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**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

WILDEARTH GUARDIANS and, ) Case No. 2:16-cv-00168-DN  
GRAND CANYON TRUST, )  
 ) **SECOND AMENDED COMPLAINT**  
Plaintiffs, )  
 )  
v. )  
 )  
S.M.R. JEWELL, *et al.*, )  
 )  
Defendants. )  
 )  
 )

## INTRODUCTION

1. This case involves the Federal Defendants’ failure to address the environmental and public health impacts of expanded coal mining in central Utah.

2. At issue are Federal Defendants’ uninformed approvals of the Flat Canyon Coal Lease (hereafter, “Flat Canyon Lease”), which will expand the Skyline Mine in Sanpete County, Utah. The Lease, comprised of publicly owned coal, underlies public lands that are part of the Manti-La Sal National Forest. The Skyline Mine provides coal to power plants in Nevada and Utah, although the Mine’s owner also exports coal to Asia. The mining, transport, and burning of coal pose tremendous environmental impacts. In particular, these activities cause emissions that contribute to air pollution and climate change. Yet in approving expanded mining—and in turn the inevitable transport and burning of coal—Federal Defendants refused to acknowledge the very real and serious air quality and climate implications of their actions.

3. This lawsuit challenges two agency actions. The first is the U.S. Bureau of Land Management’s (“BLM’s”) issuance of the Flat Canyon Lease. The second is the U.S. Forest Service’s (“Forest Service’s”) consent to issuance of the Flat Canyon Lease.

4. In issuing the Flat Canyon Lease, Federal Defendants relied on a nearly 15 year old environmental analysis and completely overlooked a number of potentially significant environmental impacts, including new information, that should have been considered in their decision as to whether issuance of the lease was in the public interest.

5. 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. Federal Defendants failed to analyze the potentially significant air quality and climate impacts of

expanded mining and of the inevitable transport and burning of coal. Federal Defendants also failed to comply with their own coal leasing regulations promulgated pursuant to the Mineral Leasing Act (“MLA”) by not considering public interest factors or, alternatively, improperly determining that the Flat Canyon Lease was in the public interest.

6. Accordingly, Federal Defendants’ approvals related to the Flat Canyon Lease violated NEPA, MLA regulations, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

### **JURISDICTION AND VENUE**

7. 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), 2202 (injunctive relief), and 5 U.S.C. § 551, *et seq.*

8. Plaintiffs’ claims arise under the judicial review provision of the APA, 5 U.S.C. §§ 701-706. Federal Defendants’ approvals of the Flat Canyon Lease are final agency actions.

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

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(1), (e)(1) because Plaintiffs and Federal Defendants both have offices in this district.

### **PARTIES**

11. Plaintiff WILDEARTH GUARDIANS is a non-profit membership organization based in Santa Fe, New Mexico, with offices in Denver and other western states. WildEarth Guardians (“Guardians”) has more than 80,000 members and activists, some of whom live, work, and/or recreate on public and private lands around the coal mines that are the subject of

this Complaint. Guardians and its members, are dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health 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.

12. Plaintiff GRAND CANYON TRUST ("Trust") is a non-profit corporation with over 3,000 Members. The Trust has offices in Castle Valley and Moab, Utah, Denver and Durango, Colorado, and is headquartered in Flagstaff, Arizona. The Trust's mission is to protect and restore the national forests and canyon country of the Colorado Plateau – its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, high alpine areas, and areas of beauty and solitude. One of the Trust's goals is to ensure that the Colorado Plateau is a region characterized by vast open spaces with restored, healthy ecosystems, and habitat for all native fish, animals, and plants.

13. Plaintiffs' members who live, work, recreate, and conduct other activities on public lands affected by the Flat Canyon leasing decision are affected by poor air quality associated with the Skyline Mine in Sanpete and neighboring Counties in Utah, and the shipping and burning of that coal for electricity at coal-fired power plants. Plaintiffs' members have a substantial interest in ensuring they breathe the cleanest air possible. Plaintiffs and their members use and enjoy public lands and resources affected by the Flat Canyon leasing decision for recreational, scientific, aesthetic, conservation, and other public purposes. They are harmed by the aesthetic and environmental impacts of coal mining at the Skyline Mine and the shipping and combustion of the mined coal. Plaintiffs and their members also have a substantial interest in ensuring that the Federal Defendants comply with federal law, including the requirements of

NEPA and the MLA. Plaintiffs' and their members' interests have been, are being, and will continue to be irreparably harmed by Federal Defendants' approvals of the Flat Canyon Lease.

14. Defendant SALLY JEWELL is sued in her official capacity as U.S. Secretary of the Interior. In this capacity she is responsible for implementing the U.S. Department of the Interior's coal leasing program pursuant to the MLA, 30 U.S.C. § 201 *et seq.*

15. 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 and the MLA. 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 and meeting public notice requirements under the MLA.

16. Defendant U.S. FOREST SERVICE is a federal agency within the United States Department of Agriculture that is directly responsible for administering and managing lands under its jurisdiction in compliance with all pertinent environmental laws, including NEPA. The Forest Service is responsible for deciding whether or not to consent to the BLM's issuance of coal leases underlying National Forest System lands.

## **LEGAL BACKGROUND**

### **I. The Federal Coal Leasing Process**

17. The Mineral Leasing Act (MLA) governs the leasing of public lands for developing deposits of federally owned coal and other minerals. 30 U.S.C. §§ 181-287. Federal regulations implementing the MLA provide for two types of coal leasing processes: Competitive

Leasing and Lease-by-Application.

18. Competitive Leasing applies in those areas BLM has designated as Coal Production Regions. As part of this Competitive Leasing process, BLM establishes regional leasing levels that include a ceiling for coal leasing, and delineates lease boundaries based on an assessment of regional environmental impacts and public input. BLM then auctions leases within the Coal Production Region to the highest bidder. 43 C.F.R § 3420.

19. BLM's Lease-by-Application ("LBA") process applies where there is an "emergency need for unleased coal" or in areas "outside Coal Production Regions." 43 C.F.R § 3425.0-2. This process allows coal companies, rather than BLM, to delineate lease tracts and propose them for leasing. Lease proposals are not based on regional leasing levels or any regional environmental impact analysis. The LBA process does not allow BLM to put a ceiling on coal leasing. *See* 43 C.F.R § 3425.

20. BLM can only approve an LBA 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 an LBA can be issued, BLM must prepare an "environmental assessment or environmental impact statement" in accordance with NEPA. 43 C.F.R. § 3425.3(a). To this end, BLM must hold a public hearing on the environmental assessment or environmental impact statement and publish notice of the hearing in the Federal Register. 43 C.F.R. §§ 3425.3(a), 3425.4(a)(1).

21. When a federal coal lease underlies surface lands under the jurisdiction of the Forest Service, the Forest Service must independently review and, if appropriate, consent to the leasing decision. 30 U.S.C. § 201(a)(3)(A)(iii); 43 C.F.R. § 3427.1.

