

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

Civil Action No. 17-2519

CITIZENS FOR A HEALTHY COMMUNITY;
HIGH COUNTRY CONSERVATION ADVOCATES;
CENTER FOR BIOLOGICAL DIVERSITY;
WILDEARTH GUARDIANS; and
WILDERNESS WORKSHOP;

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the U. S. Department of Interior;

RYAN ZINKE, in his official capacity as U.S. Secretary of the Interior;

DANA M. WILSON, in her official capacity as Acting Southwest District Manager;

UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture;

SONNY PERDUE, in his official capacity as U.S. Secretary of Agriculture; and

SCOTT G. ARMENTROUT, in his official capacity as Forest Supervisor;

Federal Defendants.

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND
PETITION FOR REVIEW OF AGENCY ACTION**

INTRODUCTION

1. This petition challenges (1) the U.S. Bureau of Land Management’s (“BLM”) approval of the Bull Mountain Unit Master Development Plan (“Bull Mountain MDP”), which approves construction of up to 33 new well pads, 146 new oil and gas wells, and 4 new waste-water disposal wells, and the Application for Permit to Drill (“APD”) for the 12-89-7-1 oil and gas well, (2) the BLM’s and the U.S. Forest Service’s (“USFS”) approval of the Development of 25 Federal Natural Gas Wells and Associated Infrastructure on 5 Multi-well Pads (“25-well Project”), which approves construction of a maximum of 5 new well pads, 25 wells, and associated pipeline and access roads, and (3) the BLM’s and the USFS’s approval of APDs approved subsequent to and associated with the Bull Mountain MDP and the 25-Well Project, as listed in Appendix A at the end of this petition. These approvals were made by Federal Defendants without properly studying alternatives, analyzing impacts, and disclosing information to the public. Plaintiffs ask this Court to set aside these approvals for violating the National Environmental Policy Act (“NEPA”) and to ensure that oil and gas activities authorized under the Bull Mountain MDP and the 25-well Project await Federal Defendants’ compliance with the law.

2. Plaintiffs Citizens for a Healthy Community, High Country Conservation Advocates, Center for Biological Diversity, WildEarth Guardians, and Wilderness Workshop (collectively, “Conservation Groups”) challenge the decision of BLM, and Ryan Zinke and Dana M. Wilson in their official capacities, to approve through a Record of Decision (“ROD”), dated October 4, 2017, the Final Environmental Impact Statement (“EIS”) for the Bull Mountain MDP

and the Application for Permit to Drill (“APD”) for the 12-89-7-1 oil and gas well. BLM’s approval of the Bull Mountain MDP violated NEPA, 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations and policies promulgated by the Council on Environmental Quality (“CEQ”), 40 C.F.R. §§ 1500.1 *et seq.*, as well as BLM regulations, 43 C.F.R. §§ 3160 *et seq.*

3. Conservation Groups challenge the joint decision of BLM and USFS, along with Ryan Zinke, Dana M. Wilson, Sonny Perdue, and Scott G. Armentrout in their official capacities, to approve through Findings of No Significant Impact (“FONSI”), dated December 7, 2015, the Environmental Assessment (“EA”) for the Dual Operator Proposal: Development of 25 Federal Natural Gas Wells and Associated Infrastructure on 5 Multi-well Pads. BLM’s and USFS’s approval of the 25-well Project violated NEPA, 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations and policies, 40 C.F.R. §§ 1500.1 *et seq.*, as well as BLM regulations, 43 C.F.R. §§ 3160 *et seq.*, and USFS regulations, 36 C.F.R. §§ 200 *et seq.*

4. Conservation Groups challenge the BLM’s and USFS’s approval of Applications for Permit to Drill approved subsequent to and associated with the Bull Mountain MDP and the 25-Well Project, as listed in Appendix A at the end of this petition, as in violation of NEPA, 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations and policies, 40 C.F.R. §§ 1500.1 *et seq.*, as well as BLM regulations, 43 C.F.R. §§ 3160 *et seq.*

5. The Bull Mountain MDP spans 19,670 acres in the headwaters of the North Fork of the Gunnison River, roughly 30 miles northeast of the Town of Paonia—an area broadly referred to as the North Fork Valley. The 25-Well Project is adjacent to the Bull Mountain MDP, with certain wells from the two projects contemplated to be less than one mile apart. The challenged APDs are encompassed by and approved subsequent to the two projects.

6. The North Fork Valley, located on the western slope of Colorado's Rocky Mountains, is renowned for its combination of natural beauty, exceptional recreational opportunities, unique geology, and award-winning wines, fruits, and vegetables. The Valley is home to the largest concentration of organic and chemical-free farms within the State of Colorado, and is one of two American Viticulture Areas in the State. North Fork Valley farmers, ranchers, orchardists, and winemakers, as well as the robust outdoor recreation industry, are building a strong and resilient local economy by using its resources wisely, conserving its soil, and valuing its water and air. The local economy and its residents value clean air and are reliant on flowing, clean water from the headwaters of the North Fork of the Gunnison River. The bucolic valley is also home to a number of wildlife species, including mule deer and elk. These iconic ungulates use areas within the Bull Mountain MDP and 25-Well Project as winter refuges, including during the most severe winters. Farther downstream, the headwaters continue to contribute to fish and wildlife habitat.

7. Federal Defendants, in the Bull Mountain MDP EIS, the 25-Well Project EA, and subsequent drilling stage approvals, failed to: (1) analyze a reasonable range of alternatives; (2) take a hard look at cumulative impacts; (3) take a hard look at the severity and impacts of greenhouse gas pollution; (4) take a hard look at the impacts of hydraulic fracturing; and (5) supplement their analyses based on new information and circumstances.

8. Conservation Groups seek a declaratory judgment and injunctive relief to remedy the violations complained of herein. Conservation Groups also seek an award of attorneys' fees, costs, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

JURISDICTION AND VENUE

9. This action arises under NEPA, 42 U.S.C. §§ 4321-4370h.

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1346, because this action arises under the laws of the United States and involves the United States as a defendant.

11. This action reflects an actual, present, and justiciable controversy between Conservation Groups and Federal Defendants. Conservation Groups' interests will be adversely affected and irreparably injured if Federal Defendants continue to violate NEPA, its implementing regulations, and BLM and USFS regulations as alleged herein, and if these challenged decisions are implemented. These injuries are concrete and particularized and fairly traceable to Federal Defendants' challenged decisions, providing the requisite personal stake in the outcome of this controversy necessary for this Court's jurisdiction.

12. The requested relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 705 and 706. The challenged agency action is final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

13. Conservation Groups' claims associated with the Bull Mountain MDP ripened and accrued on October 4, 2017, when BLM took final agency action by noticing its issuance of its Record of Decision in the *Federal Register*. Notice of Availability of the Record of Decision for the Bull Mountain Unit Master Development Plan, Gunnison County, CO, 82 Fed. Reg. 46280 (Oct. 4, 2017). On information and belief, the Record of Decision is the first site-specific final agency action implementing the challenged Bull Mountain Unit MDP.

