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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

9 Attorneys for Plaintiff

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF NEVADA**

12 REESE RIVER BASIN
13 CITIZENS AGAINST
FRACKING, LLC, a Nevada
14 limited liability company,

15 Plaintiff,

16 -vs-

17 THE BUREAU OF LAND
MANAGEMENT and KEN
18 SALAZAR, Secretary of the
Department of the Interior,

19 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

3:14-cv-00338

20 **COMPLAINT**

21 **I. INTRODUCTION**

22 1. Plaintiff, REESE RIVER BASIN CITIZENS AGAINST FRACKING,
23 (hereinafter referred to as "Plaintiff") brings this civil action for declaratory and
24 injunctive relief against the UNITED STATES BUREAU OF LAND
25 MANAGEMENT and KEN SALAZAR, Secretary of the Interior (hereinafter
26 collectively referred to as "the BLM"), regarding the BLM's decision to lease
27 sensitive lands in Nevada for oil and gas development without analyzing the full
28 environmental effects of doing so.

Paid Amt \$ 400 Date 6/27/14
Receipt # 2379 Initials JC

1 The Nevada Office of the BLM has failed to properly notice or comply with Federal
2 law prior to the sale of leases of parcels for oil and gas development in Nevada's
3 Lander, Nye and Esmeralda counties. As a result of the BLM's failure to follow legal
4 procedures and its lack of due diligence in regard to environmental protection,
5 irreparable harm will result if the sale of the leases is allowed to go forward. In order
6 to avoid this irreparable harm to the environment, cultural treasures, economic and
7 aesthetic interests, Plaintiff is seeking to enjoin the BLM from proceeding with the
8 proposed sale.

9 This action arises under, and alleges violation of, the National Environmental
10 Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et seq.* and the statute's implementing
11 regulations.

12 2. On April 14, 2014, the Battle Mountain District Office of the BLM
13 announced its intention to hold an oil and gas lease sale of approximately 230,989
14 acres of land in Lander, Nye and Esmeralda counties in Nevada by its Notice of
15 Competitive Oil and Gas Lease Sale. In so doing, the BLM relied upon an
16 environmental assessment ("EA") prepared pursuant to NEPA that failed to analyze
17 many of the significant environmental effects of the oil and gas development that
18 could occur upon development of the leases. Among the numerous deficiencies of the
19 EA, the BLM ignored or downplayed the impacts the lease sale and subsequent
20 development would have upon air quality, cultural and historical resources, Native
21 American religious and cultural sites, riparian and wetland impacts, threatened and
22 endangered species, waste fluids, forest and rangeland, geology and mineral
23 resources, geothermal conflicts, range resources, and recreation impacts. Endangered
24 and sensitive species in the area include the greater sage grouse, eagles, sage grouse,
25 mule deer, pygmy rabbits and bats.

26 Additionally, the BLM failed to address the impacts to water quality, limited
27 water resources and other resources that result from hydraulic fracturing, or
28 "fracking," a likely method of oil and gas extraction that could be applied to the

1 leased areas.

2 3. Plaintiff brings this case to enjoin the BLM's illegal and unwise proposed
3 lease sale and ensure that Nevada's sensitive wildlife and water resources are
4 properly protected, and that any oil and gas leasing and subsequent development be
5 allowed to occur, if at all, following a thorough environmental review that reveals to
6 the public and decision makers the full impacts of such action.

7 **II. PARTIES**

8 4. Plaintiff is a Nevada limited liability company with offices in Lander
9 County, Nevada. Plaintiff's members are a group of the directly affected owners of
10 farming and ranching land, water rights, and grazing rights immediately adjacent to
11 and over the lands proposed to be leased. Such owners, and their ancestors and
12 predecessors in interest, have conducted and are conducting farming and ranching
13 operations for their own support and to sell the farming and ranching products in the
14 interstate market. Such owners are dependent upon the clean air and water of the
15 region and the natural habitat and populations of imperiled species, and regularly use
16 and intend to continue to use the areas in Lander, Nye and Esmeralda counties
17 affected by the leasing at issue here. Such owners also have visited the lands
18 proposed to be leased for recreational, educational, and other pursuits, and intend to
19 continue to do so in the future, and are particularly interested in protecting the many
20 native, imperiled, and sensitive species and their habitats that may be affected by oil
21 and gas leasing and development.

22 5. Plaintiff's members use and enjoy the wildlife habitat, rivers, streams, and
23 healthy environment in the areas subject to and affected by the oil and gas leases at
24 issue in this case. Plaintiff's members derive recreation, aesthetic and spiritual
25 benefit from their activities. Plaintiff's members intend to continue to use and enjoy
26 the wildlife habitat, rivers, streams, and healthy environment of Lander, Nye and
27 Esmeralda counties on an ongoing basis in the future. Additionally, Plaintiff and its
28 members and their families have an interest in ensuring that the BLM complies with

1 all applicable laws, including the substantive, procedural and informational
2 provisions of NEPA.

3 6. This suit is brought by Plaintiff on behalf of Plaintiff's adversely affected
4 members and their families. The BLM's determination to sell oil and gas leases in the
5 areas subject to this case will harm Plaintiff's members' present and future interests
6 in and use of those areas. Negative effects include, but are not limited to:

7 (a) impacts to native plants and wildlife, especially threatened or
8 endangered species, and their habitats within and around the leases due to oil and gas
9 activities;

10 (b) impacts to water quality, water availability, and riparian habitat;

11 (c) reduction and impairment of recreation opportunities;

12 (d) impaired aesthetic value;

13 (e) loss of scientific study opportunities;

14 (f) contribution to damaging air pollution, including greenhouse
15 gases, which cause climate change; and

16 (g) potential threats to regional seismic stability.

