PETER STIRBA (Bar No. 3118)
JEFFREY C. BRAMBLE (Bar No. 15548)
CHASE AMES (Bar No. 15525)
STIRBA, P.C.
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
Telephone: (801) 364-8300
Email: cames@stirba.com
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

KANE COUNTY, UTAH, a Utah political subdivision; GARFIELD COUNTY, UTAH, a Utah political subdivision; and RURAL UTAH ALLIANCE, a nonprofit Utah corporation on behalf of its impacted members, Plaintiffs, v. SALLY JEWELL, in her capacity as Secretary of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, NEIL KORNZE, in his capacity as Director of Bureau of Land Management, BUREAU OF LAND MANAGEMENT; and DOES 1-10. Defendants.	**COMPLAINT FOR DECLARATORY RELIEF** Case No. 2:16-cv-01211 Magistrate Judge Dustin B. Pead

Plaintiffs, Kane County, Garfield County, and Rural Utah Alliance, (collectively "Plaintiffs") by and through undersigned counsel, STIRBA, P.C., hereby complain, allege, and aver against Defendants as follows:

NATURE OF THE ACTION

1. This is a civil action for declaratory judgment, attorneys fees as provided for by Federal law, including the Equal Access to Justice Act, and other appropriate relief, brought pursuant to 28 U.S.C. § 2201, 5 U.S.C. §§ 701-706, and 28 U.S.C. § 1331. In particular, Plaintiffs contend that Defendants have implemented and executed a final agency action, which is arbitrary, capricious, constitutes an abuse of discretion, and is otherwise not in accordance with law, in violation of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A). The Defendants' actions have resulted in tremendous harm to the Plaintiffs, as set forth herein. Plaintiffs seek appropriate relief from this Court including a decree invalidating, vacating, or otherwise deeming the action unlawful.

PARTIES

2. Plaintiff Kane County is a political subdivision of the State of Utah, located in the south-central region of the State, with a population of approximately 7,150. Kane County receives a significant economic benefit from coal mining operations within its borders. Kane County is a member of Rural Utah Alliance.

3. Plaintiff Garfield County is a political subdivision of the State of Utah, located in the south-central region of the State, with a population of approximately 5,100. Garfield County derives a substantial economic benefit from coal mining operations in nearby Kane County. Garfield County is a member of Rural Utah Alliance.

4. Plaintiff Rural Utah Alliance ("RUA") is a non-profit Utah corporation dedicated to protecting and defending the interests of rural counties throughout the State of Utah,

specifically interests related to land use and land ownership. RUA's current member counties are: Beaver, Carbon, Garfield, Kane, Piute, and San Juan counties.

5. Defendant Secretary Sally Jewell ("Secretary Jewell") is the Secretary of the United States Department of the Interior. In her official capacity, Secretary Jewell is responsible for upholding the Constitution of the United States and for setting public land policy in accordance with federal law.

6. Defendant United States Department of the Interior ("DOI") is the department of the federal government to which Congress delegated the authority to administer the public lands in accordance with federal law.

7. Defendant Neil Kornze ("Director Kornze") is the Director of the Bureau of Land Management. In his official capacity, Director Kornze is responsible for managing the public lands in accordance with federal law.

8. Defendant Bureau of Land Management ("BLM") is a federal agency within the DOI responsible for the management of public lands and minerals throughout the United States, including lands in Kane and Garfield counties. The BLM manages public lands and mineral leasing within Kane and Garfield counties through their Kanab and Grand Staircase-Escalante National Monument field offices.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 5 U.S.C. §§ 701-706, and 28 U.S.C. § 2201.

10. Venue in this action is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(b) and (c) because the Defendants are all officers, employees or agencies of the United States,

substantial events or omissions giving rise to the claim occurred in this judicial district, and this is the judicial district in which the Plaintiffs reside.

GENERAL ALLEGATIONS

The Coal Order and Moratorium

11. On January 15, 2016, Secretary Jewell, foregoing any meaningful consultation with any representatives of communities that would be negatively impacted by her actions, unilaterally executed Secretarial Order 3338 (the "Coal Order"). *See* Exhibit A.

12. In the Coal Order, Secretary Jewell directs the BLM to "prepare a discretionary Programmatic Environmental Impact Statement (PEIS) that analyzes potential leasing and management reforms to the current Federal coal program." Coal Order at Sec. 1. The stated purpose of the PEIS is "to allow for the continued development of Federal coal reserves while addressing the substantive issues raised by the public, other stakeholders, and the Department's own review of the comments it has received." *Id*. at Sec. 4.

