

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

WILDEARTH GUARDIANS,

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, an agency within the U.S.  
Department of the Interior;  
UNITED STATES OFFICE OF SURFACE MINING RECLAMATION AND  
ENFORCEMENT, an agency within the U.S. Department of the Interior;  
S.M.R. JEWELL, in her official capacity as U.S. Secretary of the Interior;

Federal Defendants.

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**PETITION FOR REVIEW OF AGENCY ACTION**

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**INTRODUCTION**

1. Air pollution is a growing problem in northwestern Colorado and northeastern Utah, an area generally referred to as the Uinta Basin. Ambient concentrations of poisonous ozone gas, the key ingredient of smog, have frequently exceeded federal health limits in both Colorado and Utah. In 2013, because of elevated ozone, the State of Colorado acknowledged that the Rangely area in Rio Blanco County was in violation of federal health limits. Fine particulate matter levels in the Uinta Basin have also recently repeatedly exceeded federal health limits. This air pollution is the result of growing industrial development—including oil, gas, and coal development—and the emissions from this development.

2. This case involves a failure of Federal Defendants to address, in accordance with federal law, the air quality impacts of expanded coal mining in northwestern Colorado. At issue are Defendants' uninformed approvals of leasing and mining at the Deserado Mine, which is located in Rio Blanco County at the southern the flanks of Blue Mountain, bordering Dinosaur National Monument. The Mine is the sole fuel source for the Bonanza Power Station, an adjacent coal-fired power plant in Uintah County, Utah. The Mine is connected to the power plant by a dedicated rail line. Both the mine and the power plant release emissions that contribute to air pollution. Yet in approving expanded mining—and in turn extending the life of the power plant—Defendants refused to acknowledge the very real and serious air quality implications of their actions.

3. This lawsuit challenges two agency actions. The first is the U.S. Bureau of Land Management's ("BLM's") approval of the Blue Mountain Coal Lease (hereafter, the "Blue Mountain Lease"). The second is the U.S. Office of Surface Mining's ("OSM's") and the Secretary of Interior's approval of a "Mining Plan" modification, which authorized the development of the Blue Mountain Lease.

4. In approving the Blue Mountain Lease and Mining Plan, Federal Defendants failed to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, our nation's charter for environmental protection. Not only did Defendants fail to analyze the potentially significant air quality impacts of expanded mining, Defendants also failed to analyze the air quality impacts of extending the life of the nearby Bonanza Power Station. In spite of this, Defendants concluded that the environmental impacts would not be significant under NEPA and issued Findings of No Significant Impact ("FONSIs"). Such inadequate and

uninformed environmental analysis fails to support Defendants' FONSI's and to comply with NEPA.

5. Accordingly, BLM's authorization of the Blue Mountain Lease violated NEPA and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* Furthermore, OSM and the Interior Secretary violated NEPA and the APA by unlawfully approving the Mining Plan authorizing the expansion of the Deserado Mine.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as a defendant), 2201 (declaratory relief), and 2202 (injunctive relief).

7. Guardians' claims arise under the judicial review provision of the APA, 5 U.S.C. §§ 701-706.

8. An actual and present controversy exists between the parties within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because "a substantial part of the events or omissions giving rise to the claim" took place at BLM's White River Field Office in Meeker, Colorado. A substantial part of the events or omissions giving rise to the claim also took place at OSM's Western Regional Office in Denver, Colorado.

### **PARTIES**

10. Plaintiff WILDEARTH GUARDIANS is a non-profit membership organization based in Santa Fe, New Mexico, with offices in Denver, Colorado; Missoula, Montana; Salt Lake City, Utah; and Tucson, Arizona. Guardians has more than 43,000 members and activists, some of whom live, work, and/or recreate on public lands on and near the Blue Mountain Lease and

Deserado Mine. Guardians and its members are dedicated to protecting and restoring the wildlife, wild places, and wild rivers of the American West. Towards this end, Guardians and its members work to replace fossil fuels with clean, renewable energy in order to safeguard public health, the environment, and the Earth's climate.

11. Guardians' members who live, work, recreate, and conduct other activities on public lands affected by the Blue Mountain Lease and Mining Plan modification approvals, are affected by poor air quality associated with the Deserado Mine in Colorado and burning of that coal for electricity at the nearby Bonanza Power Station in Utah. Guardians' members have a substantial interest in ensuring they breathe the cleanest air possible. Guardians and its members use and enjoy public and private lands, and natural resources including lands and natural resources affected by the Blue Mountain Lease and Mining Plan modification approvals, for recreational, scientific, aesthetic, conservation, and other public purposes, and are harmed by the aesthetic and environmental impacts of coal mining and combustion there. Guardians and its members also have a substantial interest in ensuring that the Federal Defendants comply with federal law, including the requirements of NEPA. Guardians' and its members' interests have been, are being, and will continue to be irreparably harmed by Federal Defendants' approvals of the Blue Mountain Lease and Mining Plan that will further degrade the air quality in Colorado and Utah.