## II. The National Environmental Policy Act

22. 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).

23. 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.

24. 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. The scope of the analysis must include “[c]umulative actions,” or actions that “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same statement,” and “[s]imilar actions,” or actions that “when viewed with other reasonably

foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together[.]” 40 C.F.R. §§ 1508.25(a)(2) and (3).

25. 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. “Effects” are synonymous with “impacts.” 40 C.F.R. § 1508.8.

26. 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.

27. 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).

28. After preparing an EIS, an agency may not simply rest on the original document. The agency must gather and evaluate new information that may alter the results of its original environmental analysis, and continue to take a hard look at the environmental effects of its planned actions. 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).

### **III. The Administrative Procedure Act**

29. 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.

30. 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). A court must also compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

## **FACTUAL BACKGROUND**

### **I. BLM and Forest Service Authorization of the Flat Canyon Lease**

31. On March 18, 1998, Canyon Fuel Company, a former subsidiary of Arch Coal and current subsidiary of Bowie Resources, filed an application with the BLM for a new coal lease known as the Flat Canyon Tract. Identified as lease number UTU-77114, it includes 42

million tons of federal coal reserves on a 2,692.16-acre tract of land in Sanpete County, Utah, 10 miles southwest of Scofield. This tract underlies the Manti-La Sal National Forest. This tract is adjacent to existing coal mining operations at the Skyline Mine, one of the largest underground coal mining operations in Utah.

32. Canyon Fuel Company applied to lease the Flat Canyon tract in order to expand the Skyline Mine and extend its life. Reserves at the Flat Canyon tract would extend the life of the Mine for 9-12 years. Without the coal in the Flat Canyon tract, recovery of coal at the Skyline Mine is expected to continue for approximately 12 years, through 2023, under the Winter Quarters coal lease (UTU-67939) and a 2011 Lease Modification approved by BLM.

33. On March 17, 2000 BLM and the Forest Service published a Notice of Intent to prepare an EIS for the Flat Canyon coal lease in the Federal Register. 65 Fed. Reg. 14,523 (March 17, 2000).

34. On June 21, 2001 BLM held a public hearing and requested comments on the draft EIS for the Flat Canyon lease. On July 27, 2001 BLM published in the Federal Register a notice of availability of the draft EIS and a notice that a public hearing on the Flat Canyon Lease had been held at the Flat Canyon Campground one month earlier. 66 Fed. Reg. 39,191 (July 27, 2001). BLM did not provide notice of the public hearing in the Federal Register prior to holding the hearing. The Mineral Leasing Act regulations require BLM to provide prior notice in the Federal Register of the availability of a draft EIS and the date of the public hearing. 43 C.F.R. § 3425.3(a).

35. On January 3, 2002 BLM and the Forest Service released a final EIS (“FEIS”) for the Flat Canyon Lease. On that same day, the Forest Service signed a Record of Decision

consenting to the lease sale. On January 18, 2002 a notice of availability of the FEIS for the Flat Canyon lease was published in the Federal Register. 67 Fed. Reg. 2,651 (Jan. 18, 2002). BLM signed the Record of Decision for the Flat Canyon Lease on April 11, 2002. On May 23, 2002 BLM published in the Federal Register notice of availability of BLM's Record of Decision for the Flat Canyon Lease. 67 Fed. Reg. 36,214 (May 23, 2002).

36. Shortly after BLM issued the Record of Decision authorizing the lease sale, the lease applicant—Arch Coal—asked that the leasing decision be put on hold indefinitely. As a result, the Forest Service did not transmit to BLM its letter of consent to the lease sale and BLM did not implement its leasing decision.

37. In June 2012, Arch Coal again expressed interest in leasing the Flat Canyon tract. On June 14, 2012 BLM sent a letter to the Forest Service inquiring about the status of the Forest Service's consent to leasing the Flat Canyon tract. Although the Forest Service had agreed to provide consent to the lease in its 2002 Record of Decision, the agency did not provide its consent to BLM. For this reason and because the FEIS was over 10 years old, the Forest Service determined that it needed to evaluate whether there was significant new information or changed circumstances that would warrant supplementation of the 2002 FEIS for the Flat Canyon Lease.

38. On February 1, 2013 the Forest Service completed a Supplemental Information Report (“SIR”) and consented to the sale and issuance of the Flat Canyon Lease. According to the Forest Service, “[a] SIR is not a NEPA document and therefore cannot be used to fulfill the requirements for a revised or supplemental EA or EIS. A SIR cannot repair deficiencies in the original environmental analysis or documentation[.]” Forest Service Handbook 1909.15, 18.1.

39. In its SIR, the Forest Service concluded that the analysis of the Flat Canyon Lease's environmental impacts discussed in the 2002 FEIS remained valid to support issuing the Lease more than a decade later. In the SIR, the Forest Service also concluded that it was not necessary to supplement the 2002 FEIS because the new information and changed circumstances that arose in the interim would not have any new or different environmental effects from those described in the 2002 FEIS.

40. Because BLM had not offered or issued the Flat Canyon Lease, on February 26, 2015, BLM completed a Determination of NEPA Adequacy ("DNA") concluding that the analysis of the Flat Canyon Lease's environmental impacts discussed in the 2002 FEIS remained valid to support offering the Lease for sale and issuance. According to the BLM, a DNA is meant to confirm "that an action is adequately analyzed in existing NEPA document(s)," but is "not itself a NEPA document." BLM NEPA Handbook, H-1790-1, 5.1. In its DNA, BLM concluded, based on the Forest Service's SIR, that the 2002 FEIS for the Flat Canyon Lease fully covered the proposed leasing decision. In the DNA, BLM stated that because it had determined that supplementation of the 2002 FEIS was not necessary, the agency was not soliciting any public involvement on its leasing decision.

41. On May 15, 2015, BLM published in the Federal Register a notice of competitive lease sale for the Flat Canyon Lease. 80 Fed. Reg. 28,002 (May 15, 2015).

42. On May 20, 2015 Guardians sent a letter to the BLM and the Forest Service identifying several concerns with the agencies' leasing authorization including failure to supplement the 2002 FEIS on the basis of significant new environmental circumstances and information; failure to follow proper public notice procedures; failure to provide for public

involvement in the agencies' decision not to supplement the FEIS; and failure to take a hard look at the direct, indirect, and cumulative effects to air quality and climate from coal mining and burning.

43. On June 8, 2015 a coalition of environmental organizations sent a letter to the Secretary of Interior and BLM Director reiterating the concerns raised in Guardians' letter and urging cancellation of the Flat Canyon Lease sale.

44. The "competitive" auction for the Flat Canyon Lease took place on June 17, 2015. Bowie Resources, a Kentucky-based company that acquired Canyon Fuels from Arch Coal in 2013, was the sole and winning bidder. On June 19, 2015 BLM accepted Bowie's bid and made the determination to issue the Flat Canyon Lease to Bowie. BLM issued the Flat Canyon Lease on July 31, 2015.

