwill has thus failed to
3 present sufficient evidence of liability, breach or damages. Accordingly, Ruby is entitled to
4 judgment in its favor and against Gladwill on Gladwill's Breach of Contract claim that Ruby
5 failed to grade and reestablish the contours along the Right-of-Way.

6 ***2. Gladwill Has Failed To Prove Ruby Breached the Agreement By Not Properly
7 Establishing Proper Erosion Techniques During Construction.***

8 Gladwill also alleges that Ruby did not employ proper erosion techniques during
9 construction which caused some topsoil to erode from the Right-of-Way and be deposited onto
10 her property. Ruby denies that it did not employ proper erosion techniques.

11 The evidence establishes that during construction, snowmelt and rainfall runoff caused
12 some soil to erode from the Right-of-Way and be deposited onto Gladwill's property. With
13 respect to such eroded soil, the evidence establishes that Ruby paid Gladwill \$12,250 in
14 damages in connection with that erosion. Ruby's payment of \$12,250.00 for such damages,
15 and Gladwill's acceptance thereof, constituted an account stated of the settled amount for that
16 erosion. In addition, the evidence establishes that Ruby and Gladwill entered into a Surface
17 Lease and Material Site Agreement which required Ruby to take and haul topsoil from one area
18 of Gladwill's ranch to the Right-of-Way to replace the eroded topsoil. Ruby paid Gladwill
19 another \$40,875.00 for the topsoil pursuant to the Surface Lease and Material Site Agreement.
20 Ruby's replacement of the eroded topsoil and subsequent grading and recontouring satisfied
21 Ruby's obligation under the Right-of-Way Agreement with respect to the erosion that occurred
22 during construction.

23 Since the completion of construction, Gladwill has failed to present sufficient evidence
24 of erosion or damage that was caused by Ruby. As a result, there is insufficient evidence of
25 liability, breach or damages with respect to erosion since the completion of construction. Ruby
26 is therefore entitled to judgment in its favor and against Gladwill on Gladwill's Breach of
27 Contract claim that Ruby failed to employ proper erosion techniques.

28 ///

1 **3. *Gladwill Has Failed to Prove That Ruby Damaged The Spring/Seep.***

2 Although not alleged in her Complaint, Gladwill subsequently asserted that Ruby
 3 damaged a spring near the Right-of-Way, causing it to stop working. Ruby denies it damaged
 4 the spring. Ruby asserts that the spring is really a seep that it is fed by snowmelt and rainfall,
 5 and that the reason it is not producing water is because of the unusually dry winter of 2011-12.

6 The evidence establishes that the water source allegedly damaged by Ruby is not a
 7 spring but rather a seep that results from hardpan snowfall or precipitation above the seep. In
 8 July of 2011, and at Gladwill's request, Ruby constructed a retention pond to collect water
 9 from the seep. On July 12, 2011, water was observed in the retention pond from the seep.
 10 Ruby did not perform any additional construction activities near the seep after July 12, 2011,
 11 thus demonstrating that the seep was working when Ruby completed construction. Gladwill
 12 has failed to present sufficient evidence that Ruby destroyed the seep. As a result, Gladwill
 13 cannot show that she has been damaged by the loss of the seep. Ruby is therefore entitled to
 14 judgment in its favor and against Gladwill on her claim that Ruby damaged the seep.

15 **B. *Gladwill's Preliminary and Permanent Injunction Claims***

16 A party seeking a permanent injunction must satisfy the following four factors before
 17 the district court may grant a permanent injunction: 1) The existence of irreparable injury
 18 (including a continuing and imminent threat of harm); 2) remedies at law are inadequate to
 19 compensate for that threat of harm; 3) whether the balance of hardships between plaintiff and
 20 defendant tips in favor of a remedy in equity; and 4) the public interest would not be disserved
 21 by a permanent injunction. *Bowler v. Home Depot USA Inc.*, 2011 U.S. Dist. LEXIS 4975
 22 (N.D. Cal. 2011) (*citing Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743, 177 L. Ed. 2d
 23 461 (2010), *citing eBay Inc. v. MercExchanges, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837,
 24 164 L. Ed. 2d 641 (2006)); *See also Chateau Vegas Wine, Inc. v. Southern Wine & Spirits of*
 25 *Am., Inc.*, 265 P.3d 680, 684 (Nev. 2011) (“Permanent injunctive relief may only be granted if
 26 there is no adequate remedy at law, a balancing of equities favors the moving party, and
 27 success on the merits is demonstrated.”).