17 7. The BLM is an agency within the United States Department of the
18 Interior and is responsible for managing federal lands and subsurface mineral estates
19 underlying federal, state and private lands. Its stated mission is to sustain the health,
20 productivity, and diversity of America's public lands for the use and enjoyment of
21 present and future generations. The BLM is responsible for implementing and
22 complying with federal law, including the federal laws underlying the lease sale
23 challenged in this action.

24 8. Defendant KEN SALAZAR is the Secretary of the United States
25 Department of the Interior, and is sued in his official capacity. MR. SALAZAR is
26 the official ultimately responsible under federal law for ensuring that the actions and
27 management decisions of the BLM comply with applicable laws and regulations.

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1 **III. JURISDICTION, VENUE AND INTRA-DISTRICT**
2 **ASSIGNMENT**

3 9. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
4 and 5 U.S.C. §§ 701-706. The relief requested is authorized by 28 U.S.C. §§
5 2201-2202.

6 10. Defendants have not remedied their violations of NEPA and are in
7 violation of this statute under the standards of review provided by the administrative
8 Procedure Act (“APA”). Plaintiff has exhausted all available administrative
9 remedies to the degree such exhaustion is required and to the degree that the
10 defective notice allowed Plaintiff’s members to become aware of the proposed lease
11 sales. There exists an actual controversy between the parties within the meaning of
12 28 U.S.C. § 2201 (declaratory judgments).

13 11. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part
14 of the events or omissions giving rise to the claim occurred in this judicial district.
15 The BLM developed the environmental assessment (“EA”) at issue here and
16 determined to move forward with the oil and gas lease sale from the BLM’s Battle
17 Mountain District Office, which is in Lander County, Nevada. Moreover, much of
18 the land subject to the action at issue is located in Lander County, Nevada.

19 12. Assignment to the Northern District of Nevada is appropriate because the
20 BLM’s Battle Mountain District Office in which the final decision was made is in
21 Lander County and much of the land subject to the present action is located in Lander
22 County.

23 **IV. LEGAL BACKGROUND**

24 **A. The National Environmental Policy Act**

25 13. NEPA is “our basic national charter for protection of the environment.”
26 40 C.F.R. §1500.1(a). NEPA’s twin aims are to ensure that federal agencies consider
27 the environmental impacts of their proposed actions and to ensure that agencies
28 inform the public that environmental concerns have been considered.

1 14. NEPA requires “responsible [federal] officials” to prepare an
2 environmental impact statement (“EIS”) to consider the effects of each “major
3 Federal action[] significantly affecting the quality of the human environment.” 42
4 U.S.C. § 4332(2)(C)(I). To determine whether the impacts of a proposed action are
5 significant enough to warrant preparation of an EIS, the agency may prepare an EA.

6 15. Under NEPA’s implementing regulations, an agency’s EA must include
7 “brief discussions of the need for the proposal, of the alternatives . . . , [and] of the
8 environmental impacts of the proposed action and the alternatives.” 40 C.F.R. §
9 1508.9. The EA must take a “hard look” at the impacts and, if the agency decides the
10 impacts are not significant, it must supply a convincing statement of reasons why.

11 16. Further, NEPA’s implementing regulations require that the agency “shall
12 identify any methodologies used and shall make explicit reference by footnote to the
13 scientific and other sources relied upon for conclusions,” and shall ensure the
14 scientific accuracy and integrity of environmental analysis. *Id.* § 1502.24. The
15 agency must disclose if information is incomplete or unavailable and explain “the
16 relevance of the incomplete or unavailable information to evaluating reasonably
17 foreseeable significant adverse impacts.” *Id.* § 1502.22(b)(1). The agency must also
18 directly and explicitly respond to dissenting scientific opinion. *Id.* § 1502.9(b).

19 17. An agency must prepare an EIS for any action that has “individually
20 insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). A
21 cumulative impact is defined as “the impact on the environment which results from
22 the incremental impact of the action when added to other past, present, and
23 reasonably foreseeable future actions regardless of what agency . . . or person
24 undertakes such other actions. Cumulative impacts can result from individually
25 minor but collectively significant actions taking place over a period of time.”
26 *Id.* § 1508.7.

27 18. If, after preparing an EA, the agency determines an EIS is not required,
28 the agency must provide a “convincing statement of reasons” why the project’s

1 impacts are insignificant and issue a Finding of No Significant Impact or "FONSI."
2 40 C.F.R. §§ 1501.4, 1508.9 & 1508.13.

3 **V. FACTUAL AND PROCEDURAL BACKGROUND**

4 **A. The Species and Habitats of the Lease Areas**

5 19. The areas leased by the BLM for oil and gas development under the
6 challenged sale are in Lander, Nye and Esmeralda counties, within the habitat of
7 sensitive, threatened or endangered species. Appendix D to the EA, lists 17 birds, 4
8 of which are federal endangered or threatened species, specifically, the greater sage
9 grouse, the snowy plover, the yellow-billed cuckoo, and the southwestern willow
10 flycatcher. The greater sage grouse is likely to occur in the proposed leased areas.
11 (EA, pg. 20).