12. Defendant U.S. BUREAU OF LAND MANAGEMENT is a Federal 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 coal leasing and development, including compliance with NEPA. In particular, BLM is responsible for approving applications to lease federally owned coal. BLM is also responsible for performing any required

NEPA analysis for such lease applications. BLM's White River Field Office in Meeker, Colorado approved the mining lease-by-application at issue here and conducted the related NEPA analysis challenged herein.

13. Defendant U.S. OFFICE OF SURFACE MINING, RECLAMATION AND ENFORCEMENT is a Federal agency within the United States Department of the Interior. OSM is responsible for complying with NEPA and making recommendations to the Secretary of the Interior as to whether or not she should approve a Mining Plan or Mining Plan modification. OSM's Western Regional Office that is responsible for NEPA compliance and recommended the Secretary approve the Mining Plan modification challenged herein is located in Denver, Colorado. OSM officials sitting in Denver, Colorado processed the Mining Plan modification approval challenged herein. In making that approval decision, OSM officials sitting in Denver, Colorado adopted the related NEPA analysis conducted by BLM.

14. Defendant S.M.R. JEWELL is sued in her official capacity as U.S. Secretary of the Interior. In this capacity she is responsible for approving, disapproving, or conditionally approving Mining Plans and Mining Plan modifications pursuant to the Mineral Leasing Act, 30 U.S.C. § 207(c) and the Surface Mining Reclamation and Control Act, 30 U.S.C. § 1273(c).

## **LEGAL BACKGROUND**

### **I. The Mineral Leasing Act and Surface Mining Control and Reclamation Act**

15. Under the MLA, the Secretary of the Interior has two primary responsibilities regarding the disposition of federally owned coal.

16. First, the Secretary is authorized, but not required, to lease federal coal resources, where appropriate. *See* 30 U.S.C. §§ 181 and 201. A coal lease must be in the "public interest" and include such "terms and conditions" as the Secretary of the Interior shall determine. 30

U.S.C. §§ 201 and 207(a); *see also* 43 C.F.R. §§ 3425.1-8(a) and 3475.1. A coal lease is issued “for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities[.]” 30 U.S.C. § 207(a) and 43 C.F.R. § 3475.2. BLM, an agency within the Interior Department, is largely responsible for implementing the Secretary’s coal leasing responsibilities.

17. Coal leasing is a competitive process. However, BLM regulations provide for the issuance of coal “Lease-by-Applications,” whereby a private company applies for a specific lease parcel and is ultimately provided an opportunity to bid on and be awarded the lease through a competitive auction. *See* 43 C.F.R. § 3425. The lease-by-application process is considered competitive by the BLM, although auctions rarely attract more than a single bidder.

18. A lease-by-application can only be approved by the BLM if, “for environmental or other sufficient reasons,” it is deemed to be in the public interest. 43 C.F.R. § 3425.1-8(a)(3). Furthermore, before a lease-by-application can be issued, the BLM must prepare an “environmental assessment or environmental impact statement” in accordance with NEPA. 43 C.F.R. § 3425.3(a).

19. The second responsibility of the Secretary of the Interior is, where appropriate, to authorize through a Mining Plan, the mining of federally owned coal that has been leased. The authority to issue a Mining Plan is set forth under the MLA, which states that before any entity can take action on a leasehold that “might cause a significant disturbance of the environment,” an operation and reclamation plan must be submitted to the Secretary of the Interior for approval. 30 U.S.C. § 207(c). Referred to as a “Mining Plan” by the Surface Mining Control and Reclamation Act (“SMCRA”) and its implementing regulations, the Secretary “shall approve or disapprove the plan or require that it be modified.” *id*; *see also* 30 C.F.R. § 746.14. It is standard practice for

the Assistant Secretary of the Interior for Land and Minerals Management to sign such Mining Plans on behalf of the Secretary.

20. Although states have largely been delegated authority, under SMCRA, to regulate surface coal mining activities, the law prohibits the Secretary of Interior from delegating to states the duty to approve, disapprove, or modify Mining Plans for federally owned coal. *See* 30 U.S.C. § 1273(c); *see also* 30 C.F.R. § 745.13(i). Also, SMCRA prohibits the Secretary from delegating authority to states to comply with NEPA and other federal laws and regulations other than SMCRA with regards to the regulation of federally owned coal resources. 30 C.F.R. § 745.13(b).

21. Among other things, a Mining Plan must, at a minimum, assure compliance with applicable requirements of federal laws, regulations, and executive orders, and be based on information prepared in compliance with NEPA. *See* 30 C.F.R. § 746.13. A legally compliant Mining Plan is a prerequisite to an entity's ability to mine leased federal coal. Regulations implementing SMCRA explicitly state that, "[n]o person shall conduct surface coal mining and reclamation operations on lands containing leased Federal coal until the Secretary has approved the Mining Plan." 30 C.F.R. § 746.11(a). To this end, a Mining Plan is "binding on any person conducting mining under the approved Mining Plan." 30 C.F.R. § 746.17(b).