13. The issues were allegedly raised during five "listening sessions" in the summer of 2015. *Id*. at Sec. 2(b). However, the "listening sessions" were informal town hall style meetings that merely allowed the interested parties and members of the public to briefly voice subjective and unfounded "concerns." The "listening sessions" did not allow for any meaningful or substantive discussion of the coal leasing program.

14. The Secretary appears to have relied exclusively on these amorphous and unfocused "listening sessions" instead of on any objective analysis or report substantively addressing the coal leasing program in order to conclude that there was a need for a complete programmatic overhaul to address concerns over climate change and whether American

taxpayers receive a fair return on coal leases. *Id*. Moreover, Secretary Jewell admitted that "the precise issues to be assessed in the PEIS will be determined through the public scoping process," indicating that the DOI was still unsure of what aspects of the coal leasing program, if any, needed reform. *Id*. at Sec. 4.

15. In conjunction with the PEIS, Secretary Jewell took the arbitrary and unwarranted action of directing the BLM to carry out a "pause" on Federal thermal coal leasing until the completion of the PEIS ("the Moratorium"), halting progress on all pending lease by applications ("LBA") yet to receive a Record of Decision/Final EIS. *Id* at Sec. 5(a).

16. In doing so, Secretary Jewell failed to even acknowledge the procedural requirements set forth in the National Environmental Policy Act ("NEPA") or to make any factual findings regarding the need for a pre-Moratorium EIS. 42 U.S.C. 4332(c).

17. Secretary Jewell's unilateral Moratorium undermines the long-standing partnership between the BLM, the State of Utah, and local governments, like Kane and Garfield counties, which has contributed to the effective management of public lands within the State, including management of coal leasing.

18. The lack of meaningful involvement resulted in an act of unwarranted agency overkill. There is no evidence in the Coal Order that Secretary Jewell considered any alternative means to accomplish the objectives she set forth. This includes any alternatives to the Moratorium or its scope.

19. Indeed, Secretary Jewell ignored at least one obvious alternative: limiting the Moratorium to LBA's filed after the Coal Order was issued. This alternative would have allowed applicants, who have, in good faith, invested significant financial resources and human capital

into the application process, to continue moving forward and provide an immediate and substantial return to federal, state, and local governments. One example, discussed more in depth *infra*, is an LBA submitted in 2004 by Alton Coal Development, LLC ("ACD"), that was nearing the end of the administrative process, after more than a decade of work, that is now in indefinite limbo. A timely approval of this long-gestating application would have already resulted in millions of dollars of return to the Federal government, the State of Utah, and local governments like Kane and Garfield counties.

20. In enforcing the Moratorium and bypassing substantial and immediate financial returns, the BLM is disregarding it's statutory fiduciary duty, as set forth in the Mineral Leasing Act, 20 U.S.C. §201(a)(3)(c), to maximize economic recovery for coal mined on federal lands.

21. Secretary Jewell purports to draw her authority to halt prospective thermal coal leases from the discretionary authority granted to her in the Mineral Leasing Act (30 U.S.C. § 201) and past precedent, namely two coal moratoriums implemented in 1971 and 1983, respectively. *Id*. at Sec. 5(a).

22. However, unlike the current Moratorium, prior to the implementation of the 1971 and 1983 moratoriums, the DOI examined the findings of detailed studies intended to address then-existing specific concerns regarding the coal leasing program.

23. As noted in the Coal Order, in the 1960's, serious concerns were raised regarding speculation in coal leasing. *Id*. at 2(c). Prior to taking any significant action, the BLM undertook a study, published in 1970, showing that between 1955 and 1970 there was a ten-fold increase in coal leases, but a 75% decrease in coal production. After the study was published, the DOI implemented the 1971 coal moratorium to address the study's findings. *Id*.

24. In the early 1980's, the Government Accountability Office issued a report claiming that the DOI received $100,000,000 less than market value on sale leases. *Id*. The DOI disputed the report's findings. In response, in July of 1983, Congress directed the DOI to appoint a commission, known as the Linowes Commission, to study the program and for the Office of Technology Assessment to study whether the coal leasing program was compatible with national environmental protection goals. *Id*.

25. At that time, Congress, *not* the Secretary of the DOI, imposed a moratorium on coal leasing that was set to end 90 days after the completion of the Linowes Commission Report. *Id*.

26. The Linowes Commission report was issued in February 1984 and made recommendations on how to improve the coal leasing program. *Id*. After the report was issued, then DOI Secretary William P. Clark extended the coal moratorium in order to implement the report's recommendations.