12 20. Eight sensitive or threatened fish species are listed including the federal
13 threatened railroad valley springfish and the Lahontan cutthroat trout. Twenty-three
14 sensitive mammals are listed. Two amphibians and one reptile are listed including
15 the endangered Columbia spotted frog and the desert tortoise. Seven sensitive
16 molluscs are listed.

17 21. Plaintiff is informed and believes that the loss of habitat for the foregoing
18 species due to oil and gas development is a threat to these species. Of concern are
19 habitat loss due to grading and construction for roads, well pads, tank settings,
20 pipelines, and settling ponds. Habitat degradation derives from increased noise,
21 ground vibrations, venting of toxic and noxious gases, and release of petroleum
22 products and waste waters. Traffic-related mortality is also a factor for such species
23 living in oil fields.

24 22. The BLM's lease sites in Lander, Nye and Esmeralda counties are in
25 suitable habitat for these species, and all of the lease sale areas in Lander, Nye and
26 Esmeralda counties are in habitat that may be utilized by these species.

27 23. The desert tortoise has also been under federal Endangered Species Act
28 protection and Plaintiff is informed and believes that oil and gas production

1 constitutes a threat to the species.

2 24. The FWS has noted that construction of facilities related to oil and natural
3 gas production, such as well pads, wells, storage tanks, sumps, pipelines, and their
4 associated service roads, degrade habitat and cause direct mortality as does leakage
5 of oil from pumps and transport pipes and storage facilities, dumping of waste oil and
6 highly saline wastewater into natural drainage systems also degrades habitat and
7 causes direct mortality.

8 25. The foregoing species occur within and are affected by the BLM's lease
9 sale.

10 26. Most watersheds, including the Reese River watershed, would likely be
11 affected by oil and gas development of the lease sale areas.

12 27. The development of the challenged oil and gas leases could result in the
13 use of millions of gallons of water. Development of the leases could directly,
14 indirectly, or cumulatively affect flows in the Reese River and all contributory
15 streams. Also, wastewater or flowback from the operations could enter the streams
16 and significantly affect the quality of water in those streams.

17 28. Oil and gas development resulting from the lease sale could also
18 adversely affect other birds that depend on the Reese River and contributory streams.

19 29. The Reese River Basin includes the area of the Arch Dome Wilderness
20 Area which supports golden eagles.

21 30. In sum, many sensitive, threatened or endangered species occur in or near
22 the areas offered by the BLM for oil and gas leasing under the challenged lease sale.

23 **B. Impacts of Oil and Gas Leasing and Development: Fracking,
24 Oil Spills, and Methane Leakage**

25 **1. Hydraulic Fracturing**

26 31. Under the BLM's lease sale, lessees may use hydraulic fracturing, or
27 "fracking", technology to develop the oil and gas on the leases.

28 32. Fracking is a highly controversial and dangerous drilling method. The

1 technique involves injecting pressurized fluid into rock formations to propagate
2 fractures in the rock layers and allow the release of oil and natural gas.

3 33. Fracking can result in the discharge of hazardous waste, including
4 petroleum products, into drinking water. The process involves hundreds of toxic
5 chemicals which may escape into water supplies either through deep well injection or
6 through more conventional routes, like migration through faulty casing or via surface
7 spills. Recent reports show fracking has resulted in more than 1,000 documented
8 cases of ground water contamination, either through the leaking of fracking fluids
9 and methane into ground water or via above-ground spills of contaminated
10 wastewater. In particular, the storage of the hydraulic fracturing fluid in surface pits
11 can be a source of water pollution. For instance, New Mexico data, summarized by
12 the Oil and Gas Accountability Project, shows 743 instances of ground water
13 contamination, almost all of it occurring over the last three decades. 398 of those
14 incidents are linked to faulty pits. Similar incidents are occurring across the country.

15 34. Fracking also requires the use of large amounts of water. The EA notes
16 that two to five million gallons of water may be necessary to fracture one horizontal
17 well in shale formation, which is the same formation found at the proposed lease
18 parcels. The use of this amount of water would deplete other sources and, further,
19 pumping this large amount of water will require significant amounts of fuel
20 combustion that will result in a corresponding increase in energy use and air
21 pollution, including greenhouse gas emissions.

22 35. Fracking can pollute the air. In particular, operations can result in the
23 emission of volatile organic compounds, like benzene and toluene, which have
24 substantial negative health effects. Ancillary equipment, such as diesel trucks and
25 on-site generators, emit a range of air pollutants, such as nitrous oxide and particulate
26 matter.

27 36. Fracking has also been linked with increased seismic activity.
28 Specifically, the development of the Fayetteville Shale in Arkansas and

1 corresponding development of deep waste injection wells was associated with an
2 increase in earthquake activity in that region, including swarms of micro-earthquakes
3 and significant quakes with magnitudes 3.9 and 4.7. The Arkansas Oil and Gas
4 Commission halted operations at the deep injections wells in response. Although the
5 link between the injection wells and the quakes has not been definitively established,
6 seismic activity has dropped significantly since injection ceased.