22. Although the Secretary of Interior is charged with approving, disapproving, or modifying a Mining Plan, the Office of Surface Mining, Reclamation and Enforcement, an agency within the Department of Interior, is charged with "prepar[ing] and submit[ting] to the Secretary a decision document recommending approval, disapproval or conditional approval of the Mining Plan[.]" 30 C.F.R. § 746.13. Thus, OSM plays a critical role in adequately informing the Secretary of Interior.

23. A “Mining Plan shall remain in effect until modified, cancelled or withdrawn[.]” 30 C.F.R. § 746.17(b). The Secretary must modify a Mining Plan where, among other things, there is “[a]ny change in the Mining Plan which would affect the conditions of its approval pursuant to Federal law or regulation[.]” “[a]ny change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time[.]” or “[a]ny change which requires the preparation of an environmental impact statement under the National Environmental Policy Act[.]” 30 C.F.R. §§ 746.18(a), (d)(1), (d)(4), and (d)(5).

## II. The National Environmental Policy Act

24. NEPA aims to “encourage productive and enjoyable harmony between man and his environment” and to promote government efforts “which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321. As Council on Environmental Quality (“CEQ”) regulations implementing NEPA explain, the law “is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a).

25. Although procedural in nature, compliance with NEPA serves two substantive purposes. First, “[i]t ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Second, it “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Id.* In other words, compliance with NEPA ensures well-informed decisions by the federal government.

26. Under NEPA, a federal agency must prepare an environmental impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1501.4. In the EIS, the agency must, among



other things, rigorously explore and objectively evaluate all reasonable alternatives, analyze all direct, indirect, and cumulative environmental effects, and include a discussion of the means to mitigate adverse environmental impacts. *See* 40 C.F.R. §§ 1502.14 and 1502.16.

27. Direct effects include those that “are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects include effects that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Cumulative effects 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.” 40 C.F.R. § 1508.7.

28. An agency may also prepare an Environmental Assessment (“EA”) to determine whether an EIS is necessary. 40 C.F.R. §§ 1501.3, 1508.9. An EA must include a discussion of alternatives and the environmental impacts of the action. 40 C.F.R. § 1508.9.

29. If an agency decides not to prepare an EIS, an EA must “provide sufficient evidence” to support a Finding of No Significant Impact. 40 C.F.R. § 1508.9(a)(1). Such evidence must demonstrate that the action “will not have a significant effect on the human environment[.]” 40 C.F.R. § 1508.13. An assessment of whether or not an impact is “significant” is based on a consideration of the “context and intensity” of the impacts. 40 C.F.R. § 1508.27. “Context” refers to the scope of the proposed action, including the interests affected. 40 C.F.R. § 1508.27(a). “Intensity” refers to the severity of the impact and must be evaluated with a host of factors in mind, including “[t]he degree to which the proposed action affects public health or safety” and “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(b).

30. An agency may adopt all or a portion of an EIS or EA “provided that the statement or portion thereof meets the standards for an adequate statement” under the NEPA regulations. 40 C.F.R. § 1506.3(a).

31. A NEPA analysis may “tier” to a document prepared for an earlier NEPA review process in order to incorporate general findings under that earlier review and thus avoid needless repetition in later, more specific NEPA analysis. 40 C.F.R. §§ 1502.20, 1508.28. NEPA analysis may only tier to a document prepared specifically in accordance with NEPA. *Id.*

32. Where “significant new circumstances or information relevant to environmental concerns and bearings on” an action or impacts analyzed in an EIS arise(s), an agency “shall” prepare a supplement to the NEPA document. 40 C.F.R. § 1502.9(c)(1). A supplement to an EIS “shall” generally be “prepare[d], circulate[d], and file[d]” in the same fashion as an EIS. 40 C.F.R. § 1502.9(c)(4).

33. When an EA or EIS is prepared for a major federal action, the action agency must analyze the impacts of connected actions. A “connected action” is defined as one that is “closely related” to other actions and is identified based on three factors in NEPA’s implementing regulations. Actions are “connected” if they: “(i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1).

