

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

ENERVEST, LTD., ENERVEST)
INSTITUTIONAL GP, LTD., and)
ENERVEST OPERATING, LLC)

Plaintiffs,)

v.)

Civil Case No. 2:16-cv-1256

SALLY JEWELL, in her official)
capacity as Secretary of the United States)
Department of the Interior, AHMED)
MOHSEN, in his official capacity as Field)
Manager of Bureau of Land Management’s)
Price Field Office, and BUREAU)
OF LAND MANAGEMENT,)

Magistrate Judge Dustin B. Pead

Defendants.)
_____)

VERIFIED COMPLAINT

EnerVest, Ltd., EnerVest Institutional GP, Ltd., and EnerVest Operating, LLC (collectively, “EnerVest”) submits respectfully this complaint seeking review of agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”). EnerVest is an oil and gas producer with federal oil and gas leasehold interests in the Uintah Basin, Utah. In September 2016, EnerVest submitted ten Applications for Permit to Drill (“APDs”) for wells on lands under the jurisdiction of Bureau of Land Management (“BLM”) Price Field Office. The Mineral Leasing Act, 30 U.S.C. §§ 181-287, establishes obligatory procedures that BLM field offices must employ when processing APDs on federal lands and imposes mandatory deadlines applicable to those required procedures. The Price Field Office has failed to process any of the ten APDs in a manner consistent with the process the Mineral Leasing Act imposes resulting in

substantial and immediate injury to EnerVest. Because BLM's ongoing failure to comply with non-discretionary statutory obligations continues to exacerbate the injury to EnerVest, this Court should order BLM to immediately process EnerVest's APDs in a manner consistent with controlling statutory law.

PARTIES

1. Plaintiff EnerVest, Ltd. is a Texas-incorporated entity with its principal place of business in Texas.

2. Plaintiff EnerVest Institutional GP, Ltd. is a Texas-incorporated entity with its principal place of business in Texas.

3. Plaintiff EnerVest Operating, LLC is a Delaware limited liability company with its principal place of business in Texas.

4. Defendant Sally Jewell is the Secretary of the United States Department of the Interior. Secretary Jewell is a cabinet-level officer of the United States government, and named herein in her official capacity.

5. Defendant Ahmed Mohsen is the Field Manager of BLM's Price Field Office, located in Price, Utah. Field Manager Mohsen is named in his official capacity.

6. Defendant BLM is a sub-component of the United States Department of the Interior. BLM is the custodian of the federal mineral estate and is responsible for the administration and management of oil and gas development on federal lands.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. The United States has waived its sovereign immunity under the APA, 5 U.S.C. § 702.

8. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events forming the basis of this action occurred within the State of Utah.

FACTUAL ALLEGATIONS

BLM's Administration of Oil and Gas Programs

9. The United States owns approximately 700 million subsurface acres of mineral estate. The Mineral Leasing Act establishes the framework under which the Secretary of the Interior leases and manages the development of these resources. The Secretary has delegated her statutory responsibilities associated with the administration of the oil and gas leasing program to BLM.

10. For administrative purposes, BLM is divided into twelve State Offices that exercise regional jurisdiction: (i) Alaska; (ii) Arizona; (iii) California; (iv) Colorado; (v) Eastern States; (vi) Idaho; (vii) Montana; (viii) Nevada; (ix) New Mexico; (x) Oregon; (xi) Utah; and (xii) Wyoming. The BLM State Offices are further divided into Field Offices within the particular State Office's geographic boundaries.

11. The Utah State Office administers the development of oil and gas on federal lands within the State of Utah. The Price Field Office is a subcomponent of the Utah State Office.