27. Based on the Coal Order, did not rely on any study, report or other factual findings in making her decision to implement a Moratorium. Instead, Secretary Jewell has adopted the "concerns" raised during five public listening sessions, held between July 29, 2015 and August 20, 2015, from some participating "stakeholders." Secretary Jewell dedicates a substantial portion of the Coal Order to detailing the concerns raised by "stakeholders" who oppose the current coal leasing program and support reforms that would ensure that American taxpayers receive no return from coal production, while virtually ignoring the fact that other "stakeholders," including state and local governments and coal operators, voiced strong support for the current and successful program during the same listening sessions.

28. Unlike the 1971 and 1983 moratoriums, the current Moratorium is not in response to an objective study, report, or other program review containing factual findings that indicate that an overhaul of the coal program is recommend or needed, let alone providing a rational basis for implementing a Moratorium. Instead, the current Moratorium appears to be relying on the anticipated *future* findings of a PEIS that is still in its infancy. The BLM has stated that the PEIS is estimated to take at least three years to complete, but the Coal Order contains no timeline regarding the PEIS or the Moratorium. The studies that formed the basis for the 1971 and 1983 actions each took almost a year to complete. If the DOI and BLM decide to adopt a new program or adopt recommendations from the PEIS, the Moratorium will continue well into the foreseeable future, leaving the future of the coal industry and the continued economic viability of coal dependent rural communities in doubt.

29. Not only is there no administrative record supporting Secretary Jewell's action, but her assertion that a programmatic review and overhaul is appropriate is contrary to reports issued in 2013 from the Office of the Inspector General - U.S. Department of the Interior and United States Government Accountability Office finding no systemic issues with the program. *See* Exhibit B ("OIG Report") and Exhibit C ("GAO Report"). Neither report is even mentioned in the Coal Order.

30. While the OIG and GAO reports both indicate that small improvements could be made to the program, the Interior Department's own Inspector General concludes by stating, "most of the identified issues can be resolved with little or no additional funding or personnel." *See* OIG Report at 19.

31. The GAO report found that royalties at current rates returned a substantial return in the amount of approximately $1,000,000,000 annually in recent years. *See* GAO Report at 2. The GAO Report contained eight small recommendations. *Id*. at 52-53. These recommendations have been implemented in subsequent revisions to the BLM Coal Evaluation manual and handbook and instructional memoranda to its field offices.

32. The DOI Inspector General later testified before Congress that not only were taxpayers receiving fair return from the federal coal program, in many cases, they were receiving *more* than the fair market value.

33. In the months after the reports were released, members of the DOI informed members of the United States Senate that neither report identified concerns that would warrant a moratorium on federal coal leasing.

34. Additionally, the basis for the action is also contrary to the BLM's own position in a 2011 response to a petition from WildEarth Guardians ("WildEarth") requesting that the DOI and BLM abandon the current coal leasing program. *See* Exhibit D ("2011 Decision"). In rejecting WildEarth's November 23, 2009 petition, former director of the BLM, Robert V. Abbey, specifically addressed the two primary concerns Secretary Jewell raises in the Coal Order, and refuted the idea that major changes are needed to the coal leasing program. Addressing environmental concerns, Director Abbey indicated that LBAs undergo a pre-approval environmental analysis pursuant to NEPA. *See* Ex. B at 5. "The NEPA analysis estimates direct emissions of [greenhouse gases] as a result of continued mining operations of the applicant mine, the proposed mining operations that may result from the proposed leasing action, and . . . at dispersed electric generation facilities." *Id*. Regarding fair return, Director Abbey

points out that, in addition to the competitive bidding process, a bidder must meet the undisclosed minimum acceptable bid amount placed on the tract by the BLM following a market study. *Id*. "All of this evidence demonstrates that the BLM practice has ensured fair market values are received for LBA tracts . . ." *Id*.

35. The Coal Order further ignores many key facts, previously recognized by the BLM, and other Federal agencies, which make it clear that the Moratorium is an arbitrary and unwarranted action not rationally related to accomplishing the goals of addressing climate change and ensuring a fair return to American taxpayers.

36. First, regarding the goal of ensuring a fair return, not only does the current system ensure that accepted lease bids are above market levels, but, unlike in private leases, winning bidders are required to make bonus payments over the course of four years totaling the amount of the winning bid. These bonus payments are split between Federal and state governments, doubling the return to taxpayers.

37. Additionally, even if the DOI, following the PEIS, determined that royalty rates on federal leases were too low, it is incapable of unilaterally raising rates. Royalty rates for surface coal mining are defined in statute and can only be raised through Congressional action. 30 U.S.C. § 207(a).

38. Further, the BLM's form coal lease contracts contains a "special stipulations" section that would allow for a stipulation that the BLM may adjust the terms of the lease upon completion of the PEIS. Ultimately, Secretary Jewell's assertion that rates will be locked in for decades is false.

