

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Plaintiffs,)

Case: 1:08-cv-02187
Assigned To : Urbina, Ricardo M.
Assign. Date : 12/17/2008
Description: Admin. Agency Review

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)
C. Stephen Allred, in his official capacity)
as Assistant Secretary for Lands and)
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Department of the Interior)
1849 C Street, NW)
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)
)
Kent Hoffman,)
in his official capacity as Deputy State)
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Defendants.)
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_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This suit challenges the decision by the U.S. Bureau of Land Management (BLM) to authorize oil and gas development on nearly 110,000 acres of some of Utah's most spectacular redrock country lands at the agency's December 19, 2008 quarterly oil and gas lease sale. Development of these leases will degrade air quality at Arches National Park, Canyonlands National Park, and Dinosaur National Monument. It will lead to construction of well pads, pipelines, and roads in some of Utah's most impressive wilderness quality landscapes such as the Desolation Canyon wilderness character area. The Desolation Canyon region is one of the largest roadless areas in the lower forty-eight states. These activities will also harm Nine Mile Canyon, an area that BLM describes as "the longest

outdoor art gallery in the world” because of its substantial concentration of prehistoric archeological sites and rock art.

2. BLM rushed to complete the challenged lease sale before a new administration—one that has publicly criticized the lease sale—takes office in January 2009. In its haste, the agency failed to complete the analysis required by federal law for the protection of natural and cultural resources. BLM ignored requests by the U.S. Environmental Protection Agency (EPA), National Park Service, the Hopi Tribe, and numerous environmental and historic preservation organizations to analyze, among other issues, air pollution at national parks, destruction of cultural resources, and climate change. BLM staff themselves have acknowledged that the process was rushed. “The process was a little different,” said Terry Catlin, energy team leader in BLM’s Salt Lake office. “It does look like we were a little rushed.”¹ A November 10, 2008 Washington Post editorial described the sale as “[o]ne last gift to the oil and gas industry” by the Bush administration.²

3. BLM’s leasing decision to lease the challenged parcels is governed by the resource management plans (RMPs) for the Moab, Price, and Vernal BLM field offices. These RMPs address BLM’s activities on nearly 7 million acres of public lands in Utah. The RMPs determine what lands are available for oil and gas leasing. After finalizing the RMPs on October 31, 2008, BLM immediately announced the lease sale. BLM relied on the final environmental impacts statements (FEISs) for the RMPs as the environmental analysis under the National Environmental Policy Act (NEPA) for the lease sale.

¹See http://www.denverpost.com/breakingnews/ci_11233553.

²See <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/12/AR2008111202533.html>.

4. BLM's leasing decision to lease violates NEPA, Interior Secretary Order No. 3226, the Federal Land Policy and Management Act (FLPMA), and the National Historic Preservation Act (NHPA), and is arbitrary and capricious under the Administrative Procedure Act (APA). Prior to auctioning off the leases, BLM failed to take a "hard look" at the environmental impacts of its action in violation of NEPA and FLPMA. Specifically, BLM ignored ozone pollution threatening National Parks and Monuments, despite warnings from the EPA and National Park Service. The Park Service asked BLM to defer ninety-three parcels from the December 19th lease sale, in part, because the air quality analysis was so deficient that it was impossible to tell whether federal standards would be violated and visibility impaired within Canyonlands National Park and Dinosaur National Monument. In response, BLM deferred leasing only twenty-four parcels, and did not perform any additional analyses.

5. BLM also ignored the critical issue of climate change, including the greenhouse gas contributions from oil and gas leasing and development. BLM also ignored the impacts that climate change will have to the seven million acres of arid Utah public lands governed by these RMPs. In a series of letters to BLM in the fall of 2008, EPA confirmed that BLM had not taken a hard look at climate change as required by NEPA. BLM also did not comply with Interior Secretary Order No. 3226 which directs BLM to "consider and analyze potential climate change impacts . . . when developing multi-year management plans."

6. BLM violated the NHPA because it sanctioned development on leases that will have tremendous impacts to cultural resources, including the archeological sites and rock art

of Nine Mile Canyon, without first analyzing those impacts. In doing so, BLM ignored the concerns of the Hopi Tribe.

JURISDICTION AND VENUE

7. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-06.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendants Stephen Allred, Assistant Secretary for Lands and Minerals Management, and the U.S. Bureau of Land Management reside in Washington, D.C. Additionally, Plaintiffs The Wilderness Society, National Parks Conservation Association, and the National Trust for Historic Preservation are headquartered in Washington, D.C., and plaintiffs Southern Utah Wilderness Alliance, Sierra Club, and Natural Resources Defense Council maintain offices in Washington, D.C.

PARTIES

9. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) is a non-profit environmental membership organization dedicated to the sensible management of all public lands within the State of Utah and the preservation and protection of plant and animal species and Utah’s remaining wild lands. SUWA has offices in Utah and in Washington, D.C. SUWA has members in all fifty states and several foreign countries. SUWA is also a charter member of the Utah Wilderness Coalition (UWC), a coalition of over 200 local and national organizations dedicated to the passage of America’s Red Rock Wilderness Act (H.R. 1919/S 1170), which would designate approximately 9.5 million acres of stunning BLM-managed land in Utah as wilderness. SUWA brings this action on its own behalf and on behalf of its adversely affected members.

10. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL (NRDC) is a non-profit environmental membership organization with more than 400,000 members throughout the United States. NRDC has had a longstanding and active interest in the protection of the public lands in Utah. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of land and wildlife management and resource development issues. Over the years, NRDC has participated in a number of court cases involving resource development issues throughout the American West, including Utah. NRDC brings this action on its own behalf and on behalf of its members.