12. The first phase in the development of onshore federal oil and gas resources is land use planning. Resource management plans are prepared for all federal lands and resources, with each field office preparing a plan for the lands and resources within the field office's boundaries. The resource management plans establish which areas within the field office's boundaries are open to oil and gas leasing and which areas are closed. The resource management plans are used to determine whether a specific parcel may be available at an oil and gas lease sale and under

what conditions. For open areas, the applicable resource management plan analyzes impacts of reasonably foreseeable development and enumerates any stipulations needed to provide extra protection for sensitive resources in the plan area. Approximately eight percent of the oil and ten percent of the natural gas in onshore federal lands are accessible for development under standard lease terms.

13. Parcels in areas identified as open for leasing in a resource management plan may be nominated for leasing. Anyone can nominate lands by sending a written expression of interest to the BLM State Office having jurisdiction over the parcel. BLM reviews each nomination to ensure that the parcels are, in fact, available under the resource management plan and that stipulations specified in the resource management plan are attached before the lease is placed on sale.

14. The Utah State Office conducts competitive oil and gas lease sales for nominated parcels within Utah. Once parcels are leased, operators are required to submit exploration or development proposals in the form of APDs to BLM for an environmental analysis and application of measures to mitigate impacts before any drilling for oil and gas can occur.

West Tavaputs Plateau Natural Gas Full Field Development Plan

15. BLM is responsible for approving a project proponent's APD, including both the surface use plan and subsurface drilling program, and applying appropriate mitigation measures, or conditions of approval, for affected resources, as necessary, on BLM-administered lands or minerals. Before approving an APD, BLM must comply with the National Environmental Policy Act ("NEPA") and consider the proposed action's environmental impacts. The environmental

review includes an onsite inspection of the proposed well, access road, and pipeline locations, as well as other areas of proposed surface use.

16. Rather than conducting environmental review on each individual APD, proponents of oil and gas development have the option of submitting a Master Development Plan to facilitate development on open parcels under lease. A Master Development Plan provides information common to multiple planned wells, including drilling plans, Surface Use Plans of Operations (“SUPOs”), and plans for future production. Master Development Plans also include information on associated facilities (e.g., roads, pipelines, utility corridors, and compressor stations). BLM’s internal guidance documents encourage the use of master development plans to more effectively manage federal lease development. *See* Bureau of Land Mgmt., Instruction Mem. (“I.M.”) No. 2005-247 (Sept. 30, 2005) (“An EA or EIS prepared for development of two or more oil, gas, or geothermal wells provides substantial time savings over writing individual EAs or EISs for each well approval and generally results in improved impact analysis.”).

17. In 2005, several oil and gas operators, including EnerVest, as successor in interest to Bill Barrett Corporation, proposed to develop the oil and gas resources of the West Tavaputs Plateau (“WTP”) Project Area in Duchesne, Carbon, and Uintah Counties, Utah, approximately thirty miles east-northeast of Price, Utah. Natural features define the boundaries of the WTP Project Area on three sides: Sheep Canyon on the west, Nine Mile Canyon on the north, and the Green River on the east. The southern boundary of the WTP Project Area is a straight line reflecting an anticline in the sub-surface that limits the southern extent of the natural gas resources the project targets. Surface ownership in the 137,930-acre WTP Project Area is

approximately eighty-seven percent federal, approximately eight percent State of Utah, and approximately five percent private. Mineral ownership closely parallels surface ownership.

18. Between 2005 and 2010, BLM conducted environmental review of the operators' master development plan, resulting in the preparation and issuance of an Environmental Impact Statement ("EIS") for the West Tavaputs Plateau Natural Gas Full Field Development Plan (the "WTP EIS"). The WTP EIS documents the anticipated environmental consequences of developing oil and gas resources in the WTP Project Area as well as alternatives designed to address a broad scope of issues related to the affected environment. The WTP EIS disclosed the direct, indirect, and cumulative impacts of development pursuant to the requirements of NEPA and NEPA's implementing regulations.

19. The WTP EIS featured extensive site-specific quantitative and qualitative analyses of numerous pollutants. As part of this in-depth review, the EIS specifically addressed greenhouse gases for all stages, including post-completion, of the relevant proposed drilling activity, as well as potentially relevant climate change considerations. This review considered inventories and estimates of the potential greenhouse gas emissions from, *inter alia*, multiple reasonable alternatives, direct and indirect impacts, ancillary activities, cumulative effects, and air quality mitigation factors. This process also considered the aggregated effects of this broad drilling program.