7 37. As the BLM noted, “recently, natural gas reserves have gained interest
8 nationally and in Nevada with the possibility of expanding production capacity on
9 public lands using hydraulic fracturing technology.” Reports have highlighted this
10 recent nationwide growth in hydraulic fracturing and natural gas development. One
11 report notes that “[a]s a result of hydraulic fracturing and advances in horizontal
12 drilling technology, natural gas production in 2010 reached the highest level in
13 decades,” and that “[h]ydraulic fracturing, used in combination with horizontal
14 drilling, has allowed industry to access natural gas reserves previously considered
15 uneconomical, particularly in shale formations.” Another report points out that
16 “[s]ince 1998 unconventional natural gas production [hydraulic fracturing] has
17 increased nearly 65%.”

18 38. The U.S. Department of Energy’s Energy Information Administration
19 (“EIA”) also forecasts a massive surge in oil and gas development and, in particular,
20 shale gas and shale oil from formations like the Chainman Shale deposit. As the EIA
21 explains in a review of shale gas resources dated July 8, 2011, “[the use of horizontal
22 drilling in conjunction with hydraulic fracturing has greatly expanded the ability of
23 producers to profitably recover natural gas and oil from low-permeability geologic
24 plays -- particularly, shale plays.” *Id.* As the EIA further explains, “only in the past 5
25 years has shale gas been recognized as a ‘game changer’ for the U.S. natural gas
26 market.”

27 **2. Oil Spills and Habitat Contamination**

28 39. Regardless of whether fracking is employed, oil and gas development

1 under the lease sales can have numerous negative impacts on wildlife and other
2 resources. Among the most significant of such impacts are spills of oil, gas, or brine.
3 Such spills can injure or even kill wildlife by destroying the insulating capacity of
4 feathers and fur and by depleting the oxygen availability in water. The effects of
5 exposure to these toxic substances can lead to reduced fertility, organ damage,
6 immune suppression, and cancer.

7 40. In some areas, the impact of such spills has lasted for decades.

8 41. Exposure to brine (a mixture of water, salts, other minerals, and oil
9 commonly used in oil production) can be lethal to young waterfowl, including
10 damaging feathers, killing needed vegetation, and decreasing needed nutrients in
11 their water supply.

12 42. The harmful impacts of oil spills are true for even small spills; for
13 instance, a study of National Wildlife Refuges in Louisiana found that levels of oil
14 contamination near oil and gas facilities were lethal to most species of wildlife
15 despite the lack of occurrence of any large spills. Additionally, spills are not an
16 infrequent occurrence in oil and gas production. In one report, nearly 20 percent of
17 oil and gas production facilities examined reported spills. The report also noted the
18 response to spills tends to vary, and that agency staff are often ill equipped and ill
19 trained in how to deal with such spills. One review of official spill reports indicates
20 that there have been nearly a dozen oil spills in the Los Padres National Forest area
21 in the last three years alone.

22 **3. Methane Leakage**

23 43. One of the significant consequences of oil and gas development is
24 methane release into the atmosphere. Methane, a greenhouse gas, is at least 25 times
25 more potent than carbon dioxide over a 100 year period and at least 72 times as
26 potent over a 20 year period in its contribution to global warming.

27 44. Plaintiff is informed and believes that, in the proposed lease areas, most
28 of the oil and gas potential comes from the Chainman Formation, a newly evaluated

1 shale formation that is reputed to have some of the richest shale rock characteristics
2 in the country. Due to the significantly larger production emissions of shale gas,
3 shale gas can lose much of its greenhouse gas emissions advantage against
4 coal-based generation. This is especially true if a 20-year global warming potential
5 is used to calibrate methane's relative radiative forcing against that of carbon dioxide
6 in order to emphasize the influence of methane emissions on near-term climate
7 change. Notably, recent peer-reviewed science teaches that methane is even more
8 powerful at warming the atmosphere than previously thought and, specifically, that it
9 may be 33 times as potent as carbon dioxide over 100 years and 105 times as potent
10 as carbon dioxide over 20 years. In short, when near-term warming impacts are
11 considered, upstream methane emissions can erode any climate advantage that
12 natural gas may have as a fuel.

13 45. Emissions of methane from oil and gas development reflect waste and
14 inefficiencies in the production process. The EPA's "Natural Gas STAR" program
15 encourages oil and natural gas companies to cut methane waste to reduce climate
16 pollution and recover value. Notably, these measures are applicable to both natural
17 gas and oil development (in fact, many wells produce both natural gas and oil).
18 The EPA has already identified 150 proven technologies and practices to reduce
19 methane waste and make operations more efficient. Many of these measures cost less
20 than \$10,000 and would pay back the purchaser within a year. The EPA's Natural
21 Gas STAR and other evidence programs suggest there are opportunities to
22 cumulatively and significantly reduce greenhouse gas emissions from many small
23 federal actions that approve oil and gas development if the identified technologies
24 and practices are implemented at the proper scale and are properly analyzed by
25 federal agencies.

26 **C. The BLM's Lease Sale and Environmental Assessment**

27 46. The BLM controls a total of 11,370,645 acres in the three counties where
28 the sale of parcels is being proposed. The majority of the parcels proposed for sale

1 for oil and gas development are located in Lander and Nye Counties. The Battle
2 Mountain District Office of the BLM is the lead office for the proposed July 20, 2014
3 sale.