11. Plaintiff THE WILDERNESS SOCIETY (TWS) is a non-profit national leadership organization founded in 1935. TWS works to protect America's wilderness and to develop a network of wild lands through public education, scientific analysis, and advocacy. The Wilderness Society's goal is to ensure that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine deserts, mountains, forests and rivers provide. The Wilderness Society views protecting wilderness quality and other sensitive Utah BLM managed lands as vital to achieving its mission. TWS has worked for years to protect BLM wilderness quality and other sensitive lands in Utah. The Wilderness Society is a charter member of the Utah Wilderness Coalition. The Wilderness Society brings this action on its own behalf and on behalf of its members.

12. Plaintiff NATIONAL PARKS CONSERVATION ASSOCIATION (NPCA) is a non-profit national organization whose primary mission is to address major threats facing the National Park System. NPCA is the leading voice of the American people in protecting and enhancing the National Park System and has more than 325,000 members throughout the

United States, with over 2,000 in Utah. NPCA plays a crucial role in ensuring that America's national parks are protected in perpetuity by undertaking a variety of efforts, including: advocating for the parks and the National Park Service, educating decision-makers and the public about the importance of preserving the parks, lobbying members of Congress to uphold the laws that protect the parks and in support of new legislation to address threats to the parks, and assessing the health of the parks and park management to better inform NPCA's members and the general public about the state of the park system. NPCA brings this action on its own behalf and on behalf of its members.

13. Plaintiff GRAND CANYON TRUST (Trust) is a non-profit conservation organization that advocates for sensible solutions to resource management problems on the Colorado Plateau. The Trust has worked since its inception in 1985 to protect and restore the spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude that characterize the Colorado Plateau. The Trust has offices in Flagstaff, Arizona and Moab, Utah and members nationwide. The Trust brings this suit on its own behalf and on behalf of its members.

14. Plaintiff THE SIERRA CLUB is a non-profit corporation with its principal place of business in San Francisco, California. The Sierra Club is a national conservation organization with a membership of approximately 560,000. The Utah Chapter is the Utah division of the Sierra Club and has over 6,000 members. The Sierra Club's purposes include protecting and enhancing the natural resources and human environment of the United States and the earth, and exploring, enjoying, and preserving those resources. Specifically, the Sierra Club advocates responsible management of public lands resources in the state of Utah.

The Utah Chapter has a long history of public education and advocacy to protect such resources. The Sierra Club is a charter member of the Utah Wilderness Coalition.

15. Plaintiff NATIONAL TRUST FOR HISTORIC PRESERVATION (National Trust) is a non-profit organization chartered by Congress in 1949 to “facilitate public participation” in historic preservation, and to further the purposes of federal historic preservation laws. 16 U.S.C. §§ 461, 468. With the strong support of more than 266,000 members and supporters nationwide, including over 830 members in the State of Utah and approximately 3,000 member organizations, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition to its headquarters in Washington, D.C., the National Trust has eight regional and field offices throughout the country, including a Mountains/Plains Office in Denver, Colorado, which is responsive to issues in Utah. The National Trust also operates 29 historic sites open to the public.

16. Plaintiffs’ members use and enjoy public lands in and throughout Utah for a variety of purposes, including scientific study, recreation, wildlife viewing, hunting, aesthetic appreciation, and financial livelihood. These members frequently visit and recreate (*e.g.*, boating, camping, hiking, birding, sightseeing, enjoying solitude, viewing cultural resources, and engaging in scientific study) throughout the public lands governed by the Vernal, Price and Moab RMPs as well as the specific lands within those offices that are being offered for sale at Utah BLM’s December 19, 2008 competitive oil and gas lease sale and will continue to do so in the future. Plaintiffs’ members also regularly visit and enjoy Utah’s spectacular national parks, monuments, wilderness study areas, wilderness character areas, and other

remarkable red rock public lands, including Arches and Canyonlands National Parks and Dinosaur National Monument.

17. Plaintiffs and their members' interests will be directly affected and irreparably harmed by decisions made in the Vernal, Price, and Moab RMPs, as well as BLM's decision to auction the leases challenged in this case. The RMPs open lands to oil and gas leasing and development, and BLM's December 12, 2008 "decision to lease" approved the sale of the particular parcels at issue in this suit. Development activities authorized under the RMPs and leases include, among others, the construction and maintenance of access roads, wells, drill pads, pipelines, waste pits, and noisy compressor stations that run 24-hours a day. Development also leads to an increase in traffic to maintain these facilities. These activities will degrade Utah's air quality, including air quality within Utah's prized national parks and monuments, and destroy and degrade numerous cultural artifacts. They will also significantly affect the wilderness quality and other resources of the public lands at stake in this suit. This environmental and cultural degradation will adversely impact Plaintiffs' members recreational, cultural, and scientific interests in these lands. Plaintiffs and their members are also harmed by BLM's failure to adequately address these impacts through proper NEPA and NHPA analysis. Plaintiffs and their members have a substantial interest in seeing that the BLM complies with these laws and in participating in the legally-required public processes.

18. Defendant STEPHEN ALLRED is sued in his official capacity as Assistant Secretary of the United States Department of the Interior for Lands and Minerals Management. In that capacity, he is responsible for ensuring that the agencies within the Department, including the Bureau of Land Management, comply with all applicable laws and

regulations, including NEPA and the NHPA. Mr. Allred signed the final records of decision for the Vernal, Price, and Moab RMPs.