20. On July 2, 2010, based on the conclusions presented in the WTP EIS, the Utah State Director issued a Record of Decision ("ROD") approving, with minor modifications, the oil and gas operators' master development plan for the WTP Area.

21. Pursuant to the WTP EIS, the ROD features a programmatic agreement related to the drilling activity. The WTP EIS required that, upon signing of the ROD, BLM and operators would develop a Memorandum of Understanding outlining the specific mitigation measures required as part of the monitoring plan. Mitigation measures would be required during the development, production, and final abandonment and reclamation phases of the WTP project. Specific monitoring requirements would vary depending on the mitigation measures that are identified as conditions of approval in the ROD.

22. The ROD process complied with all requirements of the WTP EIS. The ROD's Conditions of Approval and Stipulations set forth numerous mitigation measures, including air quality considerations arising from the analysis of air quality and greenhouse gas impacts in the WTP EIS. Relying on this background, when BLM processes APDs, BLM is able to tier the requisite environmental review to the WTP EIS and ROD.

23. Upon approval of the WTP EIS and ROD the BLM made the following public announcement: "The Bureau of Land Management (BLM) today (July 29, 2010) released the [WTP EIS and ROD] for the West Tavaputs Natural Gas Full Field Development Plan. The ROD reflects a historic agreement between the project proponent [] and the Southern Utah Wilderness Alliance (SUWA) that will substantially reduce the project's environmental impacts while continuing to allow for vigorous new oil and gas production."

24. Under the ROD, well pads and access roads within high-country watershed areas (areas above 7,000 feet in elevation) are to be fully constructed or upgraded during the period between April 15 and December 1 each year.

25. Under the ROD, all wells drilled on well pads within one-quarter mile of the Desolation Canyon Wilderness Study Area must be drilled during the recreational off-season, October through April.

EnerVest's Permit Applications

26. In 2014, EnerVest submitted APDs for three wells located within the WTP Area: the Peters Point 9-31D-12-16, the Peters Point 12-32D-12-16, and the Peters Point 13-32D-12-16. All three wells were located on an existing well pad, the 11-6 Pad. Each of these three permits was approved in approximately forty-five days.

27. On August 1, 2016, EnerVest transmitted by e-mail a proposed development plan for ten additional wells to Don Stephens, a Natural Resources Specialist with the Price Field Office. EnerVest advised Stephens that EnerVest intended to submit permits for these ten wells no later than September 15, 2016, in anticipation of drilling starting in mid-January. EnerVest emphasized that, since the wells referenced in the e-mail to Stephens were to be drilled on pads that are within one-quarter mile of the Desolation Canyon Wilderness Study Area, EnerVest would need to complete the drilling process by April 30, 2017. On the same day, Stephens replied via email, acknowledging receipt of the plan of development.

28. On September 7, 2016, EnerVest submitted three APDs for wells to be drilled on the existing 11-30 well pad: the Peters Point UF 1-31D-12-17, the Peters Point UF 7-31D-12-17, and the Peters Point UF 8-31D-12-17. These APDs were submitted via the WIS online portal; on the same day, EnerVest also sent the APDs by e-mail to Stephens and Priscilla White-Abuhl, a Legal Instruments Examiner with the Price Field Office.

29. Also on September 7, EnerVest submitted two APDs for wells to be drilled on the existing 11-6 well pad: the Peters Point UF 3-7D-13-17 and the Peters Point UF 4-8D-13-17. These permits were submitted via BLM's AFMSS II online portal.

30. On September 12, 2016, EnerVest submitted two APDs for wells to be drilled on the existing 11-6 well pad: the Peters Point UF 5-7D-13-17 and the Peters Point UF 7-7D-13-17. These permits were submitted via BLM's AFMSS II online portal.