### **III. Department of Interior and Related NEPA Regulations and Directives**

34. In 2008, the U.S. Department of the Interior (“Interior”) promulgated regulations to implement NEPA. *See* 73 Fed. Reg. 61,292 (Oct. 15, 2008); *see also* 43 C.F.R. § 46 *et seq.*

Interior and its agencies must use these regulations “in conjunction with and supplementary to” authorities set forth under the NEPA regulations. *Id.*

35. Interior’s NEPA regulations explain that adoption of both EISs and EAs are allowed. *See* 43 C.F.R. § 46.120. However, the regulations make clear that where an EIS or EA is adopted, the agency must determine “with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives.” 43 C.F.R. § 46.120(c). Such supporting documentation “must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.” *Id.* An EA may tier to another document prepared under NEPA, so long as the earlier document is broader in scope than the EA, describes conditions or environmental effects that are still valid, and fully analyzed any significant environmental effects of the proposed action being considered in the EA. 43 C.F.R. § 46.140.

36. OSM adopted its own handbook to implement NEPA in 1989. *See* OSM Handbook on Procedures for Implementing the National Environmental Policy Act (“OSM NEPA Handbook”). These directives emphasize that OSM may adopt NEPA documents produced by other agencies. If OSM does so, the agency must “ensure that the findings of the documents are in full compliance with NEPA and OSM policy.” OSM NEPA Handbook, Chapter 3 § B.1.

#### **IV. The Administrative Procedure Act**

37. The APA provides a right to judicial review for any “person suffering legal wrong because of agency action.” 5 U.S.C. § 702. Actions that are reviewable under the APA include final agency actions “for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.

38. Under the APA, a reviewing court shall “hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

## **FACTUAL BACKGROUND**

### **I. Smog**

39. Ozone is a poisonous gas. Atmospheric ozone protects the Earth from ultraviolet radiation, but at or near ground level ozone is the key ingredient of smog. Ozone can be dangerous to public health and the environment, even at low concentrations. The U.S. Environmental Protection Agency (“EPA”) reports, “People with lung disease, children, older adults, and people who are active outdoors may be particularly sensitive to ozone.”<sup>1</sup> The EPA further reports, “Children are at greatest risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors when ozone levels are high, which increases their exposure.” *Id.*

40. Ozone is not emitted directly, but rather forms when two key pollutants (referred to as “precursors”)—nitrogen oxides (“NO<sub>x</sub>”) and volatile organic compounds (“VOCs”)—react with sunlight. The primary source of NO<sub>x</sub> is engine exhaust. The primary sources of VOCs are petroleum-based chemicals, such as unburned gasoline and the release of natural gas from the ground.

41. Because of the health and environmental risks, EPA has adopted national ambient air quality standards (“NAAQS”) limiting concentrations of ozone in the air nationwide. NAAQS are established based solely on what is necessary to protect public health and welfare (i.e., the environment). 42 U.S.C. § 7409. In 2008, EPA adopted NAAQS limiting concentrations

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<sup>1</sup> EPA, “Ground-level Ozone, Basic Information,” website available at <http://www.epa.gov/airquality/ozonepollution/basic.html> (last accessed April 22, 2014).

of ozone at ground-level to no more than 0.075 parts per million over an eight-hour period. 40 C.F.R. § 50.15. In other words, if more than 0.0000075% of the air mass is ozone, public health and the environment are endangered.

42. The ozone NAAQS are exceeded whenever concentrations in the ambient air at a monitoring site exceed 0.075 parts per million. 40 C.F.R. § 50.1(l). A violation occurs whenever the three-year average of the fourth highest annual eight-hour ozone concentrations at a monitoring site is higher than 0.075 parts per million. 40 C.F.R. § 50.15(b).

## **II. Particulate Matter**

43. PM<sub>2.5</sub> is a dangerous pollutant that causes significant adverse impacts to human health even after a brief exposure. According to EPA, health effects associated with short-term exposure to PM<sub>2.5</sub> include “aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency department visits), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health.” 71 Fed. Reg. 61,144 (Oct. 17, 2006). *Id.* at 61,152.

44. PM<sub>2.5</sub> includes a “broad class of physically and chemically diverse substances that exist as discrete particles (liquid droplets or solids).” 71 Fed. Reg. 61,146. It can be emitted directly or secondarily from reactions of NO<sub>x</sub> and other pollutants in the atmosphere. *Id.*

45. PM<sub>2.5</sub> is a criteria pollutant under the Clean Air Act. 42 U.S.C. § 7408. In 1997, EPA promulgated two standards for PM<sub>2.5</sub>: an annual NAAQS of 15 micrograms per cubic meter (“µg/m<sup>3</sup>”) and a 24-hour NAAQS of 50 µg/m<sup>3</sup>. 62 Fed. Reg. 38,652, 38,655 (July 18, 1997). In 2006, EPA lowered the 24-hour PM<sub>2.5</sub> standard to 35 µg/m<sup>3</sup>. 71 Fed. Reg. 61,144 (Oct. 17, 2006). In 2012, EPA lowered the annual PM<sub>2.5</sub> standard to 12 µg/m<sup>3</sup>. 78 Fed. Reg. 3,086 (Jan. 15, 2013).