19. Defendant KENT HOFFMAN is sued in his official capacity as the Deputy State Director of the BLM's Utah State Office. In that capacity he signed BLM's decision to proceed with the December 19, 2008 oil and gas lease sale, including the sale of the eighty parcels at issue in this suit.

20. Defendant U.S. BUREAU OF LAND MANAGEMENT is an agency within the United States Department of the Interior that is directly responsible for carrying out the Department's obligations under statutes and regulations governing mineral leasing and development, including NEPA and the NHPA. BLM manages approximately 262 million acres of public lands across the nation and roughly 23 million acres in Utah.

LEGAL FRAMEWORK

I. THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

21. Congress enacted NEPA to, among other things, "encourage productive and enjoyable harmony between man and his environment" and to promote government efforts "that will prevent or eliminate damage to the environment." 42 U.S.C. § 4321.

22. To fulfill this goal, NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all "major Federal actions significantly affecting the environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4.

23. The agency should describe "any adverse environmental effects which cannot be avoided should the proposal be implemented." 42 U.S.C. § 4332(C)(ii). Overall, an EIS must "provide [a] full and fair discussion of significant impacts" associated with a federal decision and "inform decisionmakers and the public of the reasonable alternatives which

would avoid or minimize adverse impacts or enhance the quality of the human environment.”
40 C.F.R. § 1502.1. An EIS must identify direct, indirect, and cumulative impacts for each
reasonable alternative. *Id.* § 1502.15.

II. THE NATIONAL HISTORIC PRESRVATION ACT (NHPA)

24. Congress enacted the NHPA in 1966 to implement a broad national policy
encouraging the preservation of the country’s historic and cultural resources. 16 U.S.C. §
470(b), 470-1.

25. The heart of the NHPA is Section 106, which prohibits federal agencies from
approving any federal “undertaking,” including the issuance of any license, permit, or
approval, without first considering the effects of the action on historic properties or cultural
artifacts that are eligible for inclusion in the National Register of Historic Places. 16 U.S.C.
§§ 470f, 470w(7); 36 C.F.R. § 800.16(y).

26. The goal of Section 106 consultations is to “identify historic properties
potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or
mitigate any adverse effects.” 36 C.F.R. § 800.1.

27. Federal agencies must involve the State Historic Preservation Officer
(“SHPO”), Native American Tribes, and the public in each stage of a Section 106
consultation. *Id.* §§ 800.2, 800.3(f)(2), 800.4(b)(c), 800.14(B)(2)(i).

28. Prior to engaging in any undertaking, at a minimum, an agency must: (1)
identify the area of potential effects; (2) review existing information on historic properties
within this area (including possible historic properties not yet identified); (3) seek
information about historic properties from relevant parties, (4) evaluate the undertaking’s
potential effects on historic properties; and (5) develop and evaluate alternatives or

modifications to the undertaking that could avoid, minimize, or mitigate adverse effects. *Id.* §§ 800.3-800.7.

29. Under the NHPA, federal agencies may negotiate a programmatic agreement to govern consultation on a particular program. *Id.* § 800.14(b), *see also id.* § 800.3(a)(2). Any such agreement must be consistent with the NHPA and its implementing regulations. *Id.* § 800.14(a). BLM has entered into a programmatic agreement and a protocol agreement governing its activities in Utah. 2001 State Protocol Agreement between Utah State Office, BLM and Utah State Historic Preservation Office.

III. THE FEDERAL LAND POLICY AND MANAGEMENT ACT (FLPMA)

30. BLM manages its lands pursuant to FLPMA. 43 U.S.C. § 1701 *et seq.* Prior to FLPMA's passage in 1976, BLM lands were governed by a mélange of some 3,000 outdated and often-conflicting public lands laws, most of which were written when it was assumed that these "public domain" lands would be conveyed expeditiously to private ownership. FLPMA cleared away many of these outmoded laws and, for the first time, provided BLM with a comprehensive, statutory statement of purposes, goals, and authority for the use and management of BLM lands.

31. Section 202 of FLPMA, 43 U.S.C. § 1712(a), requires that BLM develop and maintain land use plans for each BLM area. BLM's land use plans, known as Resource Management Plans (RMPs), provide an orderly, public process for balancing among competing demands such as commercial exploitation, recreation, and environmental protection. 43 U.S.C. § 1712; 43 C.F.R. § 1601.0-2. RMPs provide a blueprint for how public lands are managed. Among other things, they allocate lands available for oil and gas leasing and impose conditions on that leasing, identify areas that are open, closed, or limited

to motorized use, designate areas of critical environmental concern (ACECs), and recommend river segments as suitable for designation under the National Wild and Scenic Rivers Act.

32. BLM must comply with all applicable air quality standards, including those found in the Clean Air Act, in land use planning and when authorizing activities under those plans. 43 U.S.C. § 1712(c)(8); 43 C.F.R. § 2920.7(b)(3).

33. BLM prepares an EIS as part of the RMP planning process: “Approval of a resource management plan is considered a major federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the [RMP] planning process and, wherever possible, the proposed plan and related [EIS] shall be published in a single document.” 43 C.F.R. § 1610.0-6.

FACTS GIVING RISE TO PLAINTIFFS’ CAUSES OF ACTION

I. BLM GEARS UP TO LEASE WILDERNESS QUALITY LANDS FOR OIL AND GAS DEVELOPMENT.

34. As part of its land use planning process, BLM determined that it was operating under outdated land use plans and needed new RMPs throughout the state of Utah. BLM started developing some of these plans as early as 2001, and this work continued through 2008.

35. After spending years on the plans, BLM finalized six RMPs covering more than eleven and a half million acres of public lands within a few weeks in the summer of 2008. These included the Moab, Price and Vernal RMPs, which cover around 7 million

acres. BLM regulations provide a thirty day protest period once the proposed RMPs and final EISs are issued. *See* 43 C.F.R. § 1610.5-2.