1 An injunction is an extraordinary remedy not to be lightly issued. *Hubbard Bus. Plaza*
 2 *v. Lincoln Liberty Life Ins. Co.*, 649 F. Supp 1310, 1317 (D. Nev. 1986): Where the purpose of
 3 the injunction is to require affirmative acts, or a mandatory injunction, the court should
 4 exercise restraint and caution when considering such a request. *See Leonard v. Stoebling*, 102
 5 Nev. 543, 551 (1986). Mandatory injunctions, which disrupt the status quo, are particularly
 6 disfavored and subject to a greater degree of scrutiny. *LGS Architects, Inc. v. Concordia*
 7 *Homes of Nev.*, 434 F.3d 1150, 1158 (9th Cir. 2006); *overruled on other grounds, Perfect 10,*
 8 *Inc. v. Google, Inc.*, 653 F.3d 976 (9th Cir. 2011); *see also Stanley v. Univ. of S. Cal.*, 13 F.3d
 9 1313, 1320 (9th Cir. 1994) (“A prohibitory injunction maintains the status quo whereas a
 10 mandatory injunction “goes well beyond simply maintaining the status quo *pendente lite* [and]
 11 is particularly disfavored.”); *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984)
 12 (Courts should be “extremely cautious” when asked to issue mandatory injunctions). “Thus,
 13 an award of mandatory preliminary relief is not to be granted unless both the facts and the law
 14 clearly favor the moving party and extreme or very serious damage will result.” *Franck v.*
 15 *Yolo County*, 2012 U.S. Dist. LEXIS 113859, 5-6 (E.D. Cal. 2012) (citing *Anderson v. United*
 16 *States*, 612 F.2d 1112, 1115 (9th Cir. 1979)). “[I]n doubtful cases” a mandatory injunction will
 17 not issue. *Id.* Likewise, mandatory injunctions are not issued “where the injury complained of
 18 is capable of compensation in damages.” *Kittitas Co. Fire Dist. #8 v. United States Forest*
 19 *Serv.*, 2011 U.S. Dist. LEXIS 146335, 11-12 (E.D. Wash. 2011) (citations omitted).

20 1. ***Gladwill Failed To Establish Irreparable Injury***

21 “In order to prevail on the question of whether there exists an immediate threat of
 22 irreparable injury, a plaintiff must do more than raise the possibility of future harm. The
 23 plaintiff bears the burden of demonstrating that the threat of future harm is immediate — as
 24 opposed to the mere possibility of harm at some point in the future.” *Bowler v. Home Depot*
 25 *USA Inc.*, 2011 U.S. Dist. LEXIS 4975, 8-9 (N.D. Cal. 2011) (*citing Caribbean Marine*
 26 *Servics. Co., Inc. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988)). Thus, speculative and
 27 uncertain harm is not sufficient for an injunction. Injunctions are “to prevent existing or
 28 presently threatened injuries” and “will not be granted against something *merely feared* as

1 liable to occur at some indefinite time in the future.” *Connecticut v. Massachusetts*, 282 U.S.
 2 660 (1931) (*emphasis added*) (citing *New York v. Illinois*, 274 U.S. 488 (1927); *New Jersey v.*
 3 *Sargent*, 269 U.S. 328, 331, 338 (1926)); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555
 4 U.S. 7, 22, 129 S.Ct. 365, 375-376 (2008) (“Issuing a preliminary injunction based only on a
 5 possibility of irreparable harm is inconsistent with our characterization of injunctive relief as
 6 an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
 7 entitled to such relief.”). Accordingly, a plaintiff’s subjective fear that the injury might reoccur
 8 is not sufficient to demonstrate capability of repetition of an injury. *Preiser v. Newkirk*, 422
 9 U.S. 395, 402-03, 95 S. Ct. 2330, 45 L. Ed. 2d 272 (1975).