### **III. Air Pollution in the Uinta Basin**

46. The Uinta Basin is a geographic area encompassing a region of northeastern Utah and portions of northwestern Colorado. The region is bordered by the Uinta Mountain to the north, the Wasatch Range of Utah to the west, the Tavaputs Plateau and Roan Cliffs to the south, and geological uplifts to the east.

47. The Uinta Basin is the epicenter of extensive oil and gas drilling and hydraulic fracturing (often referred to as fracking), as well as coal development.

48. Over the last decade, the Uinta Basin has been experiencing high levels of ozone and PM<sub>2.5</sub> pollution, including exceedances of the NAAQS for both pollutants. Since at least 2009, air monitors in populated areas in the region, including in Vernal and Roosevelt, Utah, and in Rangely, Colorado, have detected high levels of ozone and PM<sub>2.5</sub>.

49. Ozone levels in the Uinta Basin have not only exceeded the NAAQS, but the Basin's ozone levels have resulted in violations of the NAAQS. Based on ozone data from the Rangely monitor gathered between 2011 and 2013, the Colorado Department of Public Health and Environment confirmed this violation in October of 2013.

50. The violation in Rangely occurred after numerous ozone exceedances occurred in 2011 and again in the winter of 2013. In 2013, concentrations of ozone reportedly peaked at 0.106 parts per million. This concentration is 40% higher than the NAAQS. The exceedances prompted the Colorado Department of Public Health and Environment to issue public health warnings. The 2011 and 2013 exceedances in Rangely coincided with dozens of exceedances in neighboring Utah. In the town of Vernal, for example, 50 miles northwest of Rangely, 25 exceedances of the NAAQS were reported in 2013.

51. PM<sub>2.5</sub> levels in the Uinta Basin have exceeded the NAAQS on several occasions. Air quality monitoring data showed that 24-hour PM<sub>2.5</sub> concentrations had reached levels as high as 63.3 µg/m<sup>3</sup> at the Vernal monitor and 42.4 µg/m<sup>3</sup> at the Roosevelt monitor. These 24-hour levels are well above the 35 µg/m<sup>3</sup> NAAQS for PM<sub>2.5</sub>. Such high levels of PM<sub>2.5</sub> are detrimental to human health and the environment in the Uinta Basin.

#### **IV. The Deserado Coal Mine**

52. The Deserado Mine is located in northwestern Colorado. Mine operations are primarily in Rio Blanco County, but extend into Moffat County. The Mine is seven miles northeast of the town Rangely, Colorado.

53. The Mine was developed solely to fuel the Bonanza Power Station. The 500-megawatt power plant, with a 600-foot tall smokestack, is located approximately 35 miles to the west in Uintah County, Utah, just south of Vernal. The Mine is connected with the Bonanza Power Station by an electric train, which hauls the entirety of the Mine's production to the power plant to be burned. BLM considers the Deserado mine as a "captive mine" because it provides fuel exclusively for a single power plant.

54. The Deserado coal mine is owned and operated by Blue Mountain Energy, Inc., a subsidiary of Deseret Generation and Transmission Cooperative (also known as the Deseret Power Cooperative). Deseret is also the owner and operator of the Bonanza Power Station.

55. The Deserado Mine is underground and utilizes longwall mining techniques to produce nearly two million tons of coal annually, although it is permitted to mine up to three million tons. The vast majority of this coal is federally owned coal leased from the U.S. Department of Interior.

56. Although underground, the Deserado Mine requires surface disturbances in the form of ventilation shaft development, methane venting well development, road construction, and coal conveying and loading facilities. The visible surface operations of this underground mine impact the landscape.

## **V. The Blue Mountain Lease and Deserado Mining Plan Approvals**

### **A. BLM's Authorization of the Blue Mountain Lease**

57. In January 2011, Blue Mountain Energy filed an application with the BLM for a new coal lease. Identified as lease number COC-74813, it would include federal coal reserves on a 3,154.76-acre tract of land in Moffat and Rio Blanco Counties, Colorado. This tract is adjacent to existing coal mining operations at the Deserado Mine.

58. Blue Mountain Energy applied to lease this new tract in order to expand the Deserado Mine, extend its life, and in turn extend the life of the Bonanza Power Station. Without the coal in this new tract, recovery of coal at the Deserado Mine and operation of the Bonanza Power Station is expected to continue for approximately nine years. Reserves at the new tract would enable coal mining, and operation of the Bonanza Power Station, to continue through approximately 2031. It is estimated that the new lease will yield 21.3 million tons of recoverable coal.

59. On December 9, 2011, BLM solicited preliminary public comments on Blue Mountain Energy's lease application. Guardians submitted comments to BLM on January 11, 2012, urging the Agency to address the air quality impacts of expanding the Deserado Mine and extending the life of the Bonanza Power Station. In September of 2012, BLM produced a draft EA. On October 5, 2012, Guardians submitted detailed comments to BLM pointing out a number of deficiencies in the EA related to its air quality analysis and failure to adequately address the



impacts of the Bonanza Power Station. Following the public comment period, BLM produced a final EA. Based on the results of this EA, BLM issued a FONSI on February 1, 2013. On that same date, BLM's White River Field Office issued a Decision Record approving Blue Mountain Energy's application for the federal coal lease. This BLM decision authorized a "competitive" lease auction to determine the recipient of the lease.