39. As a result, Secretary Jewell's actions are not rationally related to the goal of ensuring a fair return to the American taxpayer.

40. Second, regarding the goal of ensuring that the coal leasing program addresses climate change, as Director Abbey pointed out in the 2011 Decision, before the BLM formerly approves a lease, it conducts a rigorous evaluation of the environmental impacts of the proposed project. Not only is there the extensive analysis required under NEPA, but the BLM must address the environmental considerations set forth in the Federal Land Policy Management Act ("FLPMA"), the Federal Coal Leasing Act Amendments ("FLCAA"), the Surface Mining Control and Reclamation Act ("SMCRA"), Mineral Leasing Act and applicable state laws. This gives the BLM the discretion to deny an LBA if the environmental costs outweigh the projected benefits of the proposed project. Accordingly, an entire programmatic overhaul to address climate change is redundant of existing Federal law.

41. As evidenced by the Coal Order, Secretary Jewell, the DOI, and the BLM have adopted the flawed reasoning that they previously rejected. Their actions are contrary to the legitimate factual findings of Federal agencies that the current coal program is providing a yearly return of $1,000,000,000 to American taxpayers and extensive existing federal law intended to ensure that climate change is thoroughly addressed in the coal leasing process.

Pre-Moratorium Litigation

42. At the time Secretary Jewell issued the Coal Order, the DOI and the BLM were facing at least three lawsuits from WildEarth, whose petition the BLM had denied in 2011, seeking to overturn approval for coal projects on federal lands in the Western United States. The

timing of the Coal Order indicates that it is being used, in part, to dispose of the then-pending litigation.

43. The first lawsuit, filed in the United States District Court for the District of New Mexico (Case No. 1:14-cv-00112), sought to overturn approval for a coal lease modification related to the San Juan Mine in New Mexico. The second lawsuit, filed in the United States District Court for District of Colorado (Case No. 1:15-cv-01984), sought to overturn the award of the "Flat Canyon Coal Lease" expanding the Skyline Mine in Sanpete County, Utah.[1] The third lawsuit, also filed in the District of Colorado (Case No. 1:15-cv-02026), sought to overturn federal approval for the Black Thunder and Antelope Mines in Wyoming, the Bowie No. 2 Mine in Colorado, and the El Segundo Mine in New Mexico.[2]

44. Earlier in 2015, WildEarth had been successful in arguing that the DOI and BLM had failed to follow necessary procedures in approving the expansion of the Spring Creek Mine in Montana (Case No. 1:14-cv-00013) and the Colowyo and Trapper Mines in Colorado (Case No. 1:13-cv-00518), significantly delaying any progress in developing those mining operations.

45. Within eighteen days of Secretary Jewell's Coal Order directing the implementation of the Moratorium, WildEarth filed a joint motion on behalf of the parties to stay all proceedings in each of the above referenced cases. The motions referred to the Coal Order and explicitly stated that the PEIS would address "an issue that relates to some of the specific claims in this case" and that "the Parties are hopeful that the Order may provide a foundation for settlement of this case." The motions to stay were granted in all three cases listed above.

[1] This case was later transferred to the United States District Court for the District of Utah.
[2] This case was later severed, creating three additional cases.

46. The timing of the Coal Order as it relates to the above referenced motions is not coincidental. Counsel for the DOI and BLM used the Coal Order as a tool to dispose of these pending cases and establishes that the Moratorium is arbitrary, capricious, and an abuse of Secretary Jewell's discretion pursuant to the Mineral Leasing Act.

The Alton Project

47. In or about 2004, Alton Coal Development, LLC ("ACD") identified land in Kane County, Utah, approximately three miles south of Alton, Utah near the border of the Kane and Garfield counties, as a viable location for coal mining operations. The identified area encompassed a block of adjacent federal and privately owned lands.

48. Soon thereafter, ACD began leasing the private coal lands.

49. In September of 2004, ACD submitted a LBA to the BLM to lease the federally owned track, totaling 3,500 acres, under a competitive lease.

50. In June of 2006, ACD submitted an application of the State of Utah for a permit to mine in private coal reserves in the southern portion of the privately owned land.

51. ACD's application to the State of Utah was approved by the Utah Department of Natural Resources, Division of Oil, Gas and Mining in November of 2009. ACD planned to mine approximately 2,000,000 tons of coal from the mine per year and estimated that the coal reserves would be exhausted within three to five years from the start of mining operations. In early 2011, ACD began mining operations on the privately owned land ("the Coal Hollow Mine").