31. On September 12, 2016, White-Abuhl confirmed receipt of the three APDs for the 11-30 well pad – the Peters Point UF 1-31D-12-17, the Peters Point UF 7-31D-12-17, and the Peters Point UF 8-31D-12-17 – via e-mail to EnerVest.

32. On September 13, 2016, EnerVest submitted two APDs for wells to be drilled on the existing 11-6 well pad: the Peters Point UF 8-7D-13-17 and the Peters Point UF 11-5D-13-17. These permits were submitted via BLM's AFMSS II online portal.

33. On September 19, 2016, EnerVest submitted an APD for a well to be drilled on the existing 11-6 well pad: the Peters Point UF 2B-7D-13-17. This permit was submitted via BLM's AFMSS II online portal. Upon filing this APD for the Peters Point UF 2B-7D-13-17, EnerVest had submitted a total of seven APDs for wells on the 11-6 well pad.

34. On September 20, 2016, White-Abuhl confirmed receipt of the seven APDs for the 11-6 well pad via e-mail to EnerVest.

35. Each of EnerVest's ten APDs was complete at the time of its submittal and included all the information that Onshore Order No. 1 and other applicable law require applicants for drilling permits to submit in association with an APD.

36. The Mineral Leasing Act requires that, no later than ten days after the date on which BLM receives an APD, BLM *shall*: (i) notify the applicant that the application is complete; or (ii) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete. *See* 30 U.S.C. § 226(p)(1)(A)-(B). Neither White-Abuhl's September 12 e-mail confirming receipt of the three APDs for wells on the 11-30 well pad nor White-Abuhl's September 20 e-mail confirming receipt of the seven APDs for the wells on the 11-6 well pad confirms that the APDs are complete. Neither e-mail identifies any information that is missing from any particular APD or specifies any additional information that must be submitted for any APD to be considered complete. BLM did not provide any other notice to EnerVest satisfying the requirements of 30 U.S.C. § 226(p)(1)(A)-(B).

37. The Mineral Leasing Act requires that, not later than thirty days after the applicant for a permit has submitted a complete application, BLM *shall* issue the permit, if the requirements under NEPA and other applicable law have been completed. *See* 30 U.S.C. § 226(p)(2)(A). Based on the date that White-Abuhl confirmed receipt, the deadline for BLM to act under this statutory provision for the three APDs submitted on the 11-30 well pad was October 12, 2016. BLM did not issue the permits for these three wells by October 12, 2016.

38. If the provisions of NEPA and other applicable law are not satisfied within thirty days of BLM receiving an APD, the Mineral Leasing Act requires that, not later than thirty days after the applicant for a permit has submitted a complete application, BLM *shall* issue the applicant a notice that: (i) specifies any steps that the applicant could take for the permit to be issued; and (ii) lists actions that BLM needs to take to complete compliance with applicable law

together with timelines and deadline for completing such actions. *See* 30 U.S.C. § 226(p)(2)(B)(i)-(ii). Based on the date that White-Abuhl confirmed receipt, the deadline for BLM to provide notice under this statutory provision for the three APDs submitted on the 11-30 well pad was October 12, 2016. BLM did not provide EnerVest any notice under 30 U.S.C. § 226(p)(2)(B) by October 12, 2016.

39. On October 18, 2016, White-Abuhl contacted EnerVest by e-mail and advised that all ten of the APDs that EnerVest submitted were being processed.

40. Based on the date that White-Abuhl confirmed receipt, BLM was required under 30 U.S.C. § 226(p)(2)(A) to issue the APDs for the seven wells on the 11-6 well pad by October 20, 2016, unless there were requirements under NEPA or other applicable law that remained to be completed. BLM did not issue the permits for these seven wells by October 20, 2016.

41. Based on the date that White-Abuhl confirmed receipt, the deadline for BLM to provide any notice required under 30 U.S.C. § 226(p)(2)(B) for the seven APDs submitted on the 11-6 well pad was October 20, 2016. BLM did not provide EnerVest any notice under 30 U.S.C. § 226(p)(2)(B) by October 20, 2016.