60. The "competitive" auction for the Blue Mountain Lease took place on May 29, 2013. Blue Mountain Energy was the sole and winning bidder and thus BLM issued the lease.

61. On March 4, 2013, Guardians filed a Notice of Appeal with the Interior Board of Land Appeals challenging BLM's approval of the Blue Mountain Lease. In May of 2013, Guardians filed a Statement of Reasons with the Board detailing a number of legal deficiencies in BLM's decision. On January 31, 2014, after waiting for a ruling from the Board, Guardians provided notice of voluntary dismissal of its appeal to the Board in order to pursue this petition for review in federal court. The notice of dismissal informed the Board and BLM of Guardians' intent to file suit in federal court. On February 4, 2014, the Board dismissed Guardians' appeal.

#### **B. OSM's Approval of Blue Mountain Energy's Mining Plan Modification**

62. On June 6, 2013, Blue Mountain Energy submitted a request to OSM to modify its Mining Plan to incorporate the Blue Mountain Lease. This request sought to modify the Mining Plan for the Deserado Mine, which was originally approved in 1981.

63. OSM's Western Regional Office recommended approval of the Mining Plan modification to the Director of OSM on October 21, 2013. This recommendation included a FONSI that adopted and relied entirely on BLM's EA and FONSI. In issuing its FONSI and documentation, OSM acknowledged Guardian's challenge to the Blue Mountain Lease before

the Interior Board of Land Appeals. However, OSM did not address or respond to any of Guardian's concerns over BLM's legal compliance with NEPA.

64. The OSM Director recommended approval to the Acting Assistant Secretary of the Interior for Land and Minerals Management on October 28, 2013. On October 31, 2013, the Acting Assistant Secretary of the Interior for Land and Minerals Management approved the Mining Plan modification.

65. Blue Mountain Energy now has the requisite federal permission to mine its federal coal lease.

## **VI. The Environmental Assessment for the Blue Mountain Coal Lease**

### **A. The EA's Analysis of Air Pollution Impacts Related to the Deserado Mine**

66. In the EA for the Blue Mountain Lease, BLM acknowledged air quality to be an issue requiring analysis. To this end, in the EA BLM disclosed that operations at the Deserado Mine will release a number of air pollutants, including NO<sub>x</sub> and VOCs.

67. In the EA, BLM disclosed current levels of NO<sub>x</sub> and VOC emissions from the Deserado Mine and the Bonanza Power Station. BLM did not analyze the direct, indirect, and cumulative impacts to future air quality from ozone or PM<sub>2.5</sub> levels resulting from expansion of the Deserado Mine. BLM concluded that ozone "is not a pollutant of concern." In support of its conclusion, BLM claimed, among other things that, "no violations of any ambient air quality standard have been documented in the area." BLM's conclusion regarding lack of significant ozone impacts is not supported by an analysis demonstrating that impacts to air quality from future ozone levels will not be significant.

68. In reaching its conclusion that ozone levels from future lease development would not significantly impact air quality, BLM failed to consider current ozone levels in Rangely and

in neighboring Utah. The EA's air quality analysis was limited only to Colorado, even though Utah is only approximately 10 miles away.

69. Furthermore, in concluding that ozone is not a pollutant of concern, BLM did not analyze VOC emissions associated with methane venting at the Deserado Mine. BLM only mentions that either the Colorado Department of Public Health and Environment or Blue Mountain Energy will address VOC emissions at an unspecified later date.

70. BLM concluded that baseline air quality conditions will continue. However, the record demonstrates that baseline air quality in the region is poor.

71. When BLM issued its FONSI for the Blue Mountain Lease, the agency did not acknowledge elevated ozone levels in Rangely or elsewhere in the Uinta Basin, or elevated PM<sub>2.5</sub> levels in the region. BLM also did not acknowledge in its FONSI that its assumptions and conclusions in the EA related to the air quality impacts of the Deserado Mine were based on incomplete information.

72. OSM's FONSI for the Deserado Mine's Mining Plan Modification adopted BLM's EA. OSM similarly did not acknowledge elevated ozone levels in Rangely or elsewhere in the Uinta Basin. OSM also did not acknowledge in its FONSI that BLM's assumptions and conclusions in the EA related to the air quality impacts of the Deserado Mine were based on incomplete and outdated information. OSM was aware of Guardians' concerns with BLM's EA because Guardians' provided OSM with a copy of Guardians' IBLA appeal of the lease authorization. The Acting Assistant Secretary of Interior relied on OSM's FONSI in approving the Mining Plan modification for the Deserado Mine.