4 47. The BLM's lead office participated in internal scoping meetings on
5 December 18, 2013 and January 7, 2014. The office also sent out Native American
6 consultation letters in December 2013 and, based on opposition, met with the Yomba
7 Shoshone Tribe in February. The BLM's lead office received nominations to lease
8 166 parcels for oil and gas development totaling 285,000 acres which it reduced to
9 139 parcels (230,989 acres) after an initial review of conflicts with current mining
10 operations and to protect sage grouse habitat.

11 48. The BLM completed an Environmental Assessment ("EA") of the
12 proposed sale and issued an Interested Party Letter in February, 2014. This letter
13 was posted on its website, noticed in the Federal Registry and sent out to a few
14 ranchers with grazing allotments on the parcels involved. No letters were mailed to
15 adjacent landowners with property and water rights.

16 49. Because Plaintiff's members were owners of property consisting of real
17 estate, water rights and grazing rights in, over, and adjacent to the proposed leases,
18 these parties were entitled to personal, actual notice of the proposed lease sale.

19 50. The public was given 30 days to respond with a deadline of March 13,
20 2014. Many of the directly impacted adjacent landowners and other affected parties
21 did not learn of the proposed sale until after the public comment period had ended.

22 51. The Lander County Commissioners were unable to take action until after
23 the comment period had ended but unanimously and formally stated their opposition
24 to the proposed sale of leases. On April 10, 2014, BLM representatives met with
25 County Commissioners to answer any questions they might have and informed them
26 that they had missed the deadline to formally comment on the proposed sale. The
27 representatives were unable to tell the Commissioners or the public present what the
28 next step in the process was and how they could effectively engage and provide input

1 to the BLM.

2 52. The Yomba Shoshone Tribe commented in opposition to the proposed
3 sale in an undated letter, which was within the Tribe's comment period.

4 53. On April 14, 2014, the BLM posted a Notice of Competitive Oil and Gas
5 Lease Sale which was amended on April 29, 2014. A total of 102 parcels are
6 included in the auction containing 144,201.36 acres. The BLM has posted a draft of
7 a Finding of No Significant Impact ("FONSI") and a draft of a Decision Record
8 approving the sale. Neither document is finalized and/or signed.

9 54. The BLM's EA indicates a reliance on past low development of oil and
10 gas following exploration for wildcat wells in Tonopah and surrounding areas as a
11 basis for a conclusion of low probability for oil and gas development through the sale
12 of leases on the proposed parcels. The EA makes no mention of the newly
13 discovered Chainman Formation or the oil company scramble to exploit this
14 resource. The EA further indicates that there is no direct impact from issuing the
15 leases because leasing does not authorize oil exploration and developmental
16 activities. However, it does indicate that the leases, if sold, become irrevocable
17 rights for the lessee.

18 55. As required by the National Environmental Policy Act (NEPA), the
19 BLM's EA of the sale addresses specific elements of the environment. Its conclusion
20 is noted below along with current facts in conflict.

21 56. Air Quality: The BLM indicates that as a result of exploration and
22 development there would be an increase in the fugitive dust related to disturbance
23 and exhaust, as well as due to increased traffic on existing roads.. The BLM
24 considers this temporary, and because of the low probability of actual development,
25 the EA concludes the impact is not expected to be significant.

26 57. Area of Critical Environmental Concern (ACEC): The BLM indicates
27 that no identified parcel is currently designated as an ACEC, an administrative
28 designation that is made during the land use planning process. The BLM fails to

1 discuss whether any of the parcels are under review for designation as an ACEC
2 through the Battle Mountain District updating of its comprehensive Land Use and
3 Resource Management Plan (“RMP”) currently underway. It should be noted that the
4 Battle Mountain District has been undergoing a process to update its current Land
5 Use and RMP plan since December 13, 2010. The current plan is almost 20 years
6 old. The BLM has held numerous meetings and conducted a significant amount of
7 time in developing the new comprehensive plan and inventory of resources. As a
8 result, the BLM must surely have known of the increased interest in the Chaiman
9 Formation. The plan is due to be completed this year. The BLM has used the RMP
10 process as the reason for delaying decisions on land sales and new approved uses in
11 the past. See the BLM’s RMP website for further information on the scope, process,
12 public involvement and timing of the BLM’s effort to update the RMP.

13 58. Cultural/Historic: The BLM concludes that the sale of the leases will
14 have little adverse impact on cultural or historic resources because, while there are
15 these resources in the area, any activity would be subject to compliance with the
16 National Historic Preservation Act (“NHPA”). The BLM fails to identify known
17 sites or resources in relation to the proposed sale parcels.

18 59. Environmental Justice: The BLM rationalizes that there is no negative
19 impact on environmental justice but, rather, because this may lead to limited short-
20 term employment via the drilling of wells, the sale of the leases would, therefore,
21 have a small but positive socioeconomic benefit.

22 60. Farmlands Prime or Unique: The BLM concludes that there are no prime
23 or unique farmlands in the Battle Mountain District. In the Farmland Protection
24 Policy Act, Congress found that, “the Nation’s farmland is a unique natural resource
25 and provides food and fiber necessary for the continued welfare of the people of the
26 United States.” 7 U.S.C. 4201§2(1). The BLM’s conclusion in the EA completely
27 fails to consider the numerous alfalfa farms that are adjacent to the parcels both in the
28 Reese River and Smoky Valleys. The region is known throughout Nevada’s and

1 California's dairy markets to be a consistent supplier of premium alfalfa hay, high in
2 protein due to the region's unique high altitude, high desert growing environment.
3 The BLM does not even consider the impact to the alfalfa farms even though farming
4 is a significant and stable economic source of revenue for the counties involved.