14. Conservation Groups' claims associated with the approval of the 25-Well Project ripened and accrued on December 7, 2015, when Scott G. Armentrout, Forest Supervisor, and

Sarah Dawson, Acting BLM Field Manager, respectively, signed a Decision Notice and Findings of No Significant Impact for the 25-Well Project. *See* U.S. Forest Service, Surface Use Plan of Operations Approvals Associated with Dual Operator Proposal: Decision Notice and Finding of No Significant Impact (Dec. 7, 2015); Finding of No Significant Impact (FONSI), DOI-BLM-CO-SO500-2015-0029-EA. On information and belief, the USFS’s Decision Notice and Finding of No Significant Impact is the Forest Service’s final agency action implementing the challenged 25-Well Project, and the BLM’s Finding of No Significant Impact is the BLM’s final agency action implementing the challenged 25-Well Project.

15. Plaintiffs’ claims associated with the Federal Defendants’ approvals of the challenged drilling permits ripened when final agency action was taken on those permits.

16. Conservation Groups have exhausted all required administrative remedies.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the final agency actions concern federal surface and minerals located in Colorado that BLM and USFS manage pursuant to federal statutes. Venue is also proper under 28 U.S.C. § 1391(e)(1) because officers of the United States in Colorado are defendants, a substantial part of the events and omissions giving rise to this case occurred in BLM and USFS offices located in Colorado, Plaintiffs CHC, HCCA, and WW have offices and are headquartered in Colorado, Plaintiff Center for Biological Diversity has offices in Denver and Crested Butte, Colorado, and Plaintiff WildEarth Guardians has an office in Denver, Colorado.

PARTIES

18. Plaintiff CITIZENS FOR A HEALTHY COMMUNITY (“CHC”) is a 500-member nonprofit organization located in Paonia, Colorado. CHC was founded in 2010 for the

purpose of protecting the Delta County region's air, water, and foodsheds from the impact of oil and gas development. CHC's members and supporters include farmers, ranchers, vineyard and winery owners, and other concerned citizens impacted by oil and gas development, who currently and plan to continue to live in, use, and enjoy the communities and landscapes affected by the challenged Federal Defendants' actions. CHC brings this action on its own behalf and on behalf of its adversely affected members.

19. Plaintiff HIGH COUNTRY CONSERVATION ADVOCATES ("HCCA") is a nonprofit organization located in Crested Butte, Colorado with over 950 members. HCCA was founded in 1977 to conserve and protect wild places, rivers, and wildlife in and around Gunnison County. HCCA has worked on oil, natural gas, and coal bed methane development in Gunnison County for over a decade to prevent irreparable harm to its members' interests. HCCA's members use and plan to continue to live in, use, and enjoy the communities and landscapes, including public lands, affected by the challenged Federal Defendants' actions. HCCA brings this action on its own behalf and on behalf of its adversely affected members.

20. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the CENTER") is a non-profit conservation organization headquartered in Tucson, Arizona, with offices in a number of states and Mexico. The Center has two offices in Colorado, Denver and Crested Butte. The Center uses science, policy, and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to actively advocate for increased protections for species and their habitats in Colorado. The Center has over 61,000 members and 1.6 million members and online activities. The Center's board, staff, and members use public lands in Colorado, including lands that will be affected by the Bull

Mountain Unit MDP and the 25-well Project, for quiet recreation, scientific research, aesthetic pursuits, and spiritual renewal. The Center brings this action on its own behalf and on behalf of its adversely affected members.

21. Plaintiff WILDEARTH GUARDIANS (“GUARDIANS”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians has offices in Colorado, Montana, New Mexico, Arizona, Washington, and Oregon. With more than 184,000 members and supporters—including more than 10,000 members and supporters in Colorado—Guardians works to sustain a transition from fossil fuels to clean energy in order to safeguard the West. Guardians has actively engaged in issues related to the federal government’s management of public lands and publicly owned fossil fuel minerals throughout the American West, including in the North Fork Valley of western Colorado. The organization and its members have an interest in ensuring that management of public lands and fossil fuels takes into account concerns such as climate change, water and air quality impacts, and cumulative impacts to the western Colorado landscape. Guardians bring this action on its own behalf and on behalf of its adversely affected members.

22. Plaintiff WILDERNESS WORKSHOP is a non-profit organization dedicated to preservation and conservation of the wilderness and natural resources on Colorado’s public lands, including BLM and USFS lands imperiled here. Wilderness Workshop engages in research, education, legal advocacy, and grassroots organizing to protect the ecological integrity of local landscapes and public lands in the area affected by the Bull Mountain MDP, the 25-well Project, and subsequent drilling authorizations. Wilderness Workshop focuses on the monitoring and conservation of air and water quality, wildlife species and habitat, natural communities, and

lands of wilderness quality. Wilderness Workshop is the oldest environmental non-profit in the Roaring Fork Valley, dating back to 1967, with a membership base of more than 700 people. Many of its members live, work, recreate, and/or otherwise use and enjoy lands affected by these projects. They have a great interest in the protection and enhancement of natural values in the project areas. Wilderness Workshop has been closely monitoring, informing its members, and engaging in advocacy concerning proposals, developments, and management actions by the Uncompahgre Field Office and the Grand Mesa, Uncompahgre, and Gunnison National Forests for many years. Wilderness Workshop brings this action on its own behalf and on behalf of its adversely affected members.

23. Conservation Groups and their members have concrete and particularized interests in the valley and surrounding landscape of the North Fork of the Gunnison River (hereinafter “North Fork”), which includes the project sites’ location, and, in particular, the protection of fragile land, wildlands, air, water, habitat, wildlife, and communities impacted by oil and gas development and production.

24. Conservation Groups’ members actively and regularly recreate on public lands that the Bull Mountain Unit MDP and 25-well Project will impact. Conservation Groups’ members derive health, recreational, inspirational, religious, scientific, educational, and aesthetic benefits from their activities in this area. They enjoy hiking, camping, viewing wildlife, photography, and experiencing undeveloped lands within and near the Bull Mountain MDP and 25-well Project, including but not limited to, the Raggeds Wilderness Area, the McClure Pass Area, and on the Grand Mesa.

25. Implementation of the Bull Mountain MDP, the 25-well Project, and all subsequent drilling authorizations will harm Conservation Groups' members by interfering with their recreational, scientific, and spiritual enjoyment of these lands and their values. The challenged actions will lead to increased noise and air pollution, the sights and sounds of industrial activity, truck and heavy equipment traffic, and other impacts, which will undermine their recreational, scientific, and spiritual enjoyment of the area. Through its members, Conservation Groups have an interest in ensuring the Bull Mountain MDP, the 25-well Project, and all subsequent drilling authorizations are as environmentally protective as possible and are implemented based on the most informed decisionmaking.