52. In February, the State of Utah gave approval to ACD to expand its operation into a small tract of the northern section of the privately owned land in order to extend the life of the operation for two to three more years.

53. As part of their Coal Hollow Mine operation, ACD currently directly employs 52 individuals and generates another 100 jobs in supporting industries, such as trucking, in Kane and Garfield counties. Given the counties' small populations and workforce, ACD's presence in the counties represents a major economic stimulus.

54. However, the Coal Hollow Mine operation has nearly exhausted available resources. In order to continue their coal mining operations, ACD must expand into the adjacent federally owned lands, as contemplated in the LBA ACD submitted to the BLM in 2004.

55. On November 28, 2006, a Notice of Intent ("NOI") to prepare an environmental impact statement was published in the Federal Register. The BLM also commenced a 90-day public scoping period on November 28, 2006 going through February 26, 2007. On September 14, 2011, the BLM published a Final Scoping Report. In November of 2011, the BLM published a Draft Environmental Impact Statement ("DEIS"). The BLM published a Supplemental DEIS in June of 2015. ACD was expecting that the BLM would soon issue approval for the LBA in the form of a Record of Decision and Final EIS.

56. However, the Moratorium effectively terminated ACD's LBA, more than ten years after ACD first submitted their application to the BLM, wasting years of effort on the part of the BLM and ACD in studying the impacts of the project and huge amounts of financial resources that have been invested into pushing the ACD LBA through the burdensome leasing process. Without vacating the Moratorium, allowing for approval of the LBA, ACD will be forced to close operations in Kane County.

57. In response to the Moratorium, and in an attempt to maintain the economic viability of the mine and the dependent counties, ACD filed for an emergency lease with the

BLM in May of 2016 asking for approval to expand into a 640 acre tract of adjacent Federal land, arguing that without approval, ACD would be forced to close their operations in Kane County.

58. In August of 2016, ACD's application for an emergency lease was denied. The BLM claimed that the emergency was "operator created" despite the large amounts of evidence presented by ACD in the emergency application detailing the crushing economic impact of a denial. The BLM's denial was not based on relevant data, but was instead an enforcement of Secretary Jewell's arbitrary policies, as set forth in the Coal Order, limiting coal production and the return to American taxpayers.

59. In addition to the Alton project, the Moratorium has threatened other mining operations in the United States and Utah, including the Williams Draw LBA to expand the Lila Canyon Mine.

Local Impact

60. Forbes Magazine recently ranked Utah as the 2016 "Top State for Business." Utah's coal industry and the multitude of benefits it provides play a key role in Utah's economic success. In 2013, the coal industry contributed $887 million dollars to Utah's economy. Utah's coal industry is largely supported through the BLM coal leasing program as approximately 83% of Utah coal comes from federal land.

61. The economic impact of coal is especially important to rural areas in Utah including Kane and Garfield counties were the coal industry provides high-quality jobs and a broadened tax base.

62. Though Secretary Jewell acknowledged that the loss of jobs and local revenue in the coal mining communities was a great concern that should be addressed in the PEIS, she elected to order a Moratorium that is directly and negatively affecting the economic viability of those same communities.

63. As ACD argued in their emergency lease application, unless the Moratorium is lifted and the BLM approves opening the land adjacent to the Coal Hollow Mine, ACD will be forced to close its operations in Kane County. This would have a profoundly negative impact on Kane and Garfield counties, including the loss of over 150 jobs related to the Coal Hollow Mine operation, which represents a significant part of the workforce in the two lightly populated counties.

64. Further, allowing ACD's pending LBA to remain on hold indefinitely has had a major impact on the economic growth of Kane and Garfield counties. As the BLM correctly stated in its Kolob Field Office Resource Management Plan/Final EIS, published in 2008, the approval of the Alton project "would provide by far the largest new economic stimulus to [Kane and Garfield counties]."

65. Jobs in the coal industry are the kind of quality, high-paying jobs rare to rural communities, with wages at 211% of the state average. The BLM's own estimates indicate that the Alton project would create 160 direct jobs and 320 indirect jobs in support industries. Kane and Garfield counties estimate that, in just the first year of mining operations, approximately $6,486,480 would be paid to employees in these new positions in the form of wages and benefits. After three years, that number rises to approximately $25,513,488.

66. Kane and Garfield counties also estimate that the prospective operator and supporting businesses would expend approximately $4,440,323 to obtain needed supplies, such as fuel, oil and lube from local businesses in the first year of operation. After three years, this total rises to approximately $18,501,348.