5 61. Noxious Weeds/Invasive Species: The BLM's EA finds the
6 environmental consequences with the proposed sale to have no direct impact on
7 noxious weeds and invasive non-native species. It does, however, acknowledge that
8 exploration and development activities would provide a mode of transport for these
9 species but concludes these concerns would be addressed on a site specific mitigation
10 plan.

11 62. Native American Religious Concerns: The BLM concedes that within the
12 proposed sale areas there are sites and resources considered to be sacred but that
13 these sites were not identified and that the majority of the areas have not been
14 analyzed for cultural resources. The EA concludes, however, that because the sale
15 does not directly authorize exploration, development or production, impact on
16 cultural sites can be minimized and/or mitigated. It also concludes that impacts
17 would be minor and temporary and could be further identified and analyzed in a site-
18 specific NEPA review.

19 63. Flood Plains: The BLM identifies that 6,133 acres of the proposed lease
20 parcels fall within a 100 year, 24-hour runoff event. It also notes that Esmeralda
21 County FEMA flood mapping data is not yet available. It concludes no direct impact
22 because of the sale and that further impacts would be identified in site-specific NEPA
23 analysis.

24 64. Riparian/Wetlands: The BLM concludes that while surface disturbance
25 adjacent to wetlands and riparian areas has the potential to adversely affect the
26 functioning of riparian area's soil and watershed attributes, it concludes that the
27 impacts could be mitigated and analyzed under site-specific analysis. It concedes
28 that water quality and supply is intimately related to the health of these systems and

1 that the EA fails to indicate that important riparian/wetlands exist throughout the area
2 proposed for the parcel sale. It also suggests that these areas account for less than one
3 (1%) percent of the area. The BLM does concede that these areas do provide the
4 majority of biodiversity for the area and are essential for plant and animal species.

5 65. Threatened/Endangered Species: The BLM did remove some of the
6 proposed parcels after considering the impact to greater sage grouse habitat and
7 breeding grounds. In this EA, although the BLM discusses the presence of eagles,
8 sage grouse, mule deer, pygmy rabbits, and bats in the affected areas and concedes
9 that these species could be indirectly affected due to habitat loss, it concludes that
10 since the probability of the sale resulting in actual exploration and/or development of
11 gas and oil operation is so low, the adverse impact to endangered species would be
12 short lived and minimal.

13 66. Migratory Birds: The BLM's conclusion on the impact to migratory birds
14 mirrors its conclusion of the impact on the other identified wildlife.

15 67. Waste - Hazardous/Solid: The EA identifies risks associated with the
16 waste and by-products of oil and gas development, and it concedes that these could
17 affect the environment through the production of waste fluids, emissions and site
18 impacts from field development. It also indicates the possibility of oil spills, releases
19 of produced water, industrial fluids, and hazardous materials. The BLM concludes,
20 however, that while there is an array of potential adverse impacts, the potential for oil
21 and gas development in the sale areas is low and that these adverse impacts could be
22 further reviewed in a site-specific NEPA analysis.

23 68. Water Quality/Supply: The EA identifies that the water in the lease areas
24 is owned by the public of Nevada and that the right to use surface and ground water
25 is administered and managed by the Nevada Division of Water Resources. The EA
26 also indicates which water basins are closed and open, and how much of the water is
27 already appropriated for beneficial use. The EA also describes the area as being in a
28 consistent state of moderate to exceptional drought with only a few moist years in the

1 last decade. Again, the BLM concludes no direct impact due to the sale of the leases
2 because the sale does not authorize any actual drilling or exploratory activity. The
3 BLM falls back on the premise that adverse impacts will be identified as a result of
4 site-specific NEPA analysis. It fails to identify where the required water for
5 development or exploratory activities will come from.

6 69. Wild and Scenic Rivers: The EA indicates that these are not present in
7 the area.

8 70. Wilderness: The BLM concedes that some of the nominated lease parcels
9 are located near the Antelope Range Wilderness Study Area (“WSA”) but fails to
10 give further review of environmental impacts on that area.

11 71. Forests and Rangelands (HFRA only): The EA indicates that the Healthy
12 Forest Restoration Act is not impacted by the proposed sale. The EA also addresses
13 other resources that were considered in the BLM’s analysis but specifically
14 determined that Fire Management issues and Paleontological Resources were not
15 present. These additional resources and conclusions follow:

16 (a) Geology and Minerals: The EA concedes that the area of the parcels
17 is susceptible to earthquakes given the geological nature of the area and the fact that
18 many of the faults present are still active. The BLM fails to analyze the impact oil
19 and gas development may have via increased earthquake activity.

20 (b) Geothermal Development: The Battle Mountain region has shown
21 good capacity for geothermal resource development and the EA recognizes that
22 Nevada leads the nation in geothermal energy production. The EA recognizes that
23 oil and gas development conflicts with geothermal development but concludes that
24 these conflicts could be mitigated through negotiations. Two of the current
25 proposed lease parcels are contiguous with current geothermal operations. The EA
26 fails to analyze whether this sale of leases for oil and gas development negatively
27 impacts future geothermal development in the region which has been shown to be a
28 viable source of clean energy with a positive economic impact.