26. The health, aesthetic, recreational, scientific, educational, religious, and procedural interests of Conservation Groups and their members have been adversely affected and irreparably injured by the process Federal Defendants used for approving the challenged actions and by Federal Defendants' decisions themselves. The adverse impacts that will result from Federal Defendants' processes and decisions threaten actual, imminent, concrete, and particularized harm to Conservation Groups' and their members' interests.

27. Conservation Groups seek relief that will help remedy the injuries Conservation Groups' and their members have suffered. BLM and USFS would be required to revisit the challenged decisions and take action to meaningfully evaluate and prevent or abate significant impacts that would result from their authorizations of oil and gas development in this area. The relief sought would redress these injuries.

28. Defendant BUREAU OF LAND MANAGEMENT is an agency within the United States Department of Interior and is the federal agency charged with managing public lands and resources, including federal fluid mineral leases of oil and natural gas, which are at issue here.

29. In this capacity, BLM is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

30. Defendant RYAN ZINKE, U.S. Secretary of the Interior, is the highest-ranking official within the U.S. Department of the Interior, and in that capacity, has ultimate responsibility for the administration and implementation of NEPA regarding oil and gas related activities involving the Bureau of Land Management.

31. Defendant DANA M. WILSON, is the Acting Southwest District Manager of the Bureau of Land Management, authored the herein challenged ROD approving the Bull Mountain Unit MDP, and, in that official capacity, is responsible for implementing that complying with federal law, including the federal laws implicated by this action.

32. Defendant UNITED STATES FOREST SERVICE is an agency within the United States Department of Agriculture and is responsible for approving Surface Use Plans of Operation, which are a prerequisite to approval of Applications for Permit to Drill on Forest Service lands.

33. In this capacity, USFS is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

34. Defendant SONNY PERDUE is the highest-ranking official within the U.S. Department of Agriculture, and in that capacity, has ultimate responsibility for the administration

and implementation of NEPA regarding oil and gas related activities involving the U.S. Forest Service.

35. Defendant SCOTT G. ARMENTROUT, Forest Supervisor, signed the herein challenged Decision Notice and Finding of No Significant Impact for the 25-Well Project, and in that official capacity, is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

STATUTORY BACKGROUND

I. National Environmental Policy Act

36. In 1970, NEPA was enacted “to help public officials make decisions that are based on [an] understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. §1500.1(c). “The policies and goals set forth in [NEPA] are supplementary to those set forth in existing authorizations of Federal agencies.” 42 U.S.C. § 4335.

37. Agencies must comply with NEPA before making “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(2)(c)(v); *see also* 40 C.F.R. §§ 1501.2, 1502.5(a).

38. Recognizing that “each person should enjoy a healthful environment,” NEPA ensures that the federal government uses all practicable means to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,” and to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,” among other policies. 42 U.S.C. § 4331(b), (c).

39. NEPA regulations explain, in 40 C.F.R. § 1500.1(c), that:

Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

40. NEPA is designed to ensure informed decisionmaking. NEPA sets forth specific procedural requirements federal agencies must follow as they carefully gather and evaluate relevant information about the potential impact of a proposed agency action on the environment. 42 U.S.C. § 4332. NEPA is also designed to ensure that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process thereby guaranteeing that the public is involved in and aware of agency processes. 40 C.F.R. §§1500.1(b); 1500.2(d); 1506.6.

41. NEPA contains “‘action-forcing’ provisions to make sure that federal agencies act according to the letter and spirit of the Act.” 40 C.F.R. § 1500.1(a).

42. These “action-forcing” provisions of NEPA are implemented by the Council on Environmental Quality (“CEQ”) regulations through what is known as the “NEPA process,” which the CEQ regulations define to “mean[] all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.” 40 C.F.R. § 1508.21. CEQ administers NEPA and its implementing regulations, which are binding on all federal agencies. *See* 42 U.S.C. §§ 4342, 4344(3); 40 C.F.R. §§ 1501-08.

43. There are three types of “environmental documentation”: (1) an “environmental assessment” (“EA”), 40 C.F.R. § 1508.9; (2) an “environmental impact statement” (“EIS”), 40 C.F.R. § 1508.11; and (3) a “finding of no significant impact” (“FONSI”), 40 C.F.R. § 1508.13.

Depending on the significance of the proposed actions' impacts, federal agencies are required to prepare one or more of these three types of environmental documents, along with public review and comment opportunities.

44. Agencies are required to consider, evaluate, and disclose to the public “alternatives” to the proposed action and “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of resources.” 42 U.S.C. §§ 4332(2)(C)(iii) & (E); 40 C.F.R. § 1502.14. The evaluation of alternatives must constitute a “substantial treatment,” presenting the impacts of the alternatives in comparative form “sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and public.” 40 C.F.R. § 1502.14.

45. An agency's duty to consider “alternatives to the proposed action” is the “heart” of the NEPA process. 42 U.S.C. §§ 4332(2)(C)(iii), 4332(2)(E); 40 C.F.R. § 1502.14(a). Agencies shall evaluate all reasonable alternatives to a proposed action. 40 C.F.R. § 1502.14.

46. Federal agencies are also required to recognize three types of impacts, or effects:
- a. **Direct effects**, which are caused by the action and occur at the same time and place. 40 C.F.R. 1508.8(a) (emphasis added).
 - b. **Indirect effects**, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. 40 C.F.R. § 1508.8(b) (emphases added).

c. **Cumulative impacts**, which are the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

II. Administrative Procedure Act

47. The Administrative Procedure Act (“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.” *Id.*

48. Under the APA, a reviewing court shall, *inter alia*, “hold unlawful and set aside agency action...found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.” *Id.* § 706(2)(A), (C), (D). Agency actions may also be set aside in other circumstances, such as where the action is “without observance of procedure required by law.” *Id.* § 706(2)(B)-(F).

STATEMENT OF FACTS

I. Background on the Bull Mountain MDP

49. In 2008 and 2009, BLM provided a 45-day and 57-day scoping period announcing its intention to authorize the Bull Mountain MDP proposed by SG Interests with an Environmental Assessment (“EA”).

50. On November 26, 2008, High Country Conservation Advocates submitted scoping comments on behalf of itself and another environmental organization on the Bull Mountain proposal.

51. On March 23, 2012, BLM notified the public that a Draft EA was available for a 30-day public comment period.

52. On April 23, 2012, Citizens for a Healthy Community submitted comments on BLM's Draft EA.

53. On April 24, 2012, High Country Conservation Advocates submitted comments on behalf of itself and other environmental organizations raising similar concerns to those in the Citizens for a Healthy Community letter submitted the day before.