36. While in the process of finalizing the RMPS in the fall of 2008, Utah BLM field offices conducted internal reviews of a preliminary sale list for the quarterly oil and gas lease sale to be held on November 14, 2008. BLM later changed the date of the lease sale to December 19, 2008 so that it could rely on the Moab, Vernal, and Price RMPs once the RMP protests were resolved.

37. BLM has acknowledged that it needed to complete new RMPs for the Moab, Price, and Vernal field offices before being able to offer for lease the majority of the wilderness caliber lands at issue in this suit.

38. The December 19, 2008 lease sale is the last sale scheduled in Utah before the Bush administration leaves office.

II. MOAB, PRICE AND VERNAL RESOURCE MANAGEMENT PLANS

A. Moab Resource Management Plan

39. In June 2003, BLM's Moab field office issued a notice of intent in the Federal Register to prepare a new Moab resource management plan for the 1.8 million acres of BLM managed surface lands. These lands comprise the heart of Utah's magnificent red rock wilderness with iconic landmarks such as Labyrinth Canyon and Harts Point, as well as popular recreation and hunting destinations like Monitor and Merriman buttes and the southern portion of Utah's wild Book Cliffs. Two of the nation's most prized national parks, Arches National Park and Canyonlands National Park, are located in this area.

40. The Moab field office conducted public scoping on this proposal to develop a new resource management plant from June 2003 through January 2004.

41. In August 2007, the Moab field office announced the release of its draft Moab resource management plan and draft environmental impact statement (Moab DRMP/DEIS) and gave the public ninety days to review and comment on this three volume document. The BLM's Utah State Director denied requests by Plaintiffs and others to extend the comment period on the Moab DRMP/DEIS.

42. Plaintiffs Southern Utah Wilderness Alliance, TWS, National Trust, Sierra Club, and the Trust submitted timely comments on the Moab DRMP/DEIS.

43. The Environmental Protection Agency (EPA) submitted written comments on the Moab DRMP/DEIS on December 17, 2007 that critiqued, among other things, the lack of air quality analysis for ozone and other criteria pollutants regulated under the Clean Air Act. EPA also stated its concerns that BLM had failed to analyze the emission of greenhouse gases (carbon dioxide and methane) from oil and gas development and the impacts on climate change. EPA urged BLM to conduct such analyses and include the results in the final environmental impact statement and resource management plans.

44. The Moab DRMP/DEIS did not undertake quantitative air quality modeling for ozone and other criteria pollutants regulated under the Clean Air Act.

45. The Moab DRMP/DEIS did not consider the impacts of the plan with respect to climate change or the impacts of climate change on activities authorized under the plans.

46. On August 1, 2008, the BLM's Utah State Director announced the release of its Moab field office proposed resource management plan and final environmental impact statement (Moab PRMP/FEIS). The public was given thirty days to review and file a formal protest with the BLM Director over decisions made in this final plan.

47. Plaintiffs, Southern Utah Wilderness Alliance, TWS, the Trust, and the Sierra Club filed timely formal protests with the BLM Director. Among other issues, the groups protested BLM's failure to take a "hard look" at the air quality impacts of oil and gas development and the issue of climate change.

48. On September 12, 2008, EPA submitted written comments to the Moab field office on the Moab PRMP/FEIS. EPA noted that the Moab PRMP/FEIS did not contain sufficient information to support BLM's conclusion that ambient air quality would be protected from emissions associated with oil and gas development (e.g. emissions of volatile organic compounds and oxides of nitrogen that form ozone pollution). Specifically, EPA expressed its concern that because BLM did not conduct detailed dispersion modeling, EPA did not have confidence that projected concentrations would be below the Clean Air Act's National Ambient Air Quality Standards. EPA also stated its concern that monitoring data from Canyonlands National Park was already close to the Clean Air Act standard for ozone. Additionally, EPA again objected to BLM's failure to consider the emission of greenhouse gases and climate change.

49. On October 31, 2008, Defendant Assistant Secretary Allred signed the record of decision (Moab ROD) approving the final Moab RMP.

50. BLM denied or otherwise rejected Plaintiffs' protests of the Moab PRMP/FEIS.

51. The Moab ROD did not substantively modify the Moab PRMP/FEIS or otherwise respond to EPA's concerns.

52. The approved Moab RMP designated areas as available for oil and gas leasing and development, including the 37 parcels at issue in this suit located in the Moab field office.

B. Price Resource Management Plan

53. In November 2001, BLM's Price field office issued a notice of intent in the Federal Register to prepare a new resource management plan for the 2.5 million acres of BLM managed surface lands in east-central Utah. The Price field office includes Utah's incomparable San Rafael Swell with its red rock canyons and spires, as well as Nine Mile Canyon, a virtual outdoor museum of cultural sites including thousands of rock art drawings. Remote Desolation Canyon, named by explorer John Wesley Powell in the late 1860s, forms the eastern boundary of the Price field office and offers a popular multi-day river running experience without the sight or sound of human development.

54. The Price field office conducted public scoping on its proposal to develop a new resource management plan in the winter of 2002.

55. In July 2004, the Price field office announced the release of its draft Price resource management plan and draft environmental impact statement (Price DRMP/DEIS) and gave the public ninety days to review and comment on this three volume document. The Price field office manager granted requests by Plaintiffs and others to extend the comment period on the Price DRMP/DEIS by forty-five days.