45. Also on July 31, 2015, BLM and the Forest Service each provided responses to Guardians' May 2015 letter.

## **II. The Skyline Mine**

46. The Skyline Mine is an underground coal mine that is currently the second largest producer of coal in Utah.

47. The Mine was owned by Arch Coal, but was sold to Bowie Resources in 2013. Although the Mine historically has fueled power plants in the region, Bowie Resources also exports coal from Utah overseas through ports in California. In a recent statement regarding an Initial Public Offering, Bowie stated that it exports coal "to a variety of growing economies on

the Pacific Rim.” NASDAQ, “Bowie Resource Partners LP.”<sup>1</sup> Reports indicate Bowie exports 1-3 million tons annually from its mines in Utah and is moving to lock in additional approvals, including a new coal export facility in Oakland, CA and additional federal coal leases to maintain and/or increase its export capacity.<sup>2</sup>

48. The Skyline Mine halted production in 2004 due to geologic factors and water infiltration. Starting in 2005, the Mine has steadily increased production. In 2002, BLM and Forest Service reported in their FEIS that coal production levels at the Mine would be three to four million tons annually. In 2014, coal production at the Mine exceeded four million tons. According to the Utah Geologic Survey, production reached 4.17 million tons in 2014.<sup>3</sup>

49. BLM and the Forest Service reported in the FEIS for the Flat Canyon Lease that the Mine would shutdown by 2003 if the Lease was not issued. FEIS at 4-2. The Mine did not shut down in 2003 due to a lack of coal, and has since been regularly producing coal. In late 2011, BLM and the Forest Service approved a lease modification for the Winter Quarters coal lease that added 6.9 million tons of coal to the Skyline Mine’s reserves. In an EA prepared for that lease modification, BLM and the Forest Service stated the lease modification would add two to three years to the 10-year life of the Mine, indicating sufficient reserves exist to maintain

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<sup>1</sup> Available at <http://www.nasdaq.com/markets/ipo/company/bowie-resource-partners-lp-968514-78744> (last accessed Sept. 9, 2015).

<sup>2</sup> Maffly, B., “Utah coal: California here it comes—and not everyone is happy,” *Salt Lake Tribune* (April 25, 2015), available at <http://www.sltrib.com/home/2425141-155/utah-coal-california-here-it-comes?fullpage=1> (last accessed Sept. 9, 2015).

<sup>3</sup> Utah Geologic Survey, “Coal Production and Recoverable Reserves in Utah by Coal Mine, 2001-2014,” available at <http://files.geology.utah.gov/emp/energydata/statistics/coal2.0/pdf/T2.8.pdf> (last accessed Sept. 9, 2015).

operations into the 2020s.<sup>4</sup>

### **III. Environmental Impacts of Coal Mining and Combustion**

#### **A. Climate Change, Carbon Dioxide, and Coal.**

50. Climate change has been intensively studied and acknowledged at the global, national, and regional scales. Climate change is being fueled by the human-caused release of greenhouse gas emissions, in particular carbon dioxide. The Intergovernmental Panel on Climate Change (“IPCC”) is a scientific body under the auspices of the United Nations that reviews and assesses the most recent scientific, technical and socio-economic information produced worldwide relevant to the understanding of climate change. In its most recent report to policymakers in 2014, the IPCC provided a summary of our understanding of human-caused climate change. Among other things, the IPCC summarized:<sup>5</sup>

- Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.
- Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.
- Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane, and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are

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<sup>4</sup> BLM and Forest Service, “Environmental Assessment, Modification of Winter Quarters Federal Coal Lease UTU-67939” at 10 (Nov. 2011), available at [https://www.blm.gov/ut/enbb/files/20111123\\_Tt\\_BLM\\_FS\\_Final\\_Skyline\\_Liz\\_EA.pdf](https://www.blm.gov/ut/enbb/files/20111123_Tt_BLM_FS_Final_Skyline_Liz_EA.pdf) (last accessed Sept. 9, 2015).

<sup>5</sup> IPCC, “Climate Change 2014 Synthesis Report, Summary for Policymakers,” available at [http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5\\_SYR\\_FINAL\\_SPM.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf) (last accessed Sept. 9, 2015).

extremely likely to have been the dominant cause of the observed warming since the mid-20<sup>th</sup> century.

- In recent decades, changes in climate have caused impacts on natural and human systems on all continents and across the oceans. Impacts are due to observed climate change, irrespective of its cause, indicating the sensitivity of natural and human systems to changing climate.
- Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive, and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks.
- Surface temperature is projected to rise over the 21<sup>st</sup> century under all assessed emission scenarios. It is very likely that heat waves will occur more often and last longer, and that extreme precipitation events will become more intense and frequent in many regions. The ocean will continue to warm and acidify, and global mean sea level to rise.

51. Increases in the release of greenhouse gases by human activities are intensifying the greenhouse effect, making climate change one of the most serious environmental challenges facing the United States. The U.S. Global Change Research Program was established by Presidential initiative in 1989 and charged by Congress in 1990 to assist the nation and the world in understanding and responding to climate change. According to a 2014 report prepared by this Program.<sup>6</sup>

Climate change, once considered an issue for a distant future, has moved firmly into the present. Corn producers in Iowa, oyster growers in Washington State, and maple syrup producers in Vermont are all observing climate-related changes that are outside of recent experience. So, too, are coastal planners in Florida, water managers in the arid Southwest, city dwellers from Phoenix to New York, and Native Peoples on tribal lands from Louisiana to Alaska. This National Climate Assessment concludes that the

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<sup>6</sup> Melillo, J.M., T.C. Richmond, G.W. Yohe, Eds., *Climate Change Impacts in the United States: The Third National Climate Assessment*, U.S. Global Change Research Program (May 2014) at 1-2, available at [http://s3.amazonaws.com/nca2014/low/NCA3\\_Climate\\_Change\\_Impacts\\_in\\_the\\_United%20States\\_LowRes.pdf?download=1](http://s3.amazonaws.com/nca2014/low/NCA3_Climate_Change_Impacts_in_the_United%20States_LowRes.pdf?download=1) (last accessed Sept. 9, 2015).

evidence of human-induced climate change continues to strengthen and that impacts are increasing across the country.

While scientists continue to refine projections of the future, observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases. These emissions come mainly from burning coal, oil, and gas, with additional contributions from forest clearing and some agricultural practices.

52. Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are recognized as the key greenhouse gases contributing to climate change. In 2009, the U.S. Environmental Protection Agency (“EPA”) found that these “six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.” 74 Fed. Reg. 66,496 (Dec. 15, 2009).

53. Responding to these findings and urgency in addressing human-caused climate change, the federal government has undertaken a series of initiatives to measure and reduce U.S. greenhouse gas emissions. In Department of the Interior Secretarial Order No. 3289, *Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources* (Sept. 14, 2009), the Secretary of the Interior proclaimed that “[t]he realities of climate change require us to change how we manage the land, water, fish and wildlife, and cultural heritage and tribal lands and resources we oversee.” The Secretary proceeded to call for the development of a “unified greenhouse gas emission reduction program” among Department of Interior agencies.