54. On April 3, 2013, BLM notified the public via *Federal Register* of its intent to prepare and Environmental Impact Statement ("EIS"). BLM's decision to conduct an EIS was the result of public comments that identified that the proposal would have significant impacts on air quality, greenhouse gas emissions, water quality and supply, threatened, endangered, and sensitive wildlife species, wildlife and wildlife habitat, recreation and visual resources, socioeconomics, and transportation.

55. On February 14, 2014, Citizens for a Healthy Community and other environmental organizations submitted Supplemental Comments on the Bull Mountain Unit MDP.

56. On January 16, 2015, BLM and EPA published a Notice of Availability for the Draft EIS in the *Federal Register*, marking the beginning of a 45-day public comment period. On January 27, 2015, the public comment period was extended another 45 days.

57. On April 16, 2015, Conservation Groups and others submitted comments raising concerns that included, but were not limited to, the need for BLM to issue a moratorium on all oil and gas development in the Uncompahgre Field Office pending the agency's ongoing revision of its Resource Management Plan ("RMP") and BLM's failure to consider all reasonable alternatives and to take a hard look at direct, indirect, and cumulative impacts, including for issues and resources such as air quality, climate change, resource impacts from hydraulic fracturing, water quality and quantity, soils, wildlife and their habitat, and human health.

58. On July 8, 2016, BLM and EPA published a Notice of Availability for the Final EIS in the *Federal Register*, marking the beginning of a 30-day review period.

59. On August 8, 2016, Conservation Groups and others submitted comments in response to the Notice of Availability for the Final EIS referred to in the preceding paragraph.

60. These August 8, 2016 comments re-iterated concerns raised in previous public comment periods including, but not limited to, BLM's continued failure to consider all reasonable alternatives and to take a hard look at direct, indirect, and cumulative impacts on air quality, climate change, resource impacts from hydraulic fracturing, water quality and quantity, soils, wildlife and their habitat, and human health.

61. Over a year later, on October 4, 2017, BLM published notice in the *Federal Register* that the ROD approving the Bull Mountain MDP was available and had been signed. Dana M. Wilson, in her official capacity, signed the ROD.

62. The ROD approved BLM's Selected Alternative in its Final EIS for the Bull Mountain Unit MDP, approving up to 33 new well pads, exploration and development of up to

146 natural gas wells, four waste-water disposal wells, and associated infrastructure on Federal and private minerals leases within the Bull Mountain Unit. The approval included a new well pad and well for the 12-89-7-1 APD.

63. The Bull Mountain Unit is located within the Colorado River basin, approximately 30 miles northeast of the Town of Paonia.

64. The Unit's boundaries encompass approximately 19,670 acres of Federal and private oil and gas mineral estate in Gunnison County, Colorado. The unit consists of 440 acres of BLM Federal surface lands and subsurface mineral estate; 12,900 acres of split-estate consisting of private surface and Federal mineral estate the BLM administers; and 6,330 acres of fee land consisting of private surface and private mineral estate.

65. State Highway 133, a Colorado Scenic Byway known as the West Elk Loop, bisects the Unit. It is the only paved roadway within the project area.

66. The life of any individual well in the Bull Mountain Unit MDP is estimated to be 40 years; this includes the coal bed natural gas, shale gas, and water disposal wells, although actual production years could vary by individual wells.

67. BLM assumed that the analysis horizon for the project would be 50 years.

68. BLM's Draft EIS identified three potential alternatives. These alternatives included a No Action Alternative (Alternative A) and two Action Alternatives (Alternative B and C).

69. BLM determined Alternative A did not respond to the purpose and need of the proposed action, would result in only 11 new well pads on private mineral estate, 55 new gas wells, 1 new water disposal well, and drilling would last 3 years.

70. For Alternative B, there would be 36 new well pads on Federal mineral estate, 146 new gas wells, 4 new water disposal wells, and drilling would last 6 years.

71. For Alternative C, there would be 35 new well pads on Federal mineral estate, 146 new gas wells, 4 new water disposal wells, and drilling would also last for 6 years.

72. Alternatives B and C only considered development on the federal mineral estate.

73. BLM's Final EIS identified four potential alternatives, adding another action alternative labeled Alternative D.

74. Alternative A was still stated as not responsive to the purpose and need of the proposed action, would result in 10 new well pads on private mineral estate, 55 new gas wells, 1 new water disposal well, and drilling would last 3 years.

75. For Alternative B, there would be 36 new well pads on Federal mineral estate, including the 12-89-7-1 APD, 146 new gas wells, including the 12-89-7-1 APD, 4 new water disposal wells, and drilling would last 6 years.

76. For Alternative C, there would be 35 new well pads on Federal mineral estate, including the 12-89-7-1 APD, 146 new gas wells, including the 12-89-7-1 APD, 4 new water disposal wells, and drilling would last 6 years.

77. For Alternative D, there would be 33 new well pads on Federal mineral estate, including the 12-89-7-1 APD, 146 new gas wells, including the 12-89-7-1 APD, 4 new water disposal wells, and drilling would last 6 years.

78. BLM identified Alternative D as its preferred alternative.

79. The expected duration of the Bull Mountain MDP field is to be 50 years and has potential to last for 100 years.

80. BLM's Alternative D cumulative impacts analysis for water quality and quantity was limited to a duration of no more than a ten year period, and in some instances limited to a shorter period. BLM's Alternative D cumulative impacts analysis of drilling, hydraulic fracturing, and disposal of production wastewater concluded that groundwater impacts were not expected to be significant. BLM stated this was because impacts were minimal for any given well.

81. In its cumulative impacts section, the Bull Mountain MDP includes a list of other foreseeable oil and gas development in the area, including the 25-well Project. However, the agency fails to take the critical next step and provides no analysis of the incremental impact of the Bull Mountain MDP when added to the other past, present, and reasonably foreseeable future development from these additional projects.

II. Background on the 25-Well Project

82. On March 23, 2015, BLM and USFS announced their intention to prepare a joint Environmental Assessment ("EA") for the 25-Well Project, and provided a scoping period with a due date for scoping comments of April 24, 2015.

83. On April 24, 2015, Citizens for a Healthy Community and High Country Conservation Advocates submitted scoping comments on the 25-Well Project.

84. On June 18, 2015, BLM and USFS issued a preliminary EA for the 25-Well Project and provided for comment until July 20, 2015. The due date for comments was subsequently extended to August 4, 2015.

85. On August 4, 2015, Citizens for a Healthy Community and High Country Conservation Advocates submitted comments on the preliminary EA for the 25-Well Project.

86. On September 5, 2015, BLM and USFS issued a draft EA for the 25-Well Project, including a response to comments on the preliminary EA and a draft FONSI.