56. Plaintiffs Southern Utah Wilderness Alliance, TWS, NRDC, National Trust, and Sierra Club submitted timely comments on the Price DRMP/DEIS.

57. On December 13, 2005, BLM's Price field office announced an additional sixty day public comment period on potential designation of additional areas of critical

environmental concern in the Price PRMP. Plaintiffs Southern Utah Wilderness Alliance and The Wilderness Society submitted timely comments on this proposal.

58. In September 2007, the BLM's Price field office announced the release of a supplemental draft EIS that considered an additional "alternative E" and gave the public ninety days to comment on this supplement. Plaintiffs Southern Utah Wilderness Alliance and The Wilderness Society submitted timely comments on the supplemental draft EIS.

59. On August 29, 2008, BLM's Utah State Director announced the release of its proposed resource management plan and final environmental impact statement (Price PRMP/FEIS). The public was given thirty days to review and file a formal protest with the BLM Director over decisions made in this final plan.

60. Plaintiffs Southern Utah Wilderness Alliance, TWS, National Trust, and Sierra Club filed a timely formal protest with the BLM Director. Among other issues, the groups protested BLM's failure to take a "hard look" at the air quality impacts of oil and gas development and the issue of climate change.

61. On October 2, 2008, EPA submitted written comments on the Price PRMP/FEIS. EPA critiqued BLM's failure to conduct quantitative air quality analysis and stated its concern that the PRMP/FEIS understates the potential for ozone concentrations to exceed the Clean Air Act's National Ambient Air Quality Standards. EPA also critiqued BLM's analysis of the impacts to air quality of cumulative oil and gas development. Additionally, EPA objected to the lack of analysis of the impacts of the decisions made in the PRMP/FEIS with respect to climate change.

62. On October 31, 2008, Defendant Assistant Secretary Allred signed the record of decision (Price ROD) approving the Price RMP.

63. BLM granted in small part and denied or otherwise rejected the majority of Plaintiffs' protest of the Price PRMP/FEIS.

64. The Price ROD did not substantively modify the Price PRMP/FEIS or otherwise respond to EPA's concerns.

65. The approved Price RMP designated areas as available for oil and gas leasing and development, including the 21 parcels at issue in this suit located in the Price field office.

C. Vernal Resource Management Plan

66. In March 2001, the BLM's Vernal field office issued a notice of intent in the Federal Register to prepare a new resource management plan for the roughly 1.7 million acres of BLM managed surface lands. Located in northeastern Utah, the Vernal field office oversees management in remote, wilderness character areas such as the White River as well as the Book Cliffs. These areas are increasingly becoming isolated islands in a sea of natural gas and oil development in the Uintah Basin, one of the largest onshore natural gas basins in the country. Straddling the state line between Utah and Colorado, Dinosaur National Monument is a popular destination for river runners and paleontologists alike.

67. The Vernal field office conducted public scoping on this proposal throughout 2001.

68. In January 2005, the Vernal field office announced the release of its draft Vernal resource management plan and draft environmental impact statement (Vernal DRMP/DEIS) and gave the public ninety days to review and comment on this three volume document.

69. Plaintiffs Southern Utah Wilderness Alliance, TWS, NRDC, National Trust, and Sierra Club submitted timely comments on the Vernal DRMP/DEIS.

70. On May 6, 2005, EPA submitted written comments to BLM on the Vernal DRMP/DEIS that critiqued, among other things, the failure to conduct adequate quantitative ozone analysis.

71. On December 13, 2005, BLM's Vernal field office announced an additional sixty day public comment period on designation of additional areas of critical environmental concern in the Vernal DRMP. Plaintiffs Southern Utah Wilderness Alliance and TWS submitted timely comments on this ACEC proposal.

72. In September 2007, the BLM's Vernal field office announced the release of a supplemental draft EIS that considered an additional "alternative E" and gave the public ninety days to comment. Plaintiffs Southern Utah Wilderness Alliance and TWS submitted timely comments on the supplemental draft EIS.

73. On August 22, 2008, BLM's Utah State Director announced the release of the proposed resource management plan and final environmental impact statement (Vernal PRMP/FEIS). The public was given thirty days to review and file a formal protest with the BLM Director.

74. Plaintiffs SUWA, TWS, National Trust, and Sierra Club filed a timely protest with the BLM Director. Among other issues, the groups protested BLM's failure to take a "hard look" at the air quality impacts of oil and gas development and the issue of climate change.

75. On September 23, 2008, EPA submitted comments on the Vernal PRMP/FEIS and stated its concern that BLM had failed to conduct an analysis of impacts from oil and gas development and other sources on ozone levels. EPA also stated that BLM had failed to take a hard look at the issue of climate change. In particular, BLM failed to consider the impacts

of planning decisions in the Vernal PRMP/FEIS on climate change or the impacts of climate change on future land management.

76. On October 31, 2008, Defendant Assistant Secretary Allred signed the record of decision (Vernal ROD) approving the Vernal RMP.

77. BLM granted in small part and largely dismissed or rejected Plaintiffs' protest of the Vernal PRMP/FEIS.

78. The Vernal ROD did not modify the Moab PRMP/FEIS or otherwise respond to EPA's concerns.

79. The approved Vernal resource management plan designated areas as available for oil and gas leasing and development, including the 22 parcels at issue in this suit located in the Vernal field office.

III. DECEMBER 2008 Utah OIL AND GAS LEASE SALE

A. BLM Authorizes December 2008 Utah Oil and Gas Lease Sale

80. On November 4, 2008, BLM's Utah state office published a final sale list that included 241 parcels. Also on November 4, Deputy Utah BLM State Director Kent Hoffman signed a "Proposal to Lease" which stated that his "final determination to offer parcels for the December 19, 2008 oil and gas lease sale will be made no later than December 12, 2008."