54. In Executive Order No. 13514, *Federal Leadership in Environmental, Energy, and Economic Performance* (Oct. 5, 2009), President Obama called on all federal agencies to “measure, report, and reduce their greenhouse gas emissions from direct and indirect activities.” 74 Fed. Reg. 52,117 (Oct. 8, 2009). This directive was followed up by Executive Order No.

13693, *Planning for Federal Sustainability in the Next Decade* (March 25, 2015), which reaffirmed the federal government's commitment to reducing greenhouse gas emission. 80 Fed. Reg. 15,871 (March 25, 2015).

55. Carbon dioxide is the leading cause of climate change and the most emitted greenhouse gas in the United States. According to the most recent EPA report, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2013* ("2013 GHG Inventory Report"), the U.S. emitted 6,673 million metric tons of greenhouse gases in 2013, comprising 19 percent of human created greenhouse gases released globally. Of this total, carbon dioxide comprised 83 percent of total U.S. greenhouse gas emissions, or 5,505.2 million metric tons.

56. EPA also determined in the 2013 GHG Inventory Report that the electricity generation sector is the largest source of greenhouse gases in the U.S., largely due to carbon dioxide emissions. Coal-fired power plants release more than 77 percent of all greenhouse gases from the electricity generation sector, making coal-fired power plants and the mines that supply them the largest source of carbon dioxide in the country.

57. In recognition of the economic consequences of human-caused climate change, federal agencies have developed a protocol for assessing the social cost of carbon dioxide emissions. The social cost of carbon is "an estimate of the economic damages associated with a small increase in carbon dioxide (CO<sub>2</sub>) emissions, conventionally one metric ton, in a given year."<sup>7</sup> Conversely, the social cost of carbon can represent "the value of damages avoided for a small emission reduction (i.e., the benefit of a CO<sub>2</sub> reductions)." The EPA has explained:

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<sup>7</sup> EPA, "The Social Cost of Carbon," available at <http://www.epa.gov/climatechange/EPAactivities/economics/scc.html> (last accessed Sept. 9, 2015).

The [social cost of carbon protocol] is meant to be a comprehensive estimate of climate change damages and includes changes in net agricultural productivity, human health, property damages from increased flood risk, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning. However, given current modeling and data limitations, it does not include all important damages.

58. A federal Interagency Working Group consisting of the EPA, Center for Environmental Quality, Department of Energy, National Economic Council, Office of Management and Budget, Department of Agriculture, Department of Commerce, Department of Transportation and other agencies have prepared estimates of what the actual social cost of carbon is. The Interagency Working Group prepared their first estimates of carbon dioxide in 2010.<sup>8</sup> This report disclosed that the cost of a metric ton of carbon dioxide in 2010 ranged between \$4.7 and \$64.9 per metric ton. The actual estimate depended upon the assumed discount rate, which itself was based on presumptions regarding the longevity of carbon dioxide in the atmosphere and the damages caused by its presence.

59. The 2010 report was subsequently updated in 2013. The 2013 report disclosed that the cost of a metric ton of carbon dioxide at that time ranged between \$11 and \$98 per metric ton.<sup>9</sup> The 2013 report was updated in 2015 and disclosed that the cost of carbon dioxide emissions as of 2015 ranged between \$11 and \$105 per metric ton.<sup>10</sup>

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<sup>8</sup> Interagency Working Group on Social Cost of Carbon, United States Government, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” February 2010, available at <http://www.epa.gov/otaq/climate/regulations/scc-tsd.pdf>. (last accessed Sept. 9, 2015).

<sup>9</sup> Interagency Working Group on Social Cost of Carbon, United States Government, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (May 2013) at 3, available at [https://www.whitehouse.gov/sites/default/files/omb/inforeg/social\\_cost\\_of\\_carbon\\_for\\_ria\\_2013\\_update.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf) (last accessed Sept. 9, 2015).

<sup>10</sup> Interagency Working Group on Social Cost of Carbon, United States Government, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact

60. According to EPA, on average, every one ton of coal burned releases approximately 1.8 metric tons of carbon dioxide.<sup>11</sup> Thus, a million tons of coal mined and burned would release more than 1.8 million metric tons of carbon dioxide and cost up to nearly \$200 million.

61. In terms of the mining and burning of publicly owned coal, the greenhouse gas emissions and associated costs are tremendous. A report commissioned by The Wilderness Society in 2014 found that publicly owned coal production in 2012 was linked to 765,241,950 metric tons of carbon dioxide, which the report indicated represented more than 11% of all U.S. greenhouse gas emissions released in 2012.<sup>12</sup> Based on the Interagency Working Group's most recent estimates, these emissions could cost from \$8 billion to more than \$80 billion.

62. Mining of the Flat Canyon Lease will produce coal that will be burned in coal-fired power plants. Burning this coal will release carbon dioxide and other greenhouse gases that will contribute to human-caused climate change. These emissions will impose societal costs that would otherwise be avoided if the coal was not mined.

**B. Other Air Pollutants from Coal Production—Ozone, NO<sub>2</sub>, Particulate Matter.**

63. Coal mining activities also generate various harmful air pollutants including ozone precursors, nitrogen dioxide (“NO<sub>2</sub>”), coarse particulate matter (“PM<sub>10</sub>”), and fine

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Analysis Under Executive Order 12866” (July 2015) at 3, available at <https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf> (last accessed Sept. 9, 2015).

<sup>11</sup> EPA, “Greenhouse Gas Equivalencies Calculator, Calculations and References,” available at <http://www.epa.gov/cleanenergy/energy-resources/refs.html> (last accessed Sept. 9, 2015).

<sup>12</sup> Stratus Consulting, “Greenhouse Gas Emissions from Fossil Energy Extracted From Federal Lands and Waters: an Update,” Final Report Prepared for The Wilderness Society (Dec. 23, 2014), available at <http://wilderness.org/sites/default/files/Stratus-Report.pdf> (last accessed Sept. 9, 2015).

particulate matter (“PM<sub>2.5</sub>”). Tailpipe emissions from mining equipment and emissions from trains used to haul coal from mines produce ozone precursors. Blasting on site can produce gaseous clouds that contain NO<sub>2</sub>. Coal crushing, storing, and handling facilities are the most common sources of particulate matter.