87. On October 22, 2015, Citizens for a Healthy Community and High Country Conservation Advocates submitted an objection to the draft EA and FONSI for the 25-Well Project.

88. On December 7, 2015, Scott G. Armentrout, Forest Supervisor, signed a Decision Notice and FONSI for the 25-Well Project.

89. Also on December 7, 2015, Sarah Dawson, Acting BLM Field Manager, signed a FONSI for the 25-Well Project.

90. The 25-Well Project is located approximately 11 miles north of the Town of Somerset, Colorado in Gunnison County.

91. The 25-Well Project is for the construction of four new multi-well pads and associated infrastructure, use of one existing multi-well pad and infrastructure, and the approval of 25 Applications for Permit to Drill (“APDs”); 17 individual APDs from SG Interests and eight APDs from Gunnison Energy LLC.

92. The life of any individual well in the 25-Well Project is 30-40 years.

93. The analysis horizon for the 25-Well Project is 50 years.

94. One well and portions of a new pipeline and access road occur on split-estate lands. Three well pads, including the existing well pad, are located on USFS managed lands. The remaining new well pad, access road, and pipelines are on private surface overlying private mineral estate, but would be used to drill horizontal well bores in which both the fee mineral estate and Federal mineral estate would be affected.

95. The four new multi-well pads will disturb 16 acres; associated pipeline infrastructure and road construction will disturb 10.4 acres and 5.6 acres respectively, requiring approximately 32 acres of initial surface disturbance. Long-term direct surface disturbance is estimated to be 13.5 acres and all 10.4 acres used for the underground pipelines.

96. Colorado State Highway 133, Gunnison County Roads 265, National Forest Service Roads 265, 851, 851.1B, 849, 704, and 704.4A will be used to access the five multi-well pads.

97. The expected field duration of the 25-Well Project is 30-40 years and has potential to last for 50 years.

98. Four of the five well pads and much of the associated infrastructure in the project area are mapped as winter concentration areas where elk are more likely to occur in winter.

99. The 25-Well Project only considered in detail the Proposed Action and a No Action Alternative.

100. The 25-Well Project listed oil and gas development it considered as past, present, or reasonably foreseeable future actions. The list does not provide analysis of cumulative impacts on resources.

III. Background on Impacts from Hydraulic Fracturing

101. The Piceance Basin spans seven counties on the western slope of Colorado, the southern extent of which exists in BLM's Uncompahgre planning area, where the Bull Mountain MDP and 25-Well Project are located. Historically, drilling concentrated to the north of the Uncompahgre planning area, with the greater North Fork Valley region recognized as speculative for development. This basin contains vast "tight" and "continuous" natural gas

reserves, which are difficult to extract using conventional drilling technology and require extraction via hydraulic fracturing or other unconventional methods. In recent years, the most productive area of the Basin has been the Mesaverde Group, which consists of multiple underground formations targeting natural gas and coalbed methane reserves. However, exploration and analysis of the Basin's underlying Mancos Shale formation has revealed development potential for deeper shale gas reserves.

102. In June 2016, the U.S. Geological Survey asserted the Mancos Shale formation could contain 66 trillion cubic feet of undiscovered, technically recoverable shale gas reserves—over 40 times greater than the amount previously assessed in 2003—in addition to 74 million barrels of shale oil and 45 million barrels of natural gas liquid.

103. The Bull Mountain MDP notes that most of the gas produced from the analysis area has been produced from depths of less than 5,000 feet. BLM contemplated that gas production was expected to mostly originate from the Cozzette and Corcoran members of the Mesaverde Group, as well as the Mancos Shale formation. The agency reports that, in the Bull Mountain MDP, the Mesaverde Group is found at a depth of 800 feet to 3,000 feet, and the Mancos Shale begins at depths of 4,500 feet and is “several thousand feet thick.” The BLM estimates that the target depth of bore holes for wells in the Bull Mountain MDP will range between 3,500 to 10,000 feet in depth.

104. BLM has received APDs for three wells on the 12-89-7 well pad within the Bull Mountain MDP in addition to the well authorized through the Bull Mountain MDP EIS on this well pad. These APDs have been approved by COGCC for depths of 12,861 feet, 14,059 feet, and 13,960 feet. Drilling at these depths was not analyzed in the Bull Mountain MDP EIS. Based

on information and belief, these and perhaps other APDs are being approved by BLM without additional NEPA analysis and instead rely on previous NEPA documentation in the Bull Mountain MDP EIS or 25-well Project EA.

105. The 25-well Project EA notes that the top of the Mancos Shale formation is 4,500 feet below the surface at the southern end of the Bull Mountain Unit and “and may be several thousand feet thick.” Elsewhere, the 25-Well Project EA indicates that the depth of the top of the Mancos formation is 5,793 feet. The 25-Well Project EA notes that the top of the Niobrara formation is 8,651 feet below the surface, but does not disclose the formation’s thickness. In the 25-well Project EA, Federal Defendants claimed that any deep drilling in the Mancos and Niobrara Formations would have very little potential for impacts due to “vertical separation” between deep fractures and overlying aquifers. This conclusion was based on a study funded by Halliburton Energy Services.

106. Hydraulic fracturing, or “fracking,” is an oil and gas drilling “stimulation” technique involving the high-pressure injection of large quantities of water, proppants (typically sand), and chemical additives into the wellbore to fracture the targeted geologic formations to enhance the release of oil and natural gas. However, early stimulation techniques are vastly different from the type of large-volume horizontal drilling and multi-stage hydraulic fracturing techniques currently employed. BLM’s current Resource Management Plan for the Uncompahgre Field Office does not discuss, let alone analyze or mitigate, the potential direct, indirect, or cumulative impacts of hydraulic fracturing, much less the type of modern hydraulic fracturing techniques employed here.

107. Hydraulic fracturing is generally performed in stages, beginning with a vertical

wellbore upwards of 15,000 feet in depth. Lateral lengths are then drilled in horizontal wells, and may range from 1,000 feet to more than 5,000 feet. During the fracking process, within the horizontal portion of the wellbores, a series of charges are set through the producing interval to perforate the production liner and casing to create small fractures in the formation. A fracking fluid mixture is then injected into the formation, at high pressure, to create cracks or fractures. The fluids open or enlarge fractures that typically extend several hundred feet, but can extend more than 1,000 feet away from the well bore.

108. In the first several days to weeks after fracking, the well pressure is released and a portion of the fracking fluid—known as “flowback”—returns to the surface of the wellbore. Over longer time periods, water naturally present in the targeted formation—known as “produced water”—continues to flow through the well to the surface. The flowback and produced water typically contains the injected chemicals as well as naturally occurring substances such as brines, heavy metals, radionuclides, and hydrocarbons. Very small quantities of some toxic fracking chemicals, such as benzene, are capable of contaminating millions of gallons of water.