67. Much of this new money, in the form of wages and expenditures, would be infused into the local economy resulting in a positive impact of approximately $27,612,384 in the first year alone and $109,182,537 after three years. This influx of money will allow for the continued economic viability of local vendors, retailors, restaurants, and a host of other commercial service industries throughout the counties.

68. The Kane and Garfield county governments would also see a significant tax benefit from the mine operations and the influx of money into the economy. In the first year of operation, the counties estimate that they would collect approximately $355,300 in Mining and Trucking Rolling Stock taxes and $1,935,019 in sales taxes. After three years, the estimated tax benefit to the county governments alone is estimated at approximately $8,761,496. With the increased tax revenue, local governments would have greater ability to provide needed services to their communities and improve infrastructure.

69. Moreover, pursuant to 30 U.S.C. § 191, 50% of all sales, bonuses, royalties and rental fees collected by the Federal government related to the prospective ACD project must be paid to the State of Utah. Under Utah Code § 59-21-1(1), that money is then made available for the benefit of "those political subdivisions of the state socially or economically impacted by the development of minerals leased under the Mineral Leasing Act[.]"

70. The BLM estimates that in the first year of the operation, the State of Utah would receive $4,100,000 in royalty payments and another $3,550,000 to $3,800,000 in bonus payments. As a result, a total of up to $7,900,000 would be made available to counties like Kane and Garfield to undertake projects to benefit their citizenship.

71. The Moratorium also brings less obvious but equally damaging effects to the citizens of Kane and Garfield counties, and citizens across the State of Utah.

72. Over 70% of Utah's power is generated from coal mined within the state. As a result, the average price for electricity in Utah is 8.7 cents per kWh, significantly lower than the 10.06 cents per kWh national average. As coal production continues to decrease as the Moratorium continues, the cost of electricity, and the overall cost of living in the state, will climb considerably.

73. Further, the Utah School and Institutional Trust Lands Administration ("SITLA") is an independent state agency that manages approximately 3,400,000 acres of state trust lands for the financial support of public education and other state public institutions. Coal production accounts for a significant portion of the revenue generated from these lands. However, the viability of coal production on these lands is dependent on the availability of adjacent federal tracts of land as the state trust land is often enclaved within federally owned land. As availability of federally owned land disappears, the ability of agencies like SITLA to maximize revenues in support of the public schools throughout the state, including in Kane and Garfield counties is severely damaged.

74. In addition to the economic harms that have already been inflicted, if the arbitrary Moratorium is allowed to remain in place, coal operators will be forced to close down operations

in the area, resulting in the termination of hundreds of high-paying, quality jobs. As a result, the viability of many of Utah's rural counties, including Kane and Garfield counties, will decline significantly or disappear altogether.

75. Moreover, the Moratorium will result in substantial environmental harm to Kane County.

76. As Secretary Jewell ignored, the Coal Order was issued in a time of great uncertainty for the coal industry. As a result of administrative and external pushback, several major coal companies are now in bankruptcy and coal miners have been laid off in huge numbers nationwide.

77. Many, if not all of these coal operators, had committed to engaging in the "reclamation" of mining sites, including ensuring that former mining areas are safe for recreational use and to ensure that the soil is suitable for full revegetation.

78. As the Moratorium continues to prevent the return of millions of dollars for government entities and operators on coal leases, causing coal operators to permanently close their doors, resources that would have gone to improving the environmental quality of these areas are not available. Existing mines, including the Coal Hollow Mine, will remain abandoned, unsafe, and environmentally deficient.

FIRST CAUSE OF ACTION

(*Secretary Jewell's Decision to Implement the Moratorium Was Arbitrary and Capricious in Violation of the APA)*

79. Plaintiffs hereby incorporate paragraphs 1 through 75 above.

80. The United States and its federal agencies waive sovereign immunity regarding challenges under the Administrative Procedure Act ("APA"). 5 U.S.C. §§ 702, 704. In allowing

for judicial review, the APA prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A).

81. In implementing the Moratorium, Secretary Jewell and the DOI acted arbitrarily and capriciously in carrying out their responsibilities under the Mineral Leasing Act, 30 U.S.C. §§ 201 *et seq*, in violation of the APA for the reasons set forth herein.

Lack of Administrative Record

82. Based on the contents of the Coal Order, Secretary Jewell did not rely on any objective report, study, or factual finding in deciding to implement the Moratorium. Instead, Secretary Jewell bases her decision on the "concerns" raised from various "stakeholders" during five "listening sessions." Secretary Jewell fails to corroborate those concerns with any objective analysis, study, or review that either recommended or supported such a broad and harmful action. The 1971 and 1983 moratoriums, upon which Secretary Jewell relies, were only implemented after publication of reports from other Federal agencies, including the BLM, that made factual findings addressing specific issues.