64. Ground-level ozone is a dangerous pollutant that causes a variety of significant adverse impacts to human health. According to EPA, elevated levels of ozone have a “causal relationship[] with a range of respiratory morbidity effects, including lung function decrements, increased respiratory symptoms, airway inflammation, increased airway responsiveness, and respiratory-related hospitalizations and emergency department visits.” 73 Fed. Reg. 16,436, 16,443-46 (March 27, 2008). EPA has also stated that the latest scientific evidence on ozone effects “is highly suggestive that [ozone] directly or indirectly contributes to non-accidental and cardiorespiratory-related mortality,” including “premature mortality.” *Id.* EPA has concluded that individuals with asthma are at particular risk from the adverse effects of ozone. *Id.*

65. Ozone is a criteria pollutant under the federal Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 *et seq.* The CAA establishes National Ambient Air Quality Standards (“NAAQS”) for each criteria pollutant that represents the maximum allowable concentration of each pollutant that can occur in the air and still protect public health. *See* 42 U.S.C. § 7409. Currently, the NAAQS limit for ozone concentrations is no more than 0.075 parts per million (“ppm”) over an eight-hour period. According to EPA, an exceedance of the standard occurs whenever ambient ozone concentrations reach 0.076 ppm or higher and a violation occurs whenever the three-year average of the fourth-highest annual eight-hour ozone concentrations is 0.076 ppm or higher.

66. NO<sub>2</sub> is a criteria pollutant under the CAA. The NO<sub>2</sub> annual standard is 53 parts per billion (“ppb”). On July 15, 2009, EPA proposed to supplement the annual standard with a one-hour NO<sub>2</sub> standard of between 80 and 100 ppb. 74 Fed. Reg. 34,404-66 (July 15, 2009). EPA believed it was necessary to supplement the annual standard with a standard governing short-term exposure because “recent studies provide scientific evidence that is sufficient to infer a likely causal relationship between short-term NO<sub>2</sub> exposure and adverse effects on the respiratory system.” *Id.* at 34,410. According to EPA, “[e]pidemiologic evidence exists for positive associations of short-term ambient NO<sub>2</sub> concentrations below the current NAAQS with increased numbers of emergency department visits and hospital admissions for respiratory causes, especially asthma.” *Id.* at 34,413. EPA promulgated the final one-hour NO<sub>2</sub> standard of 100 ppb on February 9, 2010. *See* 75 Fed. Reg. 6,474-6,537 (Feb. 9, 2010).

67. Particulate matter less than 10 microns in diameter, or PM<sub>10</sub>, is a criteria pollutant under the CAA. 71 Fed. Reg. 61,144 (Oct. 17, 2006). The NAAQS limits hourly PM<sub>10</sub> concentrations to no more than 150 micrograms/cubic meter. *Id.* at 61,202. According to EPA, health effects associated with short-term exposure to PM<sub>10</sub> include “aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions), increased respiratory symptoms in children, and premature mortality.” *Id.* at 61,178.

68. Particulate matter less than 2.5 microns in diameter, or PM<sub>2.5</sub>, is a criteria pollutant under the CAA. 71 Fed. Reg. 61,144 (Oct. 17, 2006). The NAAQS limits annual PM<sub>2.5</sub> concentrations to no more than 15 micrograms/cubic meter. *Id.* The NAAQS limits 24-hour PM<sub>2.5</sub> concentrations to no more than 35 micrograms/cubic meter. *Id.* 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.” *Id.* at 61,152.

69. Mining the Flat Canyon Lease will lead to increased levels of harmful air pollutants—ozone, NO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>—in Sanpete County and the surrounding area.

#### **IV. The EIS, DNA, and SIR for the Flat Canyon Lease**

##### **A. Lack of Analysis of Climate Impacts.**

70. The Flat Canyon FEIS did not estimate greenhouse gas emissions levels from coal mining, transport, or combustion; analyze how and to what degree increased greenhouse gas emissions from coal mining, transport, and combustion would contribute to climate change; or in any way address greenhouse gas emissions from coal mining, transport, and combustion. The FEIS also did not address costs associated with carbon dioxide emissions.

71. The FEIS does not include any analysis of climate impacts or carbon costs resulting from coal mining, transport, and combustion, or even the relative contribution of greenhouse gas emissions from these activities to climate change. Neither does the FEIS consider measures to mitigate those impacts or alternatives that would reduce or eliminate greenhouse gas emissions occurring as a consequence of the agency’s decision to offer the Lease. Instead, BLM and the Forest Service stated that climate change issues related to coal combustion were “beyond the scope” of the FEIS’s analysis.

72. The Forest Service’s 2013 SIR did not provide any additional consideration of climate change impacts or greenhouse gas emissions from coal combustion. The SIR repeated statements from the FEIS about coal combustion impacts being beyond the scope of analysis for

the leasing decision; concluded that the FEIS adequately addressed climate change impacts from the leasing decision; and found that no further analysis was necessary. The SIR did not address new information regarding the costs of carbon dioxide or any other new information relevant to the greenhouse gas and climate impacts of the Flat Canyon Lease, including information indicating that coal from the Skyline Mine is likely exported overseas.

73. BLM's 2015 DNA for the leasing decision did not include any discussion of greenhouse gas emissions or climate impacts. In the DNA, BLM relied on the Forest Service's SIR to support BLM's decision that supplementation of the 2002 FEIS was not necessary.

74. In BLM's July 31, 2015 response to Guardians' May 20, 2015 letter, the agency attempted to correct its failure to analyze the climate impacts of the Flat Canyon Lease by presenting estimates of greenhouse gas emissions associated with coal burning. These estimates in the letter are cursory, and do not shed any additional light on the climate impacts of the Flat Canyon Lease. This letter is not a NEPA document.

**B. Lack of Analysis of Air Pollution Impacts Related to Coal Mining.**

75. In the Flat Canyon FEIS, discussion of air quality was limited to a short paragraph asserting that the Skyline Mine facilities were currently meeting air quality standards; that extending the life of the Mine would not lead to additional emissions; and that future operations would not be expected to result in any Clean Air Act violations. The FEIS included no further discussions of potential air quality impacts from extending the life of the mine. The FEIS did not analyze the direct, indirect, and cumulative air quality impacts of mining.

76. The discussion of air quality in the Forest Service's 2013 SIR was limited to a recognition that after the agencies completed the 2002 FEIS "EPA provided new information

about air quality” in the form of an updated classification of areas that were in not in compliance with current air quality standards. The Forest Service noted that none of the counties surrounding the Flat Canyon Lease were out of compliance with current standards. The Forest Service concluded that “any new concerns over air quality fall within the scope and range of effects considered in the original FEIS analysis, so additional analysis in a supplemental EIS is unnecessary.” The SIR did not mention that in the intervening years between the FEIS and the SIR, EPA had revised and strengthened several air quality standards for air pollutants generated by coal mining and combustion.

77. BLM’s 2015 DNA for the leasing decision did not include any discussion of air quality. In the DNA, BLM relied on the Forest Service’s SIR to support BLM’s decision that supplementation of the 2002 EIS was not necessary.

**C. Inadequate Analysis of Impacts on Greater Sage-Grouse and Its Habitat**

78. The 2002 FEIS did not analyze the direct, indirect, or cumulative impacts on greater sage-grouse that would result from the Flat Canyon Lease.

79. In 2010, the U.S. Fish and Wildlife Service determined that listing the greater sage-grouse as threatened or endangered under the Endangered Species Act was warranted but precluded by higher-priority-listing actions.<sup>13</sup> In light of that determination, the Forest Service and BLM announced in December 2011 that they intended to incorporate greater sage-grouse conservation measures into their land use plans across the range of the species.<sup>14</sup> Not long after, BLM also issued an interim management policy, IM-2012-043, to promote sustainable greater

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<sup>13</sup> 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered, 75 Fed. Reg. 13,918 (Mar. 23, 2010).