109. Horizontal fracking also requires the development of new roads, gathering pipelines, and other infrastructure. Moreover, each well typically requires thousands of truck trips to transport the water, nitrogen, and chemicals necessary for well completion and subsequent disposal of flowback and produced water.

110. Oil and gas operations generate toxic air emissions and large quantities of toxic waste, threaten drinking water sources, and present a range of significant threats to public health and safety.

111. Contaminants that impact water quality include salts, heavy metals, naturally occurring radioactive materials, and hydrocarbons. Impacts on water quality affect wildlife, including threatened and endangered aquatic species, as well as sources of drinking water for people and livestock, and water used for irrigation.

112. BLM knows that oil and gas development has caused drinking water contamination and related health impacts in Colorado.

113. Oil and gas development generates significant quantities of waste, including wastewater, drill cuttings and drilling mud, residual waste, and other associated wastes. This waste can be extremely toxic. Several studies provided by Conservation Groups to BLM, including Seth Shonkoff, et al., *Environmental Public Health Dimensions of Shale and Tight Gas Development*, ENVIRONMENTAL HEALTH PERSPECTIVES (2014), discusses potential health impacts from exposure to fracturing wastewater and fluids, including neurological damage, cancer, and endocrine disruption.

114. BLM is dismissive of the health impacts from hydrocarbons and heavy metals, dismissing such impacts as “minor” and reduced to “less than significant levels” through compliance with law.

115. Pipelines associated with the Bull Mountain MDP and 25-Well Project pose risks, including safety risks from spills and explosions that can cause fires or endanger recreationists on public lands. Based on information and belief, BLM did not address these foreseeable impacts from pipeline accidents.

IV. Background on Climate Change

116. Climate change is well-established as a real and significant threat to the environment. The Secretary of the Interior stated, in Secretarial Order 3226, *Evaluating Climate Change Impacts in Management Planning* (January 19, 2001), that “[t]here is a consensus in the international community that global climate change is occurring and that it should be addressed in governmental decision making.” Order 3226 established the responsibility of agencies to “consider and analyze potential climate change impacts when undertaking long-range planning exercises, when setting priorities for scientific research and investigations, when developing multi-year management plans, and/or when making major decisions regarding potential utilization of resources under the Department’s purview.”

117. The GAO, in a 2007 report entitled *Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources*, concluded that the Department of the Interior had not provided specific guidance to implement Secretarial Order 3226, that officials were not even aware of Secretarial Order 3226, and that Secretarial Order 3226 had effectively been ignored.

118. Secretarial Order 3289, *Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources* (September 14, 2009), reinstated the provisions of Order 3226, and recognized that “the realities of climate change require us to change how we manage land, water, fish and wildlife, and cultural heritage and tribal lands and resources we oversee,” and acknowledged that the Department of the Interior is “responsible for helping protect the nation from the impacts of climate change.”

119. There remains a fundamental disconnect with regard to climate change and its resulting impacts and how our public lands are managed for energy production, particularly in

the West. Federal Defendants cannot take informed action to address climate change, as required by Order 3226 and Order 3289, without taking a hard look at the climate impacts of oil and gas development on our public lands. As stated in Order 3289, BLM must “appl[y] scientific tools to increase understanding of climate change and to coordinate an effective response to its impacts,” and “management decisions made in response to climate change impacts must be informed by [this] science.”

120. The fact that climate change is happening and is human-caused was acknowledged by BLM and USFS in the Bull Mountain MDP EIS and 25-Well Project EA. As the BLM acknowledged in the Bull Mountain MDP: “The findings presented in AR5 [the IPCC Fifth Assessment Report, 2013] indicate that climate system warming is unequivocal, and many of the observed changes are unprecedented over decades to millennia. . . . The globally averaged combined land and ocean surface temperature data show a warming of 1.5°F. . . . It is *extremely likely* (95 to 100 percent probability) that human influence has been the dominant cause of the observed warming since the mid-twentieth century (IPCC 2013).”

121. The Bull Mountain MDP EIS and 25-Well Project EA also acknowledged specific impacts to resource values in the Southwest region (of which the Bull Mountain MDP and 25-well Project are a part) as a result of climate change, including decreased water reliability, reduced crop yields, increased wildfires, and increased regional temperatures.

122. Yet, despite these acknowledgements, BLM and USFS fail to provide analysis of climate change effects to resource values from the projects or mitigation measures that would reduce these impacts, either in the Bull Mountain MDP EIS, the 25-well Project EA, or any other NEPA analysis tiered to these documents. In the Bull Mountain MDP EIS, BLM states: “The

controversy to what extent GHG emissions resulting from continued oil and gas development may contribute to global climate change, as well as the accompanying changes to natural systems cannot be quantified or predicted.” And: “Given the global and complex nature of climate change, it is not possible to attribute a particular climate impact in any given region to GHG emissions from a particular source.” The BLM does not disclose the amount of natural gas that is estimated to be produced under the Bull Mountain MDP.

123. BLM quantifies the direct greenhouse gas emissions during the construction and production phases of the Bull Mountain MDP, estimating 44,389 metric tons per year carbon dioxide equivalent emission (“CO₂e”). BLM fails to disclose the basis for this calculation of direct GHG emissions. BLM failed to quantify the foreseeable indirect and cumulative greenhouse gas emissions from downstream consumption of oil and gas produced from the Bull Mountain MDP—despite the urging of Conservation Groups and the EPA. Plaintiffs’ comments used EPA’s natural gas emission factor to calculate GHG emissions and determined the proposed action would lead to 7,189,822 metric tons or more of such emissions. BLM did not address the substantial discrepancy between the GHG emissions calculations.

124. In the 25-Well Project EA, BLM and USFS quantify the direct greenhouse gas emissions during production and construction phases of 24,706 tons per year of CO₂ and 742 tons per year of methane (CH₄). Notably, the agencies do not convert the tons of these greenhouse gases to metric tons per year of carbon dioxide equivalent emission. BLM and USFS failed to quantify the foreseeable indirect and cumulative greenhouse gas emissions from downstream consumption of oil and gas produced from the 25-well Project—despite the urging of Conservation Groups.

V. Background on Wildlife

125. BLM's analysis in the Bull Mountain MDP EIS for elk and mule deer did not look at impacts over the entire life of the project. BLM's analysis relied heavily on voluntary measures, which were expected to be implemented through the construction phase of the proposed project. BLM's analysis of the increased traffic impacts on these ungulates did not include expected increased traffic on State Highway 133. BLM does not provide for mitigation measures that would protect wildlife during the 30 plus year production phase of the project.