1. BLM prepares determinations of NEPA adequacy for the lease sale

81. BLM did not prepare new NEPA analyses for the lease sale.

82. Instead, Utah BLM field offices prepared and completed determinations of NEPA adequacy (DNAs) in October and November of 2008. BLM uses DNAs to determine whether previously prepared NEPA documents satisfy its legal obligations for subsequently

authorized activities. BLM found that FEISs accompanying the Moab, Price, and Vernal RMPs satisfied the agency's NEPA obligations with respect to the lease sale. The DNAs are BLM's final word on its NEPA compliance for the Utah Lease Sale.

83. BLM completed the DNA for the Moab field office on November 5, 2008 and updated it on November 25, 2008. BLM completed the DNA for the Price field office on November 4, 2008 and updated it on November 25, 2008. BLM finalized the DNA for the Vernal field office on November 3, 2008 and updated it on November 25, 2008.

84. The DNAs include no air quality analysis and do not discuss the issue of climate change.

2. BLM fails to complete NHPA consultation for the lease sale

85. The DNAs document each BLM field office's compliance with the NHPA for the lease sale.

86. The Moab field office did not consult with the SHPO or members of the public on impacts of the lease sale on historic properties. On November 7, 2008, the Moab field office sent a letter to the Hopi Tribe requesting comments on the lease sale. The Hopi Tribe responded on November 24, 2008, and indicated that the Tribe did not concur with the field office's finding that the lease sale had "no potential to cause adverse effects." The Tribe asked the field office to cancel or postpone the lease sale until a "balanced political environment allows for appropriate federal agency and public review and comment."

87. The Price field office did not consult with the SHPO or members of the public on impacts of the lease sale on historic properties. On October 7, 2008, the Price field office requested comments from the Hopi Tribe. The Tribe responded on November 24, 2008, and indicated that the Tribe did not concur with the field office's finding that the lease sale had

“no potential to cause adverse effects.” The Tribe asked the field office to cancel or postpone the lease sale until a “balanced political environment allows for appropriate federal agency and public review and comment.”

88. The Vernal field office did not consult with members of the public regarding the impacts of the leases on historic properties.

3. The National Park Service objects to the proposed leases.

89. After BLM announced the final sale list, the National Park Service (NPS) objected that it not been adequately consulted prior to announcement of the sale.

90. On November 24, 2008, Mike Snyder, NPS’s Intermountain Regional Director sent a letter to the BLM’s Utah State Director, Selma Sierra, requesting that the BLM defer leasing ninety-three parcels on the final sale list for the December 19th lease sale. Director Snyder’s letter identified three primary areas of concerns: impacts to park air quality, water quality, and natural sound.

91. With respect to air quality, NPS objected that the analysis BLM performed as part of the RMPs and FEISs does “not provide the information necessary to determine whether [Clean Air Act] air quality standards could be violated or if visibility and other [Air Quality Related Values] could be adversely impacted” within Canyonlands and Arches National Parks and Dinosaur National Monument. NPS stated that BLM needed to do a new study “using appropriate air quality models, and considering all other regional sources” prior to auctioning the leases to ensure that areas managed by NPS would be adequately protected. NPS also identified already existing problems with ozone pollution at Canyonlands and Dinosaur National Monument.

92. On November 25, 2008, BLM Utah State Director Selma Sierra sent a letter to NPS Director Snyder announcing that in response to NPS's concerns she was deferring twenty-four parcels from the December 19th lease sale—less than one third the number requested by NPS. BLM did not agree to any additional analysis of air quality.

4. Numerous lease sale protests filed

93. On December 4, 2008, Plaintiffs Southern Utah Wilderness Alliance, NRDC, TWS, Sierra Club, NPCA and the Trust filed a protest with the BLM's Utah State Director, challenging BLM's decision to propose selling ninety-four parcels in the Moab, Price, and Vernal field offices totaling approximately 100,000 acres. They protested the lease sale on numerous grounds, including violations of NEPA, the NHPA, the Federal Land Policy Management Act, the Clean Air Act, the Clean Water Act and their various implementing regulations and department and agency orders and rules.

94. BLM also received a lease sale protest from a coalition of historic preservation organizations including Plaintiff National Trust. This protest asked BLM to withdraw sixteen parcels from the lease sale located near Nine Mile Canyon and West Tavaputs Plateau.

95. BLM also received lease sale protests from the Outdoor Industry Association and several of its business members and a coalition of Utah based river guides and outfitters. These protests asked BLM to withdraw dozens of parcels from the December 19th lease sale, citing the threat that oil and gas leasing and development posed to the parcels' wild and remote nature.

96. BLM also received a lease sale protest from Trout Unlimited and the Theodore Roosevelt Conservation Partnership that asked BLM to withdraw over one hundred twenty parcels from the sale to protect important wildlife habitat.

5. BLM's final decision to lease

97. On December 12, 2008, Defendant BLM Deputy State Director Kent Hoffman issued a "Decision to Lease." His decision was to offer approximately 163,935 acres on 132 parcels at the December 19, 2008 lease sale.

98. Plaintiffs are challenging eighty of these parcels in this suit. *See infra* ¶¶ 100-110. None of the challenged parcels contain no surface occupancy (NSO) stipulations that would bar surface disturbing activities at some location on the parcel. Therefore, once BLM issues the parcels, the winning oil and gas company is entitled to develop somewhere on the surface of the parcel.