1 (c) Range Resources: The EA recognizes that livestock production is a
2 major industry in the lease areas and identifies 19 grazing allotments with current
3 grazing permittees within or overlapping the lease area. While the BLM concedes
4 that exploration and development would impact rangeland resources through the
5 removal of vegetation, it fails to analyze the impact and falls back on the contention
6 that the sale of the lease does not directly authorize development activity. Here, the
7 BLM concedes, however, that it is foreseeable that oil and gas development and
8 exploration would occur within the next 10 years and then goes on to rely on the fact
9 that direct impacts would then be analyzed under site-specific EAs.

10 (d) Visual Resources: The BLM uses a visual resource management
11 ("VRM") program and is tasked by Congress to consider visual resource impacts
12 prior to allowing new uses on public lands. The EA indicates that the parcel areas
13 are rated as Class III and IV. Per the BLM's Handbook H-8410-1(Rel 8-28,
14 1/17/86), these classifications can allow for moderate to significant change to the
15 visual landscape. The EA concludes that the sale will have no direct impact on
16 visual resources but that impacts in the future could be mitigated through a site-
17 specific NEPA analysis.

18 (e) Recreation: The EA identifies possible impacts with recreational
19 resources due to oil and gas development because of elevated noise, increased truck
20 traffic and increased dust associated with development and concedes that in most
21 cases recreationalists will avoid the parcels being developed. It again concludes,
22 however, that this is not a direct impact of the sale but of potential future
23 development.

24 (f) Socioeconomics: The EA identifies mining, agriculture and
25 recreation as the primary economic activities in the three counties affected by the
26 sale. The BLM concludes the only direct impact of the sale is the increased revenue
27 to the state of Nevada, as it will receive 50% of the sale proceeds. The local
28 governments are not recipients of the proceeds. The EA expects that the potential

1 positive benefits due to increased employment and tax revenue to be minimal since it
2 contends that the probability of development of the sites is low.

3 72. Section 4 of the EA contains the Cumulative Impact Analysis of the
4 proposed lease sale and, because the term of the lease is 10 years, the BLM uses that
5 as its measuring term for cumulative impacts. The EA reviews past oil and
6 development and concludes that the low level of past success of exploration will
7 most likely continue. The BLM notes that only three wildcat wells have been drilled
8 in the area since 2009 and that they have all been plugged and abandoned. Given
9 that record, the EA contends that foreseeable future actions in oil and gas
10 development in the current RMP of the area has been overstated. The EA identifies
11 a small chance that a new oil field will be discovered within the next 10 years and
12 concludes that only up to 30 acres of disturbance might be expected in the boundary
13 area. The BLM uses this conclusion to review the potential impacts on air quality,
14 cultural resources, wildlife, water quality, range resources and so forth. Because of
15 the BLM's starting premise that oil and gas development is unlikely in the region
16 where the parcels are identified for sale, the EA concludes that potential for adverse
17 direct and cumulative impacts on the environment are extremely low. The BLM
18 fails to mention or consider the impact of the newly evaluated Chainman Formation
19 or the scramble to exploit this resource. The discovery of this rich shale deposit is a
20 complete game-changer that renders any reliance on past oil and gas exploration
21 unreasonable, if not disingenuous. The BLM fails to consider in its EA how the new
22 fracking technology and successes factor into the potential impacts of the sale of the
23 leases, thereby nullifying the value of the EA and circumventing the purpose of
24 NEPA.

25 73. Among the biggest flaws of the EA is the scope of its analysis. The EA
26 looks at the environmental impacts associated with 710 acres of habitat, even though
27 a much larger number of wells on the 231,000 acres of land actually leased could
28 reasonably be expected to occur.

1 74. The BLM also justifies its limited analysis upon the assertion that future
2 activity on the leases will require subsequent environmental review. However, in its
3 EA, the BLM also states that, as a general matter, “ once a lease is issued to its
4 owner, the owner has the ‘*right to use as much of the lease lands as is necessary to*
5 *explore for, drill for, mine, extract, remove and dispose of the leased resource in the*
6 *leasehold,*’ subject to specific nondiscretionary statutes and lease stipulations.”

7 75. In sum, the subject EA turns a blind eye to significant environmental
8 impacts and whistles past those impacts based on unfounded reliance on the lack of
9 success of prior conventional exploration and resource knowledge. The EA fails to
10 mention or address the newly discovered Chainman Formation. Therefore, the
11 reliance on low probability of further exploration and development, is unreasonable,
12 arbitrary and capricious. Likewise, reliance upon later-required compliance
13 requirements violates the intent of NEPA. This approach does not constitute the hard
14 look required by NEPA.

15 VI. CLAIMS FOR RELIEF

16 FIRST CLAIM FOR RELIEF

17 [Violation of NEPA and the APA; Preparation of an Unlawful EA and FONSI]

18 77. Each and every allegation set forth above in the Complaint is
19 incorporated herein by reference.

20 78. Pursuant to NEPA, Defendants must take a “hard look” at the
21 consequences, environmental impacts, and adverse effects of the proposed actions.
22 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9.

