

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DINÉ CITIZENS AGAINST RUINING
OUR ENVIRONMENT, *et al.*,

Plaintiffs,

v.

Case No. 1:19-cv-00703-WJ-JFR

DAVID LONGLY BERNHARDT,
in his official capacity as Secretary of
the United States Department of the
Interior, *et al.*,

Defendants.

JOINT STATUS REPORT

In accordance with this Court’s order, ECF No. 91, the Parties hereby jointly submit the following status report.

BACKGROUND AND STATUS OF CASE

On August 1, 2019, Plaintiffs filed a Petition for Review of Agency Action alleging that the Bureau of Land Management (“BLM”) violated the National Environmental Policy Act (“NEPA”) when it approved approximately 255 APDs in the San Juan Basin in northwestern New Mexico. ECF No. 1. The Petition listed 32 environmental assessments (“EAs”) that Plaintiffs allege were insufficient under NEPA. *Id.* at 30. It also cited a recent decision by the Tenth Circuit in which that Court found that BLM failed to conduct adequate NEPA analysis for certain other APDs in the San Juan Basin. *Id.* ¶¶ 2, 78 (*citing Diné CARE v. Bernhardt*, 923 F. 3d 831 (10th Cir. 2019) (“*Diné CARE I*”). Plaintiffs moved for a temporary restraining order and preliminary injunction. ECF No. 5. In its response to that motion, BLM explained that it was

“taking steps to review the thirty-two EAs at issue here, as well as other EAs for the Mancos Shale, to ensure that they do not suffer from the narrow issue identified by the Tenth Circuit in *Diné CARE I*.” ECF No. 44 at 1. More specifically, BLM was “in the process of preparing programmatic NEPA analysis regarding cumulative impacts to water and air resources to supplement the thirty-two EAs challenged by Plaintiffs.” *Id.* at 8. On December 9, 2019, BLM notified the Court that on December 6, 2019, it had published draft addenda to the EAs at issue in this case. ECF No. 82 at 1. While not identified in BLM’s Notice, in addition to the EAs at issue in this case, BLM also prepared addenda for an additional 49 EAs, for a total of 81 EA addenda. BLM provided a thirty-day comment period on the draft addenda which ended January 6, 2020. *Id.*

On January 31, 2020, the Parties filed their Joint Motion to Stay Proceedings, seeking to stay litigation proceedings until April 1, 2020 to allow BLM adequate time to complete its final addenda. ECF No. 90. The Court granted the Parties’ stay motion on February 4, 2020, and in accordance with the motion, requested a joint status report by April 1, 2020. ECF No. 91.

BLM has now completed the EA addenda and issued new Findings of No Significant Impact (“FONSIs”) for the thirty-two EAs challenged here, as well as 49 other EAs for additional previously-permitted drilling activities in the Mancos Shale.

Upon review of the EA addenda and FONSIs, Plaintiffs believe that inadequacies remain in BLM’s NEPA analysis and intend to proceed with this litigation through an Amended Petition for Review of Agency Action, as further described below.

ADDITIONAL PROCEEDINGS

The Parties propose that litigation of this case proceed as follows:

By May 1, 2020, Plaintiffs will file a notice of withdrawal for their motion for temporary restraining order and preliminary injunction (ECF No. 5), and will also file an Amended Petition for Review of Agency Action reflecting the changed status of the challenged agency actions in light of BLM's EA addenda and new FONSI's.

By May 15, 2020, Federal Defendants and Intervenors will file their Answers or otherwise respond to Plaintiffs' Amended Petition in accordance with FRCP 15(a)(3).

By June 1, 2020, the Parties will file a Joint Case Management Plan with the Court providing a schedule for further proceedings, including production of the administrative record and a proposed briefing schedule.

Plaintiffs reserve the right to file a motion for preliminary injunction as may be necessary to avoid irreparable harm during the pendency of this litigation, but will confer with Federal Defendants regarding any such motion in advance of filing.

Respectfully submitted this 1st day of April, 2020.