42. On October 26, 2016, White-Abuhl again contacted EnerVest to re-affirm that all ten of the APDs that EnerVest submitted were being processed. White-Abuhl's communication does not: (i) specify any steps that EnerVest needed to take for the APDs to be issued; or (ii) identify actions that BLM needed to take to complete compliance with applicable law together with timelines and deadline for completing such actions.

43. On or about November 15, 2016, White-Abuhl contacted EnerVest by telephone and requested that EnerVest re-send the APDs for the three wells on the 11-30 well pad: the Peters Point UF 1-31D-12-17, the Peters Point UF 7-31D-12-17, and the Peters Point UF 8-31D-12-17. White-Abuhl did not request any new information not previously submitted with the three APDs and did not suggest any information was missing from EnerVest's original submissions. On November 15, 2016, EnerVest complied with that request, resending the three submittals for the wells on the 11-30 well pad to White-Abuhl and Stephens by e-mail.

44. Also on November 15, 2016, EnerVest responded to a request received from Michael Lee, Petroleum Engineer in the Vernal Field Office, to provide the drilling portion of the APD for the Peters Point UF 2B-7D-13-17. Lee also suggested that he might request EnerVest provide Lee copies of the drilling portion of the other six APDs submitted for the 11-6 well pad at some point in the future.

45. On November 17, 2016, Stephens contacted EnerVest by telephone and advised EnerVest that the Price Field Office intended to approve one well from each pad, the 11-30 and 11-6, no later than November 22, 2016, and very likely would approve all three APDs for the 11-30 well pad by that date. Approving one well on each pad would have triggered EnerVest's ability to begin "dirt work" on each of the well pads.

46. On November 17, 2016, Lee contacted EnerVest by e-mail and advised that he would not need to review the drilling portion of the remaining six APDs for the 11-6 well pad.

47. On November 21, 2016, Stephens contacted EnerVest to advise that the APDs were not going to be approved before the time EnerVest planned to start its 2017 drilling program. Stephens indicated that, in light of new guidelines the Council of Environmental

Quality (“CEQ”) had issued related to the assessment of project impacts on greenhouse gas emissions, the assessment of greenhouse gas emissions in the WTP EIS and ROD were deemed inadequate and the Price Field Office would need to prepare an Environmental Assessment (“EA”) to supplement the NEPA analysis in those documents before the APDs could be approved. Stephens did not identify any other factor other than issuance of the CEQ’s guidance for the decision to initiate additional NEPA analysis.

48. BLM has not provided EnerVest any detail with regard to why BLM deems the air quality analysis and greenhouse gas assessment prepared in support of the WTP EIS inadequate in light of CEQ’s guidance. Among other analyses, the WTP EIS quantifies projected greenhouse gas emissions, addresses the relationship between greenhouse gas emissions and climate change, and discusses the reasonably foreseeable direct, indirect, and cumulative greenhouse gas emissions and climate effects, as well as ancillary activities and air quality mitigation measures. This approach is entirely consistent with recommendations contained in the CEQ’s guidance.

49. The CEQ’s guidance acknowledges that it “does not change or substitute for any law, regulation, or other legally binding requirement, [] is not legally enforceable[,] . . . [and] does not affect legally binding requirements.” Council on Env’tl. Quality, *Mem. for Heads of Fed. Dep’ts & Agencies* at 1-2 n.3 (Aug. 1, 2016) (“Guidance”). The guidance states explicitly that “CEQ does not expect agencies to apply this guidance to concluded NEPA reviews and actions for which a final EIS or EA has been issued.” *Id.* at 33-34.