<sup>14</sup> Notice of Intent To Prepare Environmental Impact Statements and Supplemental Environmental Impact Statements To Incorporate Greater Sage-Grouse Conservation Measures Into Land Use Plans and Land Management Plans, 76 Fed. Reg. 77,008 (Dec. 9, 2011).

sage-grouse populations and conservation of greater sage-grouse habitat while the agencies were developing their greater sage-grouse resource-management-plan amendments.

80. In October 2013, the Forest Service and BLM published draft land use plan amendments and an environmental impact statement for the Utah sub-region of the agencies' national greater sage-grouse planning strategy area. This draft environmental impact statement analyzed threats to the greater sage-grouse in the Utah sub-region, including threats from mineral extraction, and proposed amendments to applicable land use plans to conserve, enhance, and restore greater sage-grouse habitat by reducing, eliminating, or minimizing threats to that habitat.

81. The draft environmental impact statement identified BLM-administered and National Forest System lands to be managed as having the highest value for maintaining sustainable greater sage-grouse populations. These areas were called "preliminary priority management areas" in the draft environmental impact statement. These areas were based on earlier maps prepared by BLM and state fish and wildlife agencies of "preliminary priority habitat" for greater sage-grouse. On information and belief, the Flat Canyon Lease includes land within or near designated preliminary priority habitat and preliminary priority management areas.

82. In June 2015, the Forest Service and BLM published proposed final land-use-plan amendments and a final environmental impact statement for the Utah sub-region of the sage-grouse planning area. In the final environmental impact statement, the areas designated as "preliminary priority management areas" were re-named "priority habitat management areas." On information and belief, the Flat Canyon Lease includes land within or near priority habitat management areas.

83. In September 2015, the Forest Service and BLM approved the greater-sage-grouse amendments to their land and resource management plans for National Forest System and BLM-administered lands in Utah, including designation of priority habitat management areas and other land-use allocations. The amendments added to the plans desired conditions, goals, objectives, standards, guidelines, and management actions to conserve, enhance, and restore greater sage-grouse and its habitat by reducing, eliminating, or minimizing threats to greater sage-grouse in priority habitat management areas and other designated areas.

84. Before consenting to the Flat Canyon Lease in February 2013, the Forest Service did not analyze, in the SIR or otherwise, its draft land-and-resource-management-plan amendments, the information and circumstances about greater sage-grouse described in the draft NEPA documents analyzing those amendments, the preliminary priority habitat and management area designations for greater sage-grouse, or other information and circumstances about greater sage-grouse developed since the 2002 EIS.

85. Before issuing the Flat Canyon Lease in July 2015, BLM did not analyze, in the DNA or otherwise, its draft land-and-resource-management-plan amendments, the information and circumstances about greater sage-grouse described in the draft NEPA documents analyzing those amendments, the preliminary priority habitat and management area designations for greater sage-grouse, or other information and circumstances about greater sage-grouse developed since the 2002 EIS.

86. In the DNA, BLM instead purported to apply its interim management policies and procedures set out in IM-2012-043. Under IM-2012-043, BLM was required to apply interim conservation policies and procedures to ongoing and proposed BLM actions, including use

authorizations, within “preliminary priority habitat” and “preliminary general habitat” areas to minimize habitat fragmentation and loss.

87. In the DNA, BLM observed that the Flat Canyon Lease area was within delineated “priority areas for conservation” for greater sage-grouse, which are identical to Utah state-designated “sage grouse management areas.” BLM concluded that the Flat Canyon Lease would not negatively affect greater sage-grouse. In reaching that conclusion, BLM relied on an assessment by the Utah Division of Wildlife Resources that the Flat Canyon Lease area should be classified as non-habitat for greater sage-grouse. In making these determinations, the Division of Wildlife Resources and BLM did not consider the “preliminary priority habitat” designation in the Flat Canyon Lease area. Thus, BLM improperly concluded that the interim conservation policies and procedures in IM-2012-043 did not apply to the Flat Canyon Lease.

**D. Lack of Analysis of Cumulative Impacts and/or Similar Actions.**

88. The Flat Canyon FEIS was prepared in 2002. Since that time, Federal Defendants have proposed and/or approved similar coal leases that cumulatively impact the environment, particularly in terms of climate impacts, including carbon costs. These proposals and approvals include coal leasing and related actions conducted pursuant to 43 C.F.R. § 3420 *et seq.* These proposals and approvals are part of Federal Defendants’ ongoing implementation of their federal coal program.

89. Since the Flat Canyon FEIS was prepared in 2002, BLM has issued at least six new coal leases in the State of Utah.<sup>15</sup> In late 2011, BLM and the Forest Service approved a lease modification that extended the life of the Skyline Mine by adding nearly seven million tons of

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<sup>15</sup> BLM, “Successful Competitive Lease Sales Since 1990, Utah,” available at <http://www.blm.gov/ut/st/en/prog/energy/coal/coaltables.html> (last accessed Sept. 9, 2015).

reserves to the Mine.<sup>16</sup> The FEIS does not mention these additional coal leasing actions or analyze their cumulative impacts. Neither the Forest Service's SIR nor BLM's DNA mention these additional coal leasing actions or evaluate whether their cumulative impacts warranted supplementation or revision of the FEIS.

90. Additionally, since 2002, Federal Defendants have proposed a number of additional coal-related actions. These proposals are all similar to the Flat Canyon Lease and pose cumulative climate impacts. Such specific similar proposals posing cumulative impacts include, but are not limited to:

- BLM's proposal to offer for sale and issuance the Greens Hollow coal lease (UTU-84102), a 60 million ton coal lease containing 6,175 acres in central Utah. The lease, which is being pursued by Bowie Resources and would expand the company's SUFCO Mine near Emery, Utah, has been proposed by the BLM and a Supplemental EIS prepared, but it has not yet approved for sale and issuance. BLM, "Greens Hollow EIS," available at <http://www.blm.gov/ut/st/en/fo/price/energy/coal.html> (last accessed Sept. 9, 2015).
- BLM's proposal to offer for sale and issuance the Alton coal lease (UTU-081895), a 45 million ton coal lease containing 3,581 acres in southern Utah. The lease has been proposed by the BLM and a Draft EIS has been prepared, but it has not yet approved for sale and issuance. BLM, "Alton Coal Lease Tract Lease by Application Draft Environmental Impact Statement," available at [http://www.blm.gov/ut/st/en/prog/energy/coal/alton\\_coal\\_project/alton\\_coal\\_eis.html](http://www.blm.gov/ut/st/en/prog/energy/coal/alton_coal_project/alton_coal_eis.html) (last accessed Sept. 9, 2015).
- BLM's proposal to offer for sale and issuance the Williams Draw coal lease (UTU-080043), a 30 million ton coal lease containing 4,191 acres in central Utah. The lease has been proposed by the BLM, but it has not yet approved for sale and issuance. BLM, "BLM Seeks Public Comment on Proposed Coal Lease Application," available at [http://www.blm.gov/ut/st/en/info/newsroom/2013/may/blm\\_seeks\\_public\\_comment.html](http://www.blm.gov/ut/st/en/info/newsroom/2013/may/blm_seeks_public_comment.html) (last accessed Sept. 9, 2015).