**B. The EA's Analysis of the Operation of the Bonanza Power Station**

73. BLM acknowledges that the nearby Bonanza Power Station poses environmental impacts and generally discloses current emissions at the power plant. BLM does not analyze the impacts of extending the life of the power plant either as a connected action or direct impact under NEPA. Rather, in its EA BLM considered the operation of the power plant only as a cause of indirect and cumulative impacts of the Deserado Mine.

74. The EA states that “BLM knows with certainty that all of the coal produced [by the Deserado Mine] will be used to generate electricity, and further, that the produced coal will be consumed entirely by . . . the Bonanza Power Station in Utah.” In the EA BLM also indicates that refueling the Bonanza Power Station with alternative fuel sources is not feasible. In spite of this, BLM did not consider the impacts of extending the life of the Bonanza Power Station as connected to its leasing decision. Neither did BLM consider the direct impacts to air quality from extending the life of the Bonanza Power Station.

75. The EA generally discloses present emissions from the Bonanza Power Station. These emissions include NO<sub>x</sub>, VOCs, and PM<sub>2.5</sub>. However, the EA does not analyze whether these emissions will increase, decrease, be extended, or stay the same as the life of the power plant is extended. The EA also does not disclose how these emissions will directly, indirectly, and cumulatively impact future air quality, and in particular ozone and PM<sub>2.5</sub> concentrations in the area around the power station that includes Colorado and Utah. Despite these omissions, BLM concluded that operation of the Bonanza Power Station would not significantly impact air quality.

76. When BLM issued its FONSI and Decision Record, it did not acknowledge elevated ozone and PM<sub>2.5</sub> levels in the Uinta Basin. BLM also did not acknowledge that

assumptions and conclusions in the EA regarding the impacts of the Bonanza Power Station were based on incomplete information.

77. OSM adopted BLM's EA in issuing its FONSI. OSM similarly did not acknowledge elevated ozone and PM<sub>2.5</sub> levels in the Uinta Basin. OSM did not evaluate whether BLM's conclusions in the EA with respect to air quality impacts were based on complete and up-to-date information. The Acting Assistant Secretary of Interior relied on OSM's FONSI in approving the Mining Plan modification for the Deserado Mine.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **BLM's Violation of NEPA: Failure to Take a Hard Look at the Air Pollution Impacts of the Deserado Mine and Bonanza Power Station**

78. Each and every allegation set forth in this complaint is incorporated herein by reference.

79. NEPA requires federal agencies to take a "hard look" at the environmental consequences of their actions. 42 U.S.C. § 4332. Thus, pursuant to NEPA, BLM was required to take a hard look at direct, indirect, and cumulative impacts of authorizing a lease that would expand the Deserado Mine. 40 C.F.R. § 1508.25(c).

80. Mining activities on the Blue Mountain Lease, individually and when added to other past, present, and reasonably foreseeable future activities have potentially significant direct, indirect, and cumulative impacts on ozone and PM<sub>2.5</sub> concentrations affecting communities and the environment in the region. Additionally, expanding mining activities will extend the life of the Bonanza Power Station and its air quality impacts from coal combustion. In spite of this, BLM concluded there would be no significant air quality impacts associated with expanding the Deserado Mine.

81. In its EA for the Blue Mountain Lease, BLM failed to take a hard look at direct, indirect, and cumulative impacts to air quality from mining activities at the Deserado Mine and coal combustion at the Bonanza Power Station as required by NEPA. Thus, BLM's conclusions regarding the lack of significant air quality impacts, and the FONSI that relied on those conclusions, are arbitrary.

82. Because the EA issued by BLM failed to take a hard look at these direct, indirect, and cumulative impacts associated with expanding the Deserado Mine and extending operation of the Bonanza Power Station, BLM's FONSI and its approval of the Blue Mountain Lease were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

**SECOND CLAIM FOR RELIEF**  
**BLM's Violation of NEPA: Failure to Analyze**  
**Extended Operation of the Bonanza Power Station as a Connected Action**

83. Each and every allegation set forth in this complaint is incorporated herein by reference.

84. NEPA requires BLM to consider connected actions in a single environmental analysis. 40 C.F.R. § 1508.25(a)(1).

85. BLM was required to analyze operation of the Bonanza Power Station as a connected action to authorization of the Blue Mountain Lease. Thus, BLM was required to take a hard look at the direct, indirect, and cumulative impacts of extending the life of the Bonanza Power Station. The power plant will not operate independently of the Deserado Mine. The Bonanza Power Station is, has been, and will be the sole recipient of one hundred percent of the coal produced at the mine.

86. Extending the life of the Bonanza Power Station has potentially significant direct, indirect, and cumulative impacts to air quality from ambient ozone and PM<sub>2.5</sub> concentrations that will affect communities and the environment in the region. In spite of this, BLM concluded there would be no significant air quality impacts associated with extending the life of the Bonanza Power Station.