50. The CEQ Guidance further recognizes that a “tiered, analytical decision-making approach using a programmatic NEPA review is used for many types of Federal actions and can

be particularly relevant to addressing proposed land, aquatic, and other resource management plans.” Guidance at 31. Under such an approach, an agency conducts a broad-scale programmatic NEPA analysis for aggregate activity at the Master Development Plan level and then “[s]ubsequent NEPA analyses for proposed site-specific decisions – such as proposed actions that implement land, aquatic, and other resource management plans – may be tiered from the broader programmatic analysis, drawing upon its basic framework analysis to avoid repeating analytical efforts for each tiered decision.” Guidance at 31-32.

51. On November 28, 2016, EnerVest officials conducted a telephone conference with officials from the Utah State Office. During that call, Leonard Herr, a Physical Scientist in the State Office focused on Air Quality, indicated to EnerVest that BLM headquarters in Washington had instructed Air Quality personnel in the Utah State Office that the agency intended to take a more aggressive approach to greenhouse gases than that outlined in the CEQ guidelines. At the conclusion of the November 28 call, the Utah State Office represented that it would consult with BLM’s Washington, DC headquarters for direction regarding whether an EA was required to meet the CEQ guidelines or the even more aggressive approach asserted by those in BLM headquarters.

52. On November 30, EnerVest contacted Stephens by phone to determine whether the Utah State Office had received any additional instruction regarding the necessity for additional NEPA work on the APDs that EnerVest submitted. Stephens represented that he had received instruction from the BLM Washington, DC office directing that additional NEPA analysis be undertaken.

53. On December 5, 2016, U.S. Representative Jason Chaffetz sent a letter to Secretary Jewell inquiring why EnerVest's permits were being delayed and insisting that the APDs "continue through the normal review process and avoid duplicative, project-delaying reviews at all costs." That same day, Nikki Buffa, Deputy Chief of Staff to the Secretary, contacted Fred Ferguson, Representative Chaffetz' Chief of Staff, and informed Ferguson that the approval of APDs is a decision made at the local field office level and subject to the Field Office Manager's discretion.

54. On December 6, 2016, EnerVest provided Stephens with a copy of the correspondence between Secretary Jewell's office and Representative Chaffetz' office. Stephens indicated to EnerVest that he and Mohsen would review the information and report back to EnerVest the next morning.

55. The next day, December 7, 2016, the Price Field Office requested a conference call with EnerVest officials. During a call held that day, Mohsen explained that the field office's attorneys had directed the Price Field Office to take the position the field office had with regard to the need for additional NEPA analysis. Mohsen summarized: "That decision was not made by the Price Field Office, and I'll leave it at that."

Impact on Development

56. BLM's illegal administration of its APD processing has injured and will continue to injure EnerVest. EnerVest's 2017 Uintah Basin drilling program would have consisted of ten wells drilled on two existing well pads. Initial work to prepare the well sites was scheduled to begin no later than December 2016 with drilling to begin in January 2017. Work on the program would have continued through April 2017. BLM's failure to process the permits will cause

EnerVest to lose the current present value associated with the wells. Upon completion, the combined present value for these ten wells is \$29,452,139.00.

57. EnerVest's project timetable was premised on, among other factors: (i) the assumption that BLM would fulfill its statutory obligations under 30 U.S.C. § 226(p) and other applicable law when processing EnerVest's APDs; (ii) BLM's timely processing of APDs for wells on the 11-6 well pad in 2014; (iii) EnerVest's knowledge that environmental review for the APDs had already been conducted as part of the WTP EIS and associated ROD; and (iv) BLM's representation that the permits would be granted in a manner that would allow EnerVest to comply with the provisions of the applicable conditions of approval.

58. BLM has denied EnerVest's procedural right to have APDs that EnerVest submits processed in accordance with the mandatory procedures, and within the obligatory deadlines, that the Mineral Leasing Act establishes. *See Spokeo v. Robins*, 136 S. Ct. 1540, 1549 (2016) (explaining that "the violation of a procedural right granted by statute" can constitute the injury in fact required for a plaintiff to establish standing).