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<sup>16</sup> BLM, "Decision Record, Environmental Assessment DOI-BLM-UT-G023-2011-0001-EA, Modification of Winter Quarters Federal Coal Lease UTU-67939 (Skyline North)" (Dec. 15, 2011), available at [https://www.blm.gov/ut/enbb/files/Skyline\\_Signed\\_DR\\_12.15.2011.pdf](https://www.blm.gov/ut/enbb/files/Skyline_Signed_DR_12.15.2011.pdf) (last accessed Sept. 9, 2015).

- BLM’s decision to offer for sale and issuance the Hay Creek II coal lease (WYW-172614), a 167 million ton coal lease containing 1,253 acres in the Powder River Basin of Wyoming. The lease was approved for sale and issuance by the BLM in 2013, although it has not yet been sold or issued. BLM, “Hay Creek II Coal Lease Application,” available at <http://www.blm.gov/wy/st/en/info/NEPA/documents/hpd/HayCreekII.html> (last accessed Sept. 9, 2015).
- BLM’s decision to offer for sale and issuance the Maysdorf II South coal lease (WYW-180711), a 271 million ton coal lease containing 2,305 acres in the Powder River Basin of Wyoming. The lease was approved for sale and issuance by the BLM in 2013, although it has not yet been sold or issued. BLM, “South Gillette Area Coal Leasing Project,” available at <http://www.blm.gov/wy/st/en/info/NEPA/documents/hpd/SouthGillette.html> (last accessed Sept. 9, 2015).
- BLM’s proposal to offer for sale and issuance the Spring Creek II coal lease (MTM-105485), a 198 million ton coal lease containing 1,602 acres in the Powder River Basin of Montana. The lease is currently under review by the BLM and was applied for in 2013. Cloud Peak Energy, “Lease by Application,” available at [http://www.blm.gov/style/medialib/blm/mt/blm\\_programs/energy/coal.Par.60997.File.dat/CPE%20File%201%20Application.pdf](http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/coal.Par.60997.File.dat/CPE%20File%201%20Application.pdf) (last accessed Sept. 9, 2015).
- BLM’s proposal to modify two coal leases (MTM-54716 and MTM-101099) to expand the Decker coal mine in the Powder River Basin of Montana by 40 million tons of coal and 500 acres. The lease modifications are currently under review by the BLM. BLM, “Decker Coal Mine Lease Modification Notification,” available at [http://www.blm.gov/pgdata/etc/medialib/blm/mt/field\\_offices/miles\\_city/coal.Par.61767.File.dat/Decker%20Lease%20Modification%20public%20scoping%20notice\\_4-30-13.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/miles_city/coal.Par.61767.File.dat/Decker%20Lease%20Modification%20public%20scoping%20notice_4-30-13.pdf) (last accessed Sept. 9, 2015).
- BLM’s proposal to modify a coal lease (WYW-833995) to expand the Rawhide mine in the Powder River Basin of Wyoming by 26 million tons of coal and 291 acres. The lease modifications is currently under review by the BLM. BLM, “BLM Announces Scoping for Rawhide Mine Coal Lease Modification,” available at [http://www.blm.gov/wy/st/en/info/news\\_room/2015/february/03hpd-Rawhide.html](http://www.blm.gov/wy/st/en/info/news_room/2015/february/03hpd-Rawhide.html) (last accessed Sept. 9, 2015).
- U.S. Department of the Interior’s Office of Surface Mining Reclamation and Enforcement’s (“OSM’s”) proposal to approve ongoing mining and an expansion of the Colowyo coal mine in northwestern Colorado. There are two proposals. One that would approve ongoing mining on 1,562 acres and extend the life of the mine to 2017. OSM, “Colowyo Coal Mine, South Taylor/Lower Wilson Permit Expansion Area, Federal Mining Plan Modification Environmental Assessment,” available at

<http://www.wrcc.osmre.gov/initiatives/colowyoMineSouthTaylor.shtm> (last accessed Sept. 10, 2015). The second is a proposal that would expand the mine by more than 16,000 acres and continue the life of the mine for 20-40 years. OSM, “Colowyo Coal Mine Collum Permit Expansion Area Project Mining Plan Environmental Assessment,” available at <http://www.wrcc.osmre.gov/initiatives/colowyo/documentlibrary.shtm> (last accessed Sept. 10, 2015).

- OSM’s proposal to approve an expansion of the Rosebud coal mine in the Powder River Basin of Montana. The proposal would expand the mine by more than 6,000 acres and continue the life of the mine for 19 years. OSM, “Western Energy Company Rosebud Coal Mine Area F Project,” available at <http://www.wrcc.osmre.gov/initiatives/westernEnergy.shtm> (last accessed Sept. 10, 2015).

91. The FEIS for the Flat Canyon Lease did not address the cumulative climate impacts of these similar mining approvals and proposals. These similar mining approvals and their cumulative climate impacts also were not mentioned in the Forest Service’s SIR or BLM’s DNA.

## **CLAIMS FOR RELIEF**

### **First Claim for Relief**

#### **Violations of NEPA: Failure to Take a Hard Look at the Environmental Impacts of the Flat Canyon Lease in the 2002 EIS**

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

93. 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, Federal Defendants were required to take a hard look at direct, indirect, and cumulative impacts of authorizing the Flat Canyon Lease that would expand the Skyline Mine. 40 C.F.R. § 1508.25(c).

94. The Forest Service and BLM jointly completed an EIS in 2001. Both agencies issued Records of Decision in 2002 to support and document their respective approvals of the

Flat Canyon Lease. The EIS evaluated the impacts of BLM's proposal to issue the Flat Canyon Lease and the Forest Service's proposed consent to BLM's issuance of the Flat Canyon Lease, along with alternatives.

95. Mining activities on the Flat Canyon Lease, individually and when added to other past, present, and reasonably foreseeable future activities have potentially significant direct, indirect, and cumulative impacts on air quality, climate, and wildlife such as the greater sage-grouse, affecting communities and the environment in the region. In spite of this, neither BLM nor the Forest Service analyzed air quality and climate impacts, including carbon costs, or impacts on greater sage-grouse and its habitat associated with expanding the Skyline Mine.

96. By failing to take a hard look at the direct, indirect, and cumulative impacts associated with expanding the Skyline Mine in the 2002 EIS, BLM's decision to approve the Flat Canyon Lease and the Forest Service's decision to consent to BLM's issuance of the Flat Canyon 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(2).