B. Detailed Description of Parcels Subject to Lease

99. Fifty-five of the parcels subject to lease are located on public lands proposed for wilderness designation in America's Red Rock Wilderness Act. These parcels are located in some of Utah's most stunning and remote public lands including such places as Desolation Canyon and the wild Book Cliffs region of eastern Utah. BLM confirmed in the Moab, Price, and Vernal RMPs that the majority of these are wilderness character lands, yet the decisions made in those documents opened them to oil and gas leasing and development. The eighty parcels are identified below.

100. Thirteen of the parcels are located in the Desolation Canyon wilderness character area (UT1108-86, UT1108-87, UT1108-335, UT1108-337, UT1108-338, UT1108-339, UT1108-340, UT1108-341, UT1108-342, UT1108-343, UT1108-345, UT1108-350, and

UT1108-355). BLM has described this area, in combination with the Desolation Canyon wilderness study area, as being “one of the largest blocks of roadless BLM public lands within the continental United States. This is a place where a visitor can experience true solitude—where the forces of nature continue to shape the colorful, rugged landscape.” This area has been proposed for wilderness protection in America’s Red Rock Wilderness Act.

101. One of the parcels is located in the Jack Canyon wilderness character area (UT1108-349). BLM has stated that “scenic views of the vast canyons and surrounding landscapes, both within the unit[] and into the Desolation Canyon [wilderness study area], enhance the feeling of remoteness, vastness, and being truly alone.” This area has been proposed for wilderness protection in America’s Red Rock Wilderness Act.

102. Six of the parcels are located in the White River wilderness character area (UT1108-106, UT1108-109, UT1108-110, UT1108-111, UT1108-136, and UT1108-137). BLM has described this as an area whose “deep canyons, high ridges, cliffs and unique geologic features create spectacular vistas,” and whose scenic beauty is “exceptional.” This area has been proposed for wilderness protection in America’s Red Rock Wilderness Act.

103. Eighteen of the parcels are located in eastern Utah’s remote Book Cliffs in places such as Sunday School Canyon, Seep Canyon, Coal Canyon, Diamond Canyon, and Bitter Creek proposed wilderness units (UT1108-90, UT1108-91, UT1108-93, UT1108-94, UT1108-96, UT1108-97, UT1108-98, UT1108-112, UT1108-115, UT1108-116, UT1108-159, UT1108-164, UT1108-187, UT1108-209, UT1108-210, UT1108-211, UT1108-212, and UT1108-295). Each of these parcels is within an area proposed for wilderness designation in America’s Red Rock Wilderness Act.

104. Seven of the parcels are located east of Canyonlands National Park in the Hatch Wash and Harts Point proposed wilderness areas (UT1108-201, UT1108-202, UT1108-203, UT1108-204, UT1108-205, UT1108-206, UT1108-207, and UT1108-208). These parcels offer dramatic views of Canyonlands National Park's Needles District and the La Sal Mountains. These areas have been proposed for wilderness protection in America's Red Rock Wilderness Act.

105. One of the parcels is located immediately east of Arches National Park in the Dome Plateau wilderness character area (UT1108-242). This area has been proposed for wilderness protection in America's Red Rock Wilderness Act.

106. Nine of the parcels are located in the Labyrinth Canyon wilderness character area and the Duma Point proposed wilderness unit (UT1108-163, UT1108-166, UT1108-167, UT1108-168, UT1108-169, UT1108-170, UT1108-171, UT1108-175, UT1108-176, and UT1108-177). These parcels are located northwest of Moab in rolling redrock canyons and desert. These areas have been proposed for wilderness protection in America's Red Rock Wilderness Act.

107. The following thirteen parcels include popular family camping and biking destinations near Moab, including Bartlett Wash and Tusher Canyon: UT1108-162, UT1108-169, UT1108-174, UT1108-175, UT1108-180, UT1108-181, UT1108-182, UT1108-183, UT1108-184, UT1108-185, UT1108-186, UT1108-196, and UT1108-197. The iconic Monitor and Merrimac buttes—immediately to the south—loom over these lease parcels.

108. The following seven parcels are located very close to the culturally significant Nine Mile Canyon in eastern Utah: UT1108-83, UT1108-84, UT1108-328, UT1108-330, UT1108-331, UT1108-332, and UT1108-348. Nine Mile Canyon has been described by the

State of Utah as an “outdoor museum” that “should be shown the respect due to one of the West’s ancient treasures.” BLM acknowledges that Nine Mile Canyon contains “the greatest concentration of rock art sites” in the United States.

109. The following four parcels are located along the Green River just south of the town of Green River, Utah: UT1108-361, UT1108-368, UT1108-369, and UT1108-370. These four parcels include lands that are popular with families for canoeing and river rafting.

110. One parcel (UT1108-101) is located both immediately adjacent to Dinosaur National Monument and a few miles west of the Monument.

111. Oil and gas development of the parcels up for auction at the December 19, 2008 lease sale, including construction and maintenance or operation of access roads, wells, drill pads, pipelines, waste pits, and compressor stations, will degrade the wilderness quality of these lands. Development will increase noise and air pollution and degrade and destroy important cultural artifacts.

FIRST CAUSE OF ACTION
Violation of NEPA and FLPMA
(Failure to Take a Hard Look at Air Quality Impacts)

112. Plaintiffs incorporate herein by reference paragraphs 1-111 above.

113. NEPA and its implementing regulations require federal agencies to take a “hard look” at the environmental impacts of proposed actions using the best available scientific information. 42 U.S.C. § 4332; 40 C.F.R. § 1508.9.

114. Under NEPA, federal agencies must consider the direct, indirect and cumulative environmental impacts of the Project when added to other past, present, and reasonably foreseeable future actions. *See* 40 C.F.R. §§ 1508.25(c)(3), 1508.7; 1508.8 Cumulative impacts are “the impact on the environment which results from the incremental

impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7.