59. BLM's failure to process the permits consistent with the agency's non-discretionary statutory obligations will impact EnerVest's rights and obligations under contracts with service providers. Among other impacts, EnerVest will incur gathering and processing costs of \$16,708,403 from 2017 to 2020 despite being precluded from producing from the wells EnerVest expected to connect to gathering and processing services.

60. EnerVest employees spent significant time on the WTP Area project that could have been redirected to identify and develop opportunities in other basins. Two geologists, one

reservoir engineer, one drilling engineer, and multiple employees in EnerVest's regulatory and land groups spent significant time on the WTP Area project.

61. Given the volatile commodity markets, unnecessary and illegal delay in processing APDs injures EnerVest's economic interest. The delay in processing the permits obviously delays EnerVest's ability to obtain revenue from production, but also restricts EnerVest's ability to market its project to third parties that might have been interested in funding development or acquiring EnerVest's assets. Since 2010, the market for oil and gas production has changed significantly, limiting the availability and elevating the cost of financing oil and gas projects. Delays also allow time for competitors to research the prospect and potentially enter the market. BLM's illegal administration of APD processing has reduced the specific value of the potential wells, EnerVest's gathering commitments, and jeopardized the entire field economics in a manner that will compel EnerVest to reduce costs, revise its development plan, and cut jobs in the area.

COUNT I

BLM'S ACTION IS CONTRARY TO LAW (5 U.S.C. § 706)

62. EnerVest reasserts and incorporates by reference the preceding paragraphs 1 to 53.

63. The Mineral Leasing Act requires that: "Not later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall-- (A) notify the applicant that the application is complete; or (B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete." 30 U.S.C. § 226(p)(1)(A)-(B).

64. Between September 7 and September 19, 2016, EnerVest submitted ten APDs for processing on two existing well pads within the WTP Area. BLM has never provided EnerVest with either of the notices that 30 U.S.C. § 226(p)(1) requires on any of the ten APDs EnerVest submitted.

65. The Mineral Leasing Act requires that:

“Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

(A) issue the permit, if the requirements under the National Environmental Policy Act of 1969 and other applicable law have been completed within such timeframe; or

(B) defer the decision on the permit and provide to the applicant a notice—

(i) that specifies any steps that the applicant could take for the permit to be issued; and

(ii) a list of actions that need to be taken by the agency to complete compliance with applicable law together with timelines and deadlines for completing such actions.”

30 U.S.C. § 226(p)(A)-(B).

66. BLM has never identified any new information bearing on the air quality analysis or calculation of greenhouse gas emissions in the WTP EIS that would require additional NEPA analysis for any of the ten APDs EnerVest submitted either under NEPA or any other applicable law. Having failed to identify any legal requirement that has not been satisfied, BLM was statutorily required to issue the permits under 30 U.S.C. § 226(p)(A) no later than October 20, 2016.

67. BLM has never given EnerVest any notice containing the information that 30 U.S.C. § 226(p)(2)(B) requires BLM provide an applicant when BLM chooses to defer issuing a decision on an APD.

68. BLM processed the ten APDs that EnerVest submitted in violation of BLM's non-discretionary, mandatory obligations under 30 U.S.C. § 226(p).

PRAYER FOR RELIEF

EnerVest requests respectfully that the Court grant the following relief:

1. Direct BLM to immediately issue all ten APDs described in this Complaint consistent with BLM's obligation under 30 U.S.C. § 226(p)(2)(A);

2. In the alternative to paragraph 1 of this Prayer for Relief, direct BLM to issue notices compliant with 30 U.S.C. § 226(p)(1)(B) and/or 30 U.S.C. § 226(p)(2)(B) within seven days of filing this Complaint;

3. All costs and attorneys' fees authorized under 28 U.S.C. § 2412; and

4. Such other and further relief, in law and in equity, to which EnerVest may be entitled.

Submitted respectfully this 13th day of December, 2016,

/s/ George Bradley

George Bradley, Associate Landman
EnerVest, Ltd.

* I certify that I have the signed original of this document which is available for inspection during normal business hours by the Court or a party to this action.

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