126. Impacts to wintering big game are expected to be considerably greater for the development phase of the project because the voluntary Winter Habitat Plan ("WHP") would no longer be implemented. BLM stated that without commitments to implement the WHP after the development stage it is realistic that more activity will occur during the winter period in the Winter Closure Areas during the 30 plus year production phase. BLM concluded it is reasonable to assume that impacts to wintering big game may be greatest during the production phase as higher quality winter habitat would be reduced by 40 percent.

127. BLM also acknowledged that the mule deer population peaked in the 1980s and has since declined to at or below the population objective of 12,5000 deer. Such decline is possibly due to such factors as limited winter range habitat availability and human development on transition and winter ranges.

128. BLM and USFS did not analyze direct, indirect, and cumulative impacts of the 25-Well Project on wildlife species, including elk and mule deer.

129. For the 25-Well Project, BLM and USFS concluded that the "negative effects from [the 25-Well Project on elk] are largely of short duration and magnitude and do not result in

a Forest-wide decrease in trends or deter from meeting the MIS objectives in the Forest Plan.” In doing so, the agencies summarily dismissed concerns raised in comments from Conservation Groups and Colorado Parks & Wildlife of direct, indirect, and cumulative impacts on elk.

130. BLM and USFS did not provide direct, indirect, and cumulative impacts analysis of the 25-Well Project on mule deer.

131. BLM and USFS acknowledged energy development impacts on ungulates have been cited as having a mean value of 1,131 meters (0.7 miles) of influence from roads (avoidance of areas within 0.7 miles) and 1,125 meters from wells.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Analyze a Reasonable Range of Alternatives **(NEPA Violation)**

132. Conservation Groups repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

133. An EIS must consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). NEPA further requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(2)(E).

134. Federal Defendants must “[r]igorously explore and objectively evaluate all reasonable alternatives” to their proposed action. 40 C.F.R. § 1502.14(a). This alternatives analysis is the “heart” of the EIS. *Id.* § 1502.14.

135. Federal Defendants violated NEPA in preparing, issuing, and approving the Bull Mountain MDP, the 25-well Project, and subsequent drilling authorizations without

consideration of all reasonable alternatives. 42 U.S.C. §§4332(2)(C)(iii) & (E); 40 C.F.R. §1502.14.

136. Federal Defendants did not consider, evaluate, and disclose all reasonable alternatives as NEPA requires, including diverse resource-protective alternatives, alternatives recognizing a baseline of development on private lands and minerals, alternatives considering phased or reduced development, or alternatives to control the timing, pace, and scale of development. In the Bull Mountain MDP EIS, BLM's analysis dismissed the No Action Alternative for not meeting the purpose and need. BLM's and USFS's failure to consider a reasonable range of alternatives is in violation of NEPA and NEPA's implementing regulations. This constitutes arbitrary and capricious agency action, an abuse of discretion, and action without observance of procedures required by law, pursuant to the APA, 5 U.S.C. § 706(2).

SECOND CAUSE OF ACTION
Failure to Take a Hard Look at Cumulative Impacts
(NEPA Violation)

137. Conservation Groups repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

138. BLM and USFS must comply with NEPA's mandate that before making "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." 42 U.S.C. § 4332(2)(c)(v); *see also* 40 C.F.R. §§ 1501.2, 1502.5(a).

139. NEPA imposes action-forcing procedures that require agencies to take a hard look at environmental consequences. These environmental consequences may be direct, indirect, or cumulative. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8.

140. BLM and USFS must consider cumulative impacts. 40 C.F.R. § 1508.7.

Cumulative impacts are those that result 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. *Id.* Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *Id.*

141. NEPA also requires that agencies incorporate into their NEPA analyses “appropriate mitigation measures not already included in the proposed action or alternatives.” 40 C.F.R. § 1508.14(f). Pursuant to 40 C.F.R. § 1508.20(a)-(e), “mitigation means methods to avoid, minimize, rectify, or compensate for the impact of a potentially harmful action. Agencies must discuss mitigation measures with sufficient detail to ensure that environmental consequences have been fairly evaluated. NEPA also requires that agencies fully analyze the effectiveness of each mitigation measure.

142. Federal Defendants failed to adequately consider the cumulative impacts of the adjacent Bull Mountain MDP and 25-Well Project, or other area development, in the Bull Mountain MDP EIS, the 25-Well Project EA, or subsequent drilling authorizations.

143. Federal Defendants’ cumulative impacts analyses for the Bull Mountain MDP, the 25-Well Project, and subsequent drilling authorizations failed to consider resource impacts over the entire life of the projects and from all other reasonably foreseeable actions within the project areas.

144. Federal Defendants' cumulative analyses for the Bull Mountain MDP, the 25-Well Project, and subsequent drilling authorizations failed to analyze landscape-scale impacts to resources caused by the cumulative level of oil and gas development in the area near the projects.

145. Federal Defendants' cumulative analyses of resource impacts for the Bull Mountain MDP, the 25-Well Project, and subsequent drilling authorizations relied heavily on voluntary mitigation measures. BLM and USFS did not provide analysis of impacts over the life of the projects with and/or without such mitigation measures, and with other foreseeable development in the region. BLM's cumulative impact analysis did not consider the cumulative impacts of expected increased traffic, water depletion, and air pollution and greenhouse gas emissions caused by the projects together with the impacts of other foreseeable development in the region.

146. Federal Defendants failed to take a "hard look" at cumulative impacts to wildlife from the Bull Mountain MDP, the 25-Well Project, and other foreseeable development in the region. BLM and USFS failed to incorporate mitigation methods to avoid, reduce, and minimize impacts to wildlife into its proposed actions or alternatives.

147. Federal Defendants did not comply with the "hard look" requirements under NEPA and its implementing regulations before approving the actions challenged herein. BLM's failures are arbitrary, capricious, an abuse of discretion, and contrary to NEPA, 42 U.S.C. § 4332(2)(C)(ii) and its implementing regulations, in 40 C.F.R. §§ 1508.7, 1508.8, 1508.25, and 1508.27.

THIRD CAUSE OF ACTION
Failure to Take a Hard Look at the Severity and Impacts of Greenhouse Gas
Pollution

(NEPA Violation)

148. Conservation Groups repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

149. NEPA requires federal agencies to consider “the environmental impact of the proposed action” including “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(2)(C)(i)-(ii). In so doing, agencies must investigate and explain “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity.” *Id.* § 4332(2)(C)(iv).

150. NEPA requires agencies to take a hard look at the effects of proposed major federal actions and reasonable alternatives to them. These effects include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

151. NEPA regulations further mandate that agencies consider “whether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7).

152. An agency’s NEPA analysis must do more than merely identify impacts. It must also enable the agency and other interested parties to “evaluate the severity” of the effects. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); *see also* 40 C.F.R. § 1508.27-(b) (a factor in assessing intensity or severity, and hence significance for NEPA purposes, is “the degree to which the proposed action affects public health or safety”).