**Second Claim for Relief**  
**Violation of NEPA – Federal Defendants' Unlawful Supplemental Information Report and Determination of NEPA Adequacy**

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

98. Prior to completing their respective major federal actions, Federal Defendants assessed whether new information and circumstances warranted supplementing the 2002 EIS in accordance with NEPA, 40 C.F.R. § 1502.9(c)(1)(ii). At the time of its Determination of NEPA Adequacy, BLM had not yet offered, sold, or issued the Flat Canyon Lease. At the time of its

Supplemental Information Report, the Forest Service had not yet given its required consent to BLM's decision to sell the Flat Canyon Lease.

99. BLM concluded through its Determination of NEPA Adequacy that new information and circumstances were not significant. The Forest Service determined through its Supplemental Information Report that new information and circumstances were not significant. Based on its Supplemental Information Report, the Forest Service consented to BLM's leasing decision on February 4, 2013. Based on its Determination of NEPA Adequacy, BLM offered the Flat Canyon lease for sale on May 15, 2015. Federal Defendants relied on these NEPA findings to complete their major federal actions.

100. Federal Defendants' analysis of new information in the Supplemental Information Report and Determination of NEPA Adequacy violated NEPA and was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2). Federal Defendants' conclusions in the Supplemental Information Report and Determination of NEPA Adequacy that the EIS did not need to be supplemented before completing their respective major federal actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2). Accordingly, BLM's decision to approve the Flat Canyon Lease and the Forest Service's decision to consent to BLM's issuance of the Flat Canyon Lease were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2).

**Third Claim for Relief**  
**Violations of NEPA— Failure to Supplement Existing EIS**

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

102. NEPA obligates federal agencies to prepare an EIS for “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Whether a proposed action “significantly” impacts the environment is determined by considering “context and intensity.” 40 C.F.R. § 1508.27. NEPA also requires that the scope of the analysis in an EIS include cumulative actions and similar actions. 40 C.F.R. §§ 1508.25(a)(2) & (3).

103. NEPA regulations provide that every agency “shall” prepare supplements to environmental impact statements if there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

104. Between issuance of the Records of Decision for the Flat Canyon Lease in 2002 and consenting to and issuing the Lease in 2015, new information and circumstances relevant to environmental concerns and bearing on the Lease and its impacts arose. This new information and these new circumstances include, but are not limited to: 1) EPA gained a better understanding of adverse health impacts and therefore strengthened air quality standards for pollutants generated by coal mining, transport, and burning; 2) greenhouse gases were declared to pose an endangerment to public health and welfare; 3) considerable national resources and attention have been directed toward efforts to quantify and reduce greenhouse gas emissions; 4) federal agencies have developed credible and useful methods of assessing carbon costs; 5) Bowie Resource has taken over ownership of the Skyline Mine and intends to export coal from the Mine overseas; 6) production at the Skyline Mine has exceeded four million tons annually; 7) a number of new coal leasing and mining approvals have been issued in Utah, including a lease modification that expanded the Skyline Mine; 8) Federal Defendants have proposed a number of

similar coal leasing and mining approvals in Utah and other western states that pose cumulative impacts to the climate; and 9) Federal Defendants identified priority habitat for greater sage-grouse and proposed amendments to their land and resource management plans for Utah and other western states to conserve, enhance, and restore the greater sage-grouse and its habitat.

105. This new information represents significant new information relevant to environmental concerns associated with the challenged decision. Both BLM and the Forest Service had not completed their respective “major federal actions” before the significant new information arose: the Forest Service had not provided its consent to BLM and BLM had not noticed, issued and awarded the Flat Canyon coal lease. Therefore, before authorizing the sale and issuance of the Lease, Federal Defendants were required to prepare a supplemental EIS evaluating the environmental impacts of coal mining, transport, and burning associated with the Flat Canyon Lease and numerous other federal coal leasing and mining plan actions that are cumulative in terms of their greenhouse gas emissions and carbon cost impacts and similar in terms of their climate impacts, timing, and geography. Federal Defendants failed to do so.

106. Federal Defendants violated NEPA by failing to prepare a supplemental EIS that considered the new information and changed circumstance before authorizing and consenting to the Flat Canyon Lease. This failure to comply with NEPA was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, under the APA. 5 U.S.C. § 706(2). Accordingly, BLM’s decision to approve the Flat Canyon Lease and the Forest Service’s decision to consent to BLM’s issuance of the Flat Canyon Lease were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under the APA. 5 U.S.C. § 706(2).

**Fourth Claim for Relief**

**BLM Violation of MLA Coal Leasing Regulations—Failure to Demonstrate that Leasing is in the Public Interest**

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

108. Under regulations implementing the MLA, BLM must reject a lease if it determines that offering, selling and issuing the lease, “for environmental or other sufficient reasons, would be contrary to the public interest.” 43 C.F.R. § 3425.1-8.

109. BLM failed to comply with this regulatory requirement. In approving the Flat Canyon Lease, BLM failed to make a determination as to whether issuance of the Lease would be contrary to the public interest. The FEIS contains no public interest analysis. BLM’s ROD does not present any reasoned weighing of public interest concerns. BLM also failed to make this public interest determination in preparing its Determination of NEPA Adequacy or issuing the Flat Canyon Lease in 2015.

110. Alternatively, BLM’s public interest determination failed to consider all relevant factors, including environmental factors. BLM only considered the economic benefits of issuing the Flat Canyon Lease.

111. BLM violated its MLA coal leasing regulations by failing to make a public-interest determination before issuing the Lease or, alternatively, considering only economic factors, and not environmental factors, in its public-interest determination. Accordingly, BLM’s decision to issue the Flat Canyon Lease was thus arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, under the APA. 5 U.S.C. § 706(2).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that Federal Defendants violated NEPA in authorizing the Flat Canyon Lease;
- B. Declare that Department of Interior Defendants violated the MLA in authorizing the Flat Canyon Lease;
- C. Vacate and remand Federal Defendants' approvals of the Flat Canyon Lease;
- D. Vacate and remand Federal Defendants' 2002 EIS and RODs, 2013 Supplemental Information Report, and 2015 Determination of NEPA Adequacy;
- E. Enjoin Federal Defendants from any further Flat Canyon Lease authorizations until such time as the agencies have demonstrated compliance with NEPA;
- F. Enjoin Department of Interior Defendants from any further Flat Canyon Lease authorizations until such time as compliance with the MLA has been demonstrated;
- G. Order Federal Defendants to inform Bowie Resources that the Flat Canyon Lease authorization and consent have been vacated and operations on the Flat Canyon Lease are prohibited until such time as Federal Defendants have demonstrated compliance with NEPA and the MLA;
- H. Order Federal Defendants to prepare a Supplemental Environmental Impact Statement pursuant to NEPA;
- I. Grant Plaintiffs their costs of litigation including reasonable attorneys' fees as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

J. Grant Plaintiffs such additional and further relief as the Court deems just and proper.

Dated: February 24, 2017

/s/ Neil Levine  
Neil Levine  
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