23 79. The BLM arbitrarily assumed for the purposes of the EA that
24 development of oil and gas exploration and production facilities would be subject to
25 later procedures and compliances and, as a result, minimized potential environmental
26 impacts and failed to analyze the nature, intensity, and extent of the lease sale’s
27 actual effects. Later procedures and compliances will not produce one drop of
28 additional water. The BLM’s assumption is arbitrary because the agency unlawfully

1 relied on unrepresentative information concerning three conventional wildcat wells
2 and ignored more recent data regarding the newly discovered Chainman Formation,
3 the new technology of “fracking” and the resulting increases in oil and gas activity
4 both nationally and regionally. Further, the BLM minimized impacts by unlawfully
5 determining that few environmental effects result from the lease-sale stage because
6 the BLM could prohibit harm to the environment at the exploration and development
7 stages.

8 80. The BLM failed to take a hard look at the impacts of the sale of the oil
9 and gas leases in Lander, Nye and Esmeralda counties because it ignored the
10 cumulative impacts of other oil and gas activities in conjunction with this lease sale.

11 81. The BLM failed to take a hard look at the air pollution that will occur as a
12 result of the leasing, including the greenhouse gas emissions and the lease sale’s
13 impact on climate change, despite available methods of doing so. The agency should
14 have considered the impact on the economy of methane releases due to exploration
15 and production and greenhouse gas emissions generated by the addition of more
16 fossil fuels.

17 82. The BLM failed to take a hard look at impacts on water quality and water
18 scarcity as it did not consider water contamination, water usage or waste storage.

19 83. The BLM failed to take a hard look at potential impacts on threatened,
20 endangered, and sensitive species and their habitats.

21 84. The BLM failed to take a hard look at impacts on species and their
22 habitats resulting from oil spills and contamination.

23 85. The BLM failed to take a hard look at impacts resulting from hydraulic
24 fracturing, including the risk it poses to water quality and air quality, and its effect on
25 seismic activity.

26 86. For each of the above reasons, and others, the BLM’s adoption of an
27 inadequate EA and incomplete FONSI for the lease sale is arbitrary, capricious, and
28 not in accordance with law as required by NEPA, its implementing regulations, and

1 the APA, and is subject to judicial review under the APA. 5 U.S.C. §§701-706,
2 706(2).

3 **SECOND CLAIM FOR RELIEF**

4 **[Violation of NEPA and APA; Failure to Prepare an EIS]**

5 87. Each and every allegation set forth above in the Complaint is
6 incorporated herein by reference

7 88. The BLM violated NEPA in proposing the lease sale without preparing an
8 EIS. NEPA requires the preparation of an EIS for all “major federal actions
9 significantly affecting the quality of the human environment.” 42 U.S.C. §
10 4332(2)(C); 40 C.F.R. § 1501.4. The BLM’s lease sale is a major federal action
11 significantly affecting the quality of the human environment. The BLM’s conclusion
12 that preparation of an EIS prior to holding of the lease sale was not required was
13 arbitrary, capricious and inconsistent with the law.

14 89. Numerous factors requiring the preparation of an EIS are triggered by the
15 BLM’s lease sale. The CEQ regulations list ten factors that must be considered in
16 determining the significance of an action’s environmental effects. 40 C.F.R.
17 §1508.27. Among these are that the action affects “ecologically critical areas,” is
18 “highly controversial,” involves possible effects that are “highly uncertain or involve
19 unique or unknown risks,” is related to other actions with “cumulatively significant
20 impacts,” and “may adversely affect an endangered or threatened species.” 40 C.F.R.
21 §§ 1508.27(b)(3)(4), (5), (7) & (9). The presence of any or all of these factors
22 renders the BLM’s decision to not prepare an EIS arbitrary, capricious and
23 inconsistent with the law.

24 90. For each of the above reasons, and others, the BLM’s sale of the oil and
25 gas leases without preparing an EIS is arbitrary, capricious and not in accordance
26 with the law as required by NEPA, its implementing regulations, and the APA, and is
27 subject to judicial review under the APA. 5 U.S.C. §§701-706, 706(2).

28 *///*

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24 gas leases without preparing an EIS is arbitrary, capricious and not in accordance
25 with the law as required by NEPA, its implementing regulations, and the APA, and is
26 subject to judicial review under the APA. 5 U.S.C. §§701-706, 706(2).

27 **VII. PRAYER FOR RELIEF**

28 Therefore, Plaintiff respectfully requests that this Court:

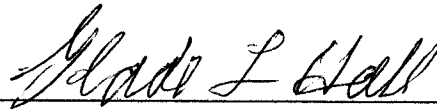
VII. PRAYER FOR RELIEF

Therefore, Plaintiff respectfully requests that this Court:

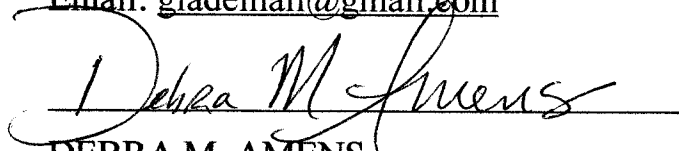
1. Declare that the BLM will violate NEPA and the APA by relying on its inadequate EA and incomplete FONSI for the proposed lease sale;
2. Declare that the BLM will violate NEPA and the APA by failing to prepare an EIS before holding the lease sale;
3. Declare that the BLM will violate the MLA and the APA by failing to ensure that the lessee will prevent waste;
4. Issue an order restraining and enjoining, as unlawful, the lease sale, the underlying inadequate EA and incomplete FONSI, and any leases issued pursuant to such sale;
5. Award Plaintiff the costs of this action, including reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
6. Grant such other relief as the Court deems just and proper.

Dated: June 26, 2014.

Respectfully submitted,



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