153. The Bull Mountain MDP EIS and the 25-Well Project EA offer estimates of the amount of direct GHGs that will be emitted under the alternatives, but fail to include any meaningful discussion of the impacts of these emissions. Federal Defendants asserted that the discussion of these emissions' impacts would require modeling that was beyond the scope of their analysis and was impossible.

154. Federal Defendants ignored the foreseeable indirect impacts from downstream combustion of oil and gas resources developed under the Bull Mountain MDP and 25-Well Project. Federal Defendants are required to take a hard look at indirect impacts, which includes downstream indirect emissions from the refining and combustion of natural gas and oil produced under the projects.

155. Federal Defendants accounted for economic benefits from approving the Bull Mountain MDP and 25-Well Project. However, Federal Defendants failed to consider the costs of approving the projects, including the costs of greenhouse gas emissions to society, despite available tools. Federal Defendants may not engage in a one-sided analysis that accounts for economic benefits, but fails to account for climate costs.

156. Where information relevant to foreseeable adverse impacts is unavailable, agencies must nonetheless evaluate "such impacts based upon theoretical approaches or research methods generally accepted in the scientific community." 40 C.F.R. § 1502.22(b)(4).

157. Federal Defendants failed to assess the potential impacts of its decisions on climate caused by the production and combustion of the federal oil and gas resources made available for development pursuant to the Bull Mountain MDP, the 25-Well Project, and subsequent drilling authorizations. Federal Defendants' failure to take a hard look at both direct

and indirect emissions, and their carbon cost, despite the availability of tools to do so, is arbitrary, capricious, an abuse of discretion, and contrary to NEPA, 42 U.S.C. § 4332(2)(C)(ii) and its implementing regulations, in 40 C.F.R. §§ 1508.7, 1508.8, 1508.25, and 1508.27.

FOURTH CAUSE OF ACTION
Failure to Take a Hard Look at the Impacts of Hydraulic Fracturing
(NEPA Violation)

158. Conservation Groups repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

159. NEPA’s implementing regulations direct agencies to consider “the degree to which the proposed action affects public health or safety.” 40 C.F.R. § 1508.27(b).

160. NEPA also states it as national policy that federal agencies “shall use all practicable means, consistent with other essential considerations of national policy,” to improve decisions in order to, *inter alia*, “assure for all Americans safe, healthful...surroundings [and] attain the widest range of beneficial uses of the environment without...risk to health or safety.” 42 U.S.C. § 4331(b).

161. Federal Defendants failed to satisfy NEPA and its implementing regulations by failing to adequately analyze the direct, indirect, and cumulative impacts on people and the environment from oil and gas development approved through the Bull Mountain MDP, the 25-Well Project, and subsequent drilling authorizations, including but not limited to impacts on human health; vulnerable wildlife species; surface and groundwater resources and water quantity; air quality; and pipeline safety.

162. Federal Defendants also violated 40 C.F.R. § 1503.4 by not responding adequately to Conservation Groups’ comments, studies, and other information provided

concerning impacts to human health and safety, and not explaining why they failed to undertake the requested Health Impact Assessment. Federal Defendants violated NEPA and its implementing regulations by failing to accurately identify, analyze, and take a hard look at hydraulic fracturing impacts at drilling depths now being proposed and authorized, or the different magnitude of impacts to resource values at those drilling depths.

163. Federal Defendants' failure to take a hard look at the direct, indirect and cumulative impacts of hydraulic fracturing from the implementation of the Bull Mountain MDP, the 25-Well Project, and subsequent drilling authorizations; its failure to examine relevant data and articulate a satisfactory explanation for its actions, including a rational connection between the facts found and choices made; and its failure to analyze the impacts of actual drilling depths was arbitrary, capricious, an abuse of discretion, and contrary to NEPA, 42 U.S.C. § 4332(2)(C)(ii) and its implementing regulations, 40 C.F.R. §§ 1508.7, 1508.8, 1508.25, and 1508.27.

FIFTH CAUSE OF ACTION
Failure to Supplement NEPA Analyses
(NEPA Violation)

164. Conservation Groups repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

165. Agencies have a continuing obligation to comply with NEPA and must prepare supplemental NEPA documentation when "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" emerge. 40 C.F.R. § 1502.9(c)(1)(ii).

166. Here, significant new circumstances and information relevant to environmental concerns and bearing on the proposed actions have emerged. Specifically, Applications for Permit to Drill associated with the Bull Mountain MDP and 25-Well Project show that approved drilling will be substantially deeper than BLM and/or USFS anticipated or analyzed in its NEPA documentation. The agencies were required to supplement their analyses to consider this new information prior to approving the Applications for Permit to Drill—including how drilling substantially deeper wells may undermine prior assumptions and analysis concerning the magnitude and severity of impacts to water, air, climate, and other resources—but failed to do so.

167. Federal Defendants' violated NEPA by failing to supplement their NEPA analyses prior to the authorization of drilling at substantially deeper depths. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(c)(1)(ii). Federal Defendants' failure is arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law. 5 U.S.C. § 706 (2)(A), (C), (D).

REQUEST FOR RELIEF

FOR THESE REASONS, Conservation Groups respectfully request that this Court enter judgment providing the following relief:

A. Declare that Federal Defendants violated NEPA and the regulations and policies promulgated thereunder when approving the Bull Mountain MDP and the 25-Well Project;

B. Vacate and set aside for violations of NEPA Federal Defendants' actions taken in reliance on the Bull Mountain MDP Final EIS/ROD, including the approval of the 12-89-7-1 APD, and the 25-Well Project EA, Decision Notice, and Findings of No Significant Impact;

C. Enjoin Federal Defendants from approving the development of oil and gas resources within the Bull Mountain Unit and the 25-Well Project area until Federal Defendants have demonstrated NEPA compliance;

D. Remand this matter to BLM and USFS for further action in accordance with applicable laws;

E. Retain continuing jurisdiction of this matter until BLM and USFS fully remedy the violations of law complained of herein;

F. Award Conservation Groups their fees, costs, and other expenses as provided by applicable law; and,

G. Issue such additional and further relief as Conservation Groups subsequently request and this Court may deem just, proper, and equitable.

RESPECTFULLY SUBMITTED this 16th day of January, 2018,

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APPENDIX A. Applications for Permit to Drill Challenged Herein

Well Number	NEPA Identification Number
Federal 12-89-7-1	DOI-BLM-CO-S050-2013-0022-EIS
Federal 12-89-7-2	DOI-BLM-CO-N040-2018-0012-DNA
Federal 12-89-7-3	DOI-BLM-CO-N040-2018-0012-DNA
Federal 12-89-7-4	DOI-BLM-CO-N040-2018-0012-DNA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR REVIEW OF AGENCY ACTION was served on all counsel of record through the Court's ECF system on this 16th day of January 2018.

/s/ Laura King