87. In its EA for the Blue Mountain Lease, BLM failed to consider extended operation of the Bonanza Power Station as a connected action with its own direct, indirect, and cumulative impacts to air quality.

88. Because BLM's EA failed to consider the Bonanza Power Station's operation as a connected action, BLM's FONSI and its approval of the Blue Mountain Lease were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

### **THIRD CLAIM FOR RELIEF**

#### **OSM's and the Secretary's Violation of NEPA: Failure to Take a Hard Look at the Air Pollution Impacts of the Deserado Mine and Bonanza Power Station**

89. Each and every allegation set forth in this complaint is incorporated herein by reference.

90. In adopting BLM's EA for the Blue Mountain Lease, OSM failed to provide "appropriate supporting documentation, that it adequately assessed the environmental effects of the proposed action and reasonable alternatives." 43 C.F.R. § 46.120(c). To this end, OSM failed to provide supporting documentation, including "an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects." *Id.*

91. In adopting BLM's EA for the Blue Mountain Lease, OSM specifically failed to take a hard look at the direct, indirect, and cumulative ozone- and PM<sub>2.5</sub>-related air quality impacts of from expanded mining activities at the Deserado Mine and coal combustion at the Bonanza Power Station as required by NEPA.

92. Because OSM adopted an EA that failed to take a hard look at ozone- and PM<sub>2.5</sub>-related air quality impacts from expansion of the Deserado Mine and Bonanza Power Station as required by NEPA, OSM's FONSI and the Acting Assistant Secretary's subsequent approval of Blue Mountain Energy's Mining Plan modification, were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

#### **FOURTH CLAIM FOR RELIEF**

##### **OSM's and the Secretary's Violation of NEPA: Failure to Analyze Extended Operation of the Bonanza Power Station as a Connected Action**

93. Each and every allegation set forth in this complaint is incorporated herein by reference.

94. NEPA requires OSM to consider connected actions in a single environmental analysis. 40 C.F.R. § 1508.25(a)(1).

95. OSM was required to analyze operation of the Bonanza Power Station as a connected action to its approval of the Deserado Mining Plan modification. The power plant will not operate independently of the Deserado Mine. The Bonanza Power Station is, has been, and will be the sole recipient of one hundred percent of the coal produced at the Mine.

96. In adopting BLM's EA for the Blue Mountain Lease which did not analyze as a connected action extended operation of the Bonanza Power Station, OSM failed to consider extended operation of the power station as a connected action with its own direct, indirect, and



cumulative impacts to air quality. OSM refused to take a hard look at the direct, indirect, and cumulative ozone- and PM<sub>2.5</sub>-related air quality impacts of extending the life of the Bonanza Power Station.

97. Because OSM adopted an EA that failed to consider the Bonanza Power Station's operation as a connected action to extended operation of the Deserado Mine, OSM's finding of no significant environmental impact and Acting Assistant Secretary's subsequent approval of Blue Mountain Energy's Mining Plan modification were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of NEPA and the APA. 5 U.S.C. §§ 706(1), (2)(A).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that BLM violated NEPA and the APA by approving the Blue Mountain Lease;
- B. Vacate and remand BLM's decision approving the Blue Mountain Lease application;
- C. Declare that OSM and Secretary Jewell violated NEPA and the APA by approving the Blue Mountain Energy Mining Plan modification;
- D. Vacate and remand OSM's and Secretary Jewell's approval of the Blue Mountain Energy Mining Plan modification;
- E. Enjoin BLM from re-issuing the Blue Mountain Lease approval until such time as BLM has demonstrated compliance with NEPA and the APA;
- F. Enjoin OSM and Secretary Jewell from re-issuing the Blue Mountain Mining Plan modification approval until such time as OSM has demonstrated compliance with

NEPA and the APA;

- G. Order Federal Defendants to inform Blue Mountain Energy that the Blue Mountain Lease and Mining Plan modification approvals have been vacated and new operations on the Blue Mountain Lease are prohibited until such time as Federal Defendants have demonstrated compliance with NEPA and the APA;
- H. Grant Plaintiff its costs of litigation including reasonable attorneys' fees as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- I. Grant Plaintiff such additional and further relief as the Court deems just and proper.

Respectfully submitted this 23rd day of May 2014.

/s/ Samantha Ruscavage-Barz  
WildEarth Guardians  
516 Alto Street  
Santa Fe, NM 87501  
(505) 401-4180  
ruscavagebarz@wildearthguardians.org

/s/ Ashley D. Wilmes  
WildEarth Guardians  
680 W. Hickory St.  
Louisville, CO 80027  
(859) 312-4162  
awilmes@wildearthguardians.org

*Attorneys for Plaintiff WildEarth Guardians*