115. FLPMA and its implementing regulations require BLM to comply with all applicable air quality standards, including those found in the Clean Air Act, in land use planning and when authorizing activities under those plans. *See* 43 U.S.C. § 1712(c)(8); 43 C.F.R. § 2920.7(b)(3).

116. The FEISs for the Moab, Price, and Vernal RMPs fail to take a hard look at the air quality impacts of the plans, including cumulative impacts. The DNAs prepared for the December 19th lease sale rely entirely on the FEISs and do not contain any additional analysis of air quality. The FEISs and DNAs fail to provide support for BLM’s claim that federal air quality standards will be met.

117. Therefore, the FEISs for the Moab, Price, and Vernal RMPs and the DNAs for the December 19, 2008 lease sale violate NEPA and its implementing regulations, FLPMA and its implementing regulations, and are arbitrary, capricious and contrary to law in violation of the APA. 5 U.S.C. § 706.

SECOND CAUSE OF ACTION
Violation of NEPA and Interior Secretary Order No. 3226
(Failure to Consider Climate Change)

118. Plaintiffs incorporate herein by reference paragraphs 1-117 above.

119. NEPA and its implementing regulations require federal agencies to take a “hard look” at the environmental impacts of proposed actions using the best available scientific information. 42 U.S.C. § 4332; 40 C.F.R. § 1508.9.

120. On January 19, 2001 then-Interior Secretary Bruce Babbitt issued Secretarial Order No. 3226 – Evaluating Climate Change Impacts in Management Planning.

121. Secretarial Order No. 3226 “ensures that climate change impacts are taken into account in connection with Departmental planning and decision making.” It provides that “[e]ach bureau and office of the Department will consider and analyze potential climate change impacts when . . . developing multi-year management plans, and/or when making major decisions regarding the potential utilization of resources under the Department’s purview. Departmental activities covered by this Order include, but are not limited to . . . management plans and activities developed for public lands [and] planning and management activities associated with oil, gas, and mineral development on public lands.”

122. Secretarial Order No. 3226 was effective on the date it was issued—January 19, 2001—and “will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first.” The Order has not been amended, suspended or revoked or converted to the Departmental Manual.

123. The FEISs for the Moab, Price, and Vernal RMPs fail to take a hard look at the impacts of the activities authorized under the plans, including oil and gas leasing, on climate change. Nor do the FEISs disclose or analyze how climate change will impact the land use decisions made under the Plans. The DNAs for the December 19th lease sale rely entirely on the FEISs and do not contain any additional information regarding climate change.

124. Therefore, the FEISs and DNAs violate NEPA and its implementing regulations, Secretarial Order No. 3226, and are arbitrary, capricious or otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706.

THIRD CAUSE OF ACTION
Violation of NHPA and its Implementing Regulations
(Failure to Take Into Account Impacts on Cultural Resources)

125. Plaintiffs incorporate herein by reference paragraphs 1-124 above.

126. The NHPA requires that a federal agency shall “prior to the issuance of any license . . . take into account the effect of an undertaking on any district, site, structure, or object that is included or eligible for inclusion in the National Register [of Historic Places].” 16 U.S.C. § 470f.

127. The NHPA’s implementing regulations require that an “agency official shall determine whether the proposed Federal action is an undertaking as defined in [36 C.F.R.] § 800.16(y), and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.” 36 C.F.R. § 800.3(a).

128. If the undertaking has the potential to cause effects on historic properties, the federal agency must identify all historic properties within the area of potential effect. *Id.* §§ 800.4, 800.5, 800.6. The “area of potential effects” is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character of use of historic properties. *Id.* § 800.16(d). Adverse effects include direct, indirect, and cumulative effects. *Id.* § 800.5(a)(1).

129. The agency must then assess any adverse effects of the undertaking and resolve those effects prior to carrying out the undertaking. *Id.* § 800.5.

130. Federal agencies must consult with the State Historic Preservation Officer (SHPO), Native American Tribes, and the public regarding impacts to historic properties. *Id.* §§ 800.2(d), 800.3(f)(2), 800.4(b)(c).

131. The sale of an oil and gas lease, without NSO stipulations, constitutes an undertaking under the NHPA that has the potential to affect historic properties.

132. BLM did not evaluate the impacts oil and gas leasing and development on all historic properties prior to issuing its final decision to lease on December 12, 2008.

133. BLM did not adequately consult with the SHPO, Native American tribes (such as the Hopi Tribe), or the public prior to issuing its Decision to Lease on December 12, 2008.

134. Defendants' failure to analyze these impacts and consult with the appropriate parties prior to issuing its final decision violated the NHPA and its implementing regulations and was arbitrary, capricious, or otherwise not in accordance with law and/or constitutes agency action unlawfully withheld in violation of the APA. 5 U.S.C. § 706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

(1) Declare that defendants violated NEPA, FLPMA, Secretarial Order No. 3226, and the NHPA;


(2) Declare unlawful and set aside the Moab, Price and Vernal FEISs and RMPs and DNAs for the December 19, 2008 lease sale;

(3) Enjoin BLM from taking any actions pursuant to the Moab, Price, and Vernal FEISs and RMPs – including the sale or issuance of oil and gas leases – until the BLM has complied with NEPA, FLPMA, Secretarial Order No. 3226, and the NHPA;

(4) Award plaintiffs the costs they have incurred in pursuing this action, including attorney's fees and costs, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other applicable statutes; and

(5) Grant such other and further relief as is proper.

Respectfully submitted,



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