10 Moreover, a showing of no more than “mere monetary harm” or even “financial
 11 hardship” does not demonstrate irreparable harm. *Elias v. Connell*, 908 F.2d 521, 526 (9th Cir.
 12 1990). Likewise, “[m]erely serious or substantial’ harm is not irreparable harm.” *Id.* (*citing*
 13 *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) (quoting *Prairie Band of*
 14 *Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001)). To satisfy the
 15 irreparable harm requirement, the movant “must show that the injury complained of is of such
 16 *imminence* that there is a clear and present need for equitable relief to prevent irreparable
 17 harm.” *Walker v. Bay*, 2008 U.S. Dist. LEXIS 66662, *6 (D. Colo. Sept. 2, 2008) (*citing*
 18 *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (*emphasis in original*)
 19 (*quoting Wis. Gas Co. v. FERC*, 244 U.S. App. D.C. 349, 758 F.2d 669, 674 (D.C. Cir. 1985)).

20 Gladwill has failed to present any evidence that there is any impending danger of
 21 irreparable harm that would support such an extraordinary remedy. Gladwill failed to identify
 22 how she is suffering imminent or irreparable harm. In fact, Gladwill has offered no evidence
 23 of such erosion since the completion of the Right-of-Way. Rather, Gladwill testified that she
 24 has a fear that erosion and substantial harm will occur at some indefinite time in the future.
 25 This fear of future harm is insufficient to establish a permanent or mandatory injunction. For
 26 this reason alone, Ruby is entitled to judgment in its favor and against Gladwill on her claim
 27 for a preliminary and permanent injunction.

28 ///

1 2. *Adequate Remedy at Law Is Available*

2 Gladwill also cannot establish that an adequate remedy at law is unavailable. It is well
 3 established that injunctive relief is only available when a legal remedy is inadequate. *W. Land*
 4 *Exch. Project v. United States BLM*, 315 F. Supp. 2d 1068, 1098 (D. Nev. 2004) (declaring
 5 legal remedies are inadequate where no party is advancing any theory under which the
 6 plaintiffs could recover money damages). A legal remedy is inadequate when the plaintiff is
 7 “faced with immediate and irreparable injury for which he cannot be compensated with money
 8 damages.” *Coffee Dan's, Inc. v. Coffee Don's Charcoal Broiler*, 305 F. Supp. 1210, 1216 (N.D.
 9 Cal. 1969). Thus, “[a] plaintiff is not entitled to an injunction if money damages would fairly
 10 compensate him for any wrong he may have suffered.” *Youngstown Sheet & Tube Co. v.*
 11 *Sawyer*, 343 U.S. 579, 595 (1952); *see also W. Land Exch. Project*, 315 F.Supp. at 1098;
 12 *Stanley v. University of S. Cal.*, 13 F.3d at 1320.

13 Here, Ruby has a continuing obligation to maintain and repair the Right-of-Way. If it
 14 appears there is a natural gully down the Right-of-Way which would result in damages to
 15 Gladwill, Ruby has the obligation to maintain it. In fact, the parties’ Right-of-Way Agreement
 16 expressly provides for money damages if Mrs. Gladwill’s pastures are damaged because of
 17 Ruby’s conduct: “Company, by acceptance hereof, agrees to pay for damages to crops, pasture,
 18 and fences which may arise from laying, constructing, maintaining, operating, repairing,
 19 replacing or removing said pipeline.” Thus, the parties have already agreed that an adequate
 20 remedy at law exists under the precise circumstances of this case.

21 Ultimately, Gladwill has failed to show that an immediate and irreparable injury exists,
 22 and that there is no adequate remedy at law. Instead, pursuant to the Right-of-Way Agreement
 23 and FERC requirements, Ruby has a continuing obligation to maintain and repair the Right-of-
 24 ///

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1 Way. As a result, Ruby is entitled to judgment in its favor and against Gladwill on her claim
2 for a preliminary and permanent injunction.

3 Dated this 10th day of January, 2013.
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5 
6 JUDGE ROBERT C. JONES
7 United States District Court Judge
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9
10
11
12

13 SUBMITTED BY:

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