Respectfully Submitted,

PRERAK SHAH
Deputy Assistant Attorney General

/s/ Clare Boronow
CLARE BORONOW
Environment and Natural Resources Division
United States Department of Justice
999 18th St.
South Terrace, Suite 370
Denver, CO 80202
clare.boronow@usdoj.gov

ANDREW A. SMITH
Senior Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section
c/o United States Attorney's Office
P.O. Box 607
Albuquerque, New Mexico 87103
505-224-1468
andrew.smith@usdoj.gov

Counsel for Federal Defendants

/s/ Kyle J. Tisdel
Kyle J. Tisdel
WESTERN ENVIRONMENTAL LAW CENTER
208 Paseo del Pueblo Sur, Suite 602
Taos, New Mexico 87571
(p) 575.613.8050
tisdel@westernlaw.org

/s/ Allyson A. Beasley
Allyson A. Beasley
WESTERN ENVIRONMENTAL LAW CENTER
208 Paseo del Pueblo Sur, Suite 602
Taos, New Mexico 87571
(p) 575.224.6260
beasley@westernlaw.org

Counsel for Plaintiffs

/s/ Daniel L. Timmons
Daniel L. Timmons
WILDEARTH GUARDIANS
301 N. Guadalupe Street, Suite 201
Santa Fe, NM 87501
(p) 505.570.7014
dtimmons@wildearthguardians.org

/s/ Samantha Ruscavage-Barz

Samantha Ruscavage-Barz
WILDEARTH GUARDIANS
301 N. Guadalupe Street, Suite 201
Santa Fe, NM 87501
(p) 505.401.4180
ruscavagebarz@wildearthguardians.org

Counsel for Plaintiff WildEarth Guardians

/s/ Karimah Schoenhut

Karimah Schoenhut (D.C. Bar No. 1028390)
(appearing by association with Federal Bar
member Kyle J. Tisdell pursuant to L.R. 83.3(a))
SIERRA CLUB
50 F Street NW, 8th Floor
Washington DC 20001
(p) 202.548.4584
karimah.schoenhut@sierraclub.org

Counsel for Plaintiff Sierra Club

Keith D. Tooley

Keith D. Tooley
WELBORN SULLIVAN MECK & TOOLEY, P.C.
1125 17th Street, Suite 2200
Denver, CO 80202
Phone: 303-830-2500
Fax: (303) 832-2366
ktooley@wsmtlaw.com

*Counsel for Intervenor-Defendant Enduring
Resources IV, LLC*

/s/ John J. Indall

Jon J. Indall
MALDEGEN, TEMPLEMAN & INDALL LLP
1925 Aspen Drive, 200A
Santa Fe, NM 87505
Phone: 505-216-3075
jindall@cmtisantafe.com

Steven J. Rosenbaum
Bradley K. Ervin
COVINGTON & BURLING, LLP
One CityCenter
850 Tenth St., N.W.
Washington, D.C. 20001
Phone: (202) 662-6000
Fax: (202) 662-6291
srosenbaum@cov.com
bervin@cov.com

Counsel for Intervenor-Defendant American Petroleum Institute

s/ Jennifer H. Weddle

Jennifer H. Weddle, D. N.M. Bar No. 19-163
1200 17TH Street, Suite 2400
Denver, Colorado 80202
Phone: (303) 572-6565
Fax: (303) 572-6540
weddlej@gtlaw.com

Counsel for Intervenor-Defendant Navajo Allottees

/s/ Hadassah M. Reimer

Hadassah M. Reimer
Holland & Hart LLP
25 S. Willow St., Suite 200 Post Office Box 68
Jackson, WY 83001
Phone: (307) 739-9741
Fax: (307) 739-8175
hmreimer@hollandhart.com

Counsel for Intervenor-Defendants DJR Energy Holdings, LLC and BP America Production Company

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2020, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Daniel L. Timmons

Daniel L. Timmons

Attorney for Plaintiff WildEarth Guardians