83. With the current Moratorium, a critical evaluation of whether the coal leasing program returns fair market value to American taxpayers and whether the program sufficiently addresses climate change would clearly establish that those concerns are unfounded.

84. Both the DOI's own Inspector General and the GAO issued reports, prior to implementation of the Moratorium, which found that American taxpayers were receiving a fair return on coal leases. The Coal Order does not even mention these reports. The DOI Inspector General later testified before Congress that in many cases, taxpayers were receiving *more* than a

fair return. Additionally, DOI members later informed members of the United States Senate that nothing in the reports warranted a moratorium on Federal coal leases.

85. Further, as set forth in a 2011 denial of a petition from WildEarth asking the BLM to abandon the current coal leasing program, the BLM rejected WildEarth's concern that the current program failed to properly address climate change. The BLM noted that prior to application approval, the BLM conducts a rigorous assessment of the environmental impact of the proposed project. Indeed, the BLM must follow the procedures, and make the required considerations, of a variety of statutes including NEPA, FLPMA, FCLAA, SMCRA, the Mineral Leasing Act, and other Federal and state laws. While Secretary Jewell refers to these statutes in support of her order to the BLM to conduct a PEIS, she fails to mention that the statutes already ensure that climate change is sufficiently addressed in the coal leasing process.

86. The Moratorium is not supported by any objective data that corroborates Secretary Jewell's arbitrary and capricious actions. Secretary Jewell's assertions that a coal leasing PEIS and Moratorium are necessary are contrary to objective reports from the DOI's own Inspector General, and GAO specifically addressing the issues raised in the Coal Order. Moreover, the Moratorium is contrary to the BLM's own position as set forth in the 2011 decision. As a result, Secretary Jewell acted arbitrarily and capriciously in fulfilling her responsibilities under the Mineral Leasing Act.

The Moratorium Was Responsive To Litigation And Political Sentiment

87. Secretary Jewell issued the Moratorium at a time when the DOI and the BLM were facing a host of lawsuits seeking to overturn Federal coal leases, including from WildEarth who had successfully reversed the BLM's approval of two other projects. Immediately following

implementation of the Moratorium, the parties filed joint motions to stay the proceedings in the lawsuits to allow for settlement, specifically stating that the Moratorium addressed the issues raised by WildEarth.

88. Further, the Moratorium was issued only days after President Barack Obama stated in his State of the Union address that the Federal government would be changing "the way we manage our oil and coal resources . . ." A staple of the Obama Administration's policy has been to move the United States away from coal production.

89. The timing of the Moratorium indicates that Secretary Jewell was not taking this broad and harmful action to address legitimate concerns, but rather to appease litigious environmental groups and to respond to political pressure to take action limiting coal production.

Failure to Balance "Stakeholder Concerns"

90. While Secretary Jewell indicated that the potential for a negative socioeconomic impact on rural areas like Kane and Garfield counties was one of the concerns that the PEIS is supposed to address, Secretary Jewell nevertheless, without discussion of the impact on these counties, arbitrarily and capriciously implemented the Moratorium which has had a swift and profound negative economic impact on these same communities.

91. In addition to the economic harm the counties have already endured, within two to three years, 152 current jobs will cease to exist and another 480 future jobs will be lost, putting the future economic viability of the counties in doubt.

92. Secretary Jewell dedicates the majority of the Coal Order to the concerns raised by the "stakeholders" opposed to coal production and who seek to ensure that American taxpayers receive no return from federally owned tracts of coal land. However, Secretary Jewell

ignores the "concerns" raised at the same "listening session" by the very people and organizations that are immediately and directly impacted by the Moratorium.

Failure To Consider Alternatives

93. In the Coal Order, Secretary Jewell fails to provide any information that would indicate how the scope of the Moratorium was determined. The Coal Order is devoid of any mention of the feasibility of alternative means to accomplish the stated goals.

94. In doing so, Secretary Jewell ignored at least one obvious alternative: to place a Moratorium on the filing of new LBAs after she issued the Coal Order. This alternative would have allowed the Federal and state governments to obtain an immediate and sizable return on coal leases from operators like ACD who were nearing the completion of a decade long administrative process.

95. Employing this alternative would have allowed for approval of ACD's application, that had been pending for over a decade, allowing a major financial return to the Federal government, the State of Utah, and Kane and Garfield counties.

SECOND CAUSE OF ACTION

(*Secretary Jewell and DOI's Implementation of the Moratorium Was An Abuse of Discretion in Violation of the APA)*

96. Plaintiffs hereby incorporate paragraphs 1 through 92 above.

97. Secretary Jewell abused the discretion granted to her pursuant to the Mineral Leasing Act because her decision was contrary to the official position of the BLM, objective reports from the OIG and GAO, and ignored existing Federal law that sufficiently addresses the issues of climate change in coal leasing.

98. In a 2011 denial of a petition from WildEarth asking the BLM to abandon the current coal leasing program, the BLM stated that, in addition to the fact that the coal leasing process involves competitive bidding, a bidder must meet the undisclosed minimum acceptable bid amount placed on the tract by the BLM following a market study and the overall competitive nature of the LBA process. *See* Ex. B at 5. "All of this evidence demonstrates that the BLM practice has ensured fair market values are received for LBA tracts . . ." *Id*.

99. The BLM also stated in the 2011 Decision that prior to the approval of any LBA, the BLM conducts a rigorous assessment of the environmental impact of the proposed project. Indeed, the BLM must follow the procedures, and make the required considerations, of a variety of statutes including NEPA, FLPMA, FCLAA, SMCRA, the Mineral Leasing Act, and other Federal and state laws. While Secretary Jewell refers to these statutes in support of her order to the BLM to conduct a PEIS, she fails to mention that the statutes already ensure that climate change is sufficiently addressed in the coal leasing process.

100. In 2013, the DOI's own Inspector General and the GAO each published objective reports addressing the issue of whether taxpayers received a fair return on coal leases. Both reports indicated that returns, in excess of $1,000,000,000 yearly, were fair to taxpayers. The DOI's own Inspector General later testified that in most cases return was *more* than fair market value.

101. Despite the expansive evidence that no Moratorium was needed, Secretary Jewell adopted the position of external third-parties who seek to end coal production in the United States. In doing so, Secretary Jewell abused the discretion granted to her in the Mineral Leasing Act.

THIRD CAUSE OF ACTION

(The BLM's Enforcement of the Moratorium is Contrary to Law in Violation of the APA)

102. Plaintiffs hereby incorporate paragraphs 1 through 98 above.

103. In the Coal Order, Secretary Jewell states that the sole purpose of the Moratorium is to avoid being locked into rates and terms with mine operators that may later be deemed "less than optimal" by the prospective PEIS.

104. Secretary Jewell's assertion is contrary to the BLM's own form coal lease contracts which allow for "special stipulations" that would allow the BLM to stipulate with the operators to readjust the terms of the lease upon completion of the PEIS.

105. As a result of the Moratorium, the Alton and other coal projects, which could immediately bring a substantial return to the Federal, State, and local governments, remain in indefinite limbo.

106. The Mineral Leasing Act requires the BLM to maximize economic recovery for coal on federal land. 20 U.S.C. §201(a)(3)(c). In preventing the immediate and sizable return on readily available coal on federal tracts of land adjacent to existing operations, the BLM is disregarding its statutory fiduciary duty in a manner contrary to law in violation of the APA.

FOURTH CAUSE OF ACTION

(*Defendants' Failure to Carryout an EIS Prior to Implementation of the Moratorium was Contrary to Law in Violation of the APA)*

107. Plaintiffs hereby incorporate paragraphs 1 through 103 above.

108. NEPA requires the DOI and the BLM to prepare an EIS prior to "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c).

109. The Moratorium is a major Federal action affecting the quality of the human environment because it is a program-wide action that limits access to minerals on Federal land

and limits the ability of coal operators and state and local governments to revitalize existing mine locations to ensure the land is environmentally suitable.

110. The DOI and the BLM failed to prepare an EIS prior to implementation of the Moratorium. The EIS would have provided Secretary Jewell key information regarding the socioeconomic and environmental impacts of implementing the Moratorium.

111. Further, unlike the only other Secretary-initiated moratorium, implemented in 1971, the Coal Order contains no findings that NEPA does not apply or that an EIS is unnecessary.

112. As a result, the Defendants acted contrary to law, as set forth in 42 U.S.C. § 4332(c), in implementing the Moratorium, in violation of the APA.

PRAYER FOR RELIEF

WHEREAS, Plaintiffs pray for relief against Defendants as follows:

1. A decree from this Court that the Defendants' actions are arbitrary, capricious, an abuse of discretion, and contrary to law in violation of the APA;

2. An award of attorneys' fees and costs incurred by Plaintiffs herein as allowed by law, including pursuant to the Equal Access for Justice Act; and,

3. Any other relief this Court deems just and appropriate.

DATED this 30th day of November, 2016.

STIRBA, P.C.

By: /s/ Peter Stirba
PETER STIRBA
JEFFREY C. BRAMBLE
CHASE AMES
Attorneys for Plaintiffs