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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

STATE OF CALIFORNIA; STATE OF NEW MEXICO; STATE OF NEW YORK; and **STATE OF WASHINGTON,** Plaintiffs, **v.** **DEB HAALAND,** in her official capacity as Secretary of the Interior; **UNITED STATES BUREAU OF LAND MANAGEMENT**; and **UNITED STATES DEPARTMENT OF THE INTERIOR,** Defendants.	Case No. CV 17-30-BMM [Lead] Consolidated with: Case No. CV 17-42-BMM **STATE PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In this action, the States of California, New Mexico, New York, and Washington ("State Plaintiffs") challenge the decision by Defendants United States Bureau of Land Management ("BLM"), and the United States Department of the Interior and its Secretary, Deb Haaland[1] (collectively, "Defendants") to restart the federal coal leasing program based on an inadequate and overly narrow environmental review that does not even attempt to assess the significant impacts of the program, in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*. Plaintiffs also challenge Defendants' decision to restart the federal coal leasing program without evaluating whether the program is in the public interest or will provide fair market value to the public, in violation of the Mineral Leasing Act ("MLA"), 30 U.S.C. § 181 *et seq*., and the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq*.

In January 2016, then-Secretary of the Interior Sally Jewell issued a Secretarial Order commencing a process to prepare a new programmatic environmental impact statement ("programmatic EIS" or "PEIS") to identify and assess potential reforms to the program, which had not been reevaluated in over three decades. Secretary Jewell placed a moratorium on new coal leases until the review was complete to avoid locking in the future development of large quantities of coal on unfavorable terms. A year later, BLM released a comprehensive scoping report which determined that an updated review of the program was "warranted" to bring Defendants into compliance with their statutory obligations under NEPA to fully consider the environmental impacts, including climate change, of coal leasing, and to secure a fair return from the sale of public resources as required by the MLA and FLPMA.

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Secretary of the Interior Deb Haaland is automatically substituted for her predecessor, David Bernhardt.

Following the change in presidential administration in 2017, and with no justification other than an objection to the time and cost of complying with the law, then-Secretary of the Interior Ryan Zinke issued Secretarial Order 3348 on March 29, 2017. That Order terminated the ongoing NEPA review and resumed coal leasing. This lawsuit followed. On April 19, 2019, this Court held that the issuance of Secretarial Order 3348 constituted a "major federal action" requiring compliance with NEPA. *Citizens for Clean Energy v. U.S. Dep't of the Interior*, 384 F. Supp. 3d 1264 (D. Mont. 2019), ECF No. 141.

While continuing to dispute this finding, on February 26, 2020, Defendants issued a Final Environmental Assessment entitled "Lifting the Pause on the Issuance of New Federal Coal Leases for Thermal (Steam) Coal" (the "Final EA"), and a Finding of No Significant Impact ("FONSI"), which allegedly responded to the Court's decision. However, in violation of the fundamental requirements of NEPA, Defendants made no effort to take a "hard look" at the environmental impacts of their decision to open up tens of thousands of acres of public lands to coal leasing and development. In particular, Defendants arbitrarily limited the scope of their analysis to just four leases that were issued since March 2017, representing just a tiny fraction of the more than 300 existing leases and pending lease applications under the restarted coal leasing program. The Final EA also considered an extremely narrow range of "issues" related to these four leases, ignoring many of the impacts that warrant consideration in an updated environmental review, such as harm to public lands and wildlife from coal mining, air quality impacts from coal transport and combustion, the disposal of coal ash, as well as environmental justice impacts related to such activities. Further, the Final EA's failure to consider any alternatives other than the so-called "no action" alternative or the proposed action (*i.e.*, the resumption of normal leasing procedures

in March 2017), including those suggested by commenters and BLM itself, violated NEPA's mandate to consider a reasonable range of alternatives.

Furthermore, the issuance of the Final EA and FONSI did not address or otherwise seek to remedy Defendants' violations of the MLA and FLPMA in restarting the coal leasing program. Specifically, Defendants have continued to violate the MLA and FLPMA by failing to ensure that the program both serves the public interest and provides a fair market return from the sale of public resources.

Recent actions taken by the current administration have not remedied these violations. In particular, on April 16, 2021, Secretary Haaland issued Secretarial Order 3398,[2] which revoked Secretarial Order 3348, but did not otherwise place any restrictions on the federal coal leasing program or withdraw the Final EA and FONSI. Nor did Secretarial Order 3398 discuss Defendants' obligations under the MLA and FLPMA with regard to the program.

Accordingly, State Plaintiffs seek a declaration that Defendants' decision to restart the federal coal leasing program with inadequate environmental review violated NEPA, the MLA, FLPMA, and the Administrative Procedure Act ("APA"), and request that the Court vacate and set aside the Final EA and FONSI and resume the moratorium on new federal coal leases unless and until Defendants comply with applicable law.

STATUTORY BACKGROUND

I. NATIONAL ENVIRONMENTAL POLICY ACT.

"NEPA 'is our basic national charter for the protection of the environment.'" *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020) (quoting 40 C.F.R. § 1500.1[3]). The fundamental purposes of NEPA are to ensure

[2] Secretarial Order 3398 is *available at*: https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3398-508_0.pdf.

[3] On July 16, 2020, the Council on Environmental Quality ("CEQ") finalized an update to its existing regulations implementing NEPA, which became effective on September 14, 2020. 85 Fed. Reg. 43,304 (July 16, 2020) (codified at 40 C.F.R. pt.

"that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts," and "that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

To achieve these purposes, NEPA requires the preparation of a detailed EIS for any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). An EIS must provide a "full and fair discussion of significant environmental impacts," 40 C.F.R. § 1502.1, and analyze the direct, indirect, and cumulative impacts of the agency's action. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.7, 1508.8. "Direct effects" are those "caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). "Indirect effects" are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id*. § 1508.8(b). A "cumulative impact" is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id*. § 1508.7.

As a preliminary step, an agency may first prepare an environmental assessment ("EA") to determine whether the effects of an action may be significant. 40 C.F.R. § 1508.9. An EA must discuss the "environmental impacts of the proposed action" and "provide sufficient evidence and analysis for determining

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1500). CEQ's prior regulations, promulgated in 1978 with minor amendments in 1986 and 2005, govern the Final EA and FONSI and are cited here. *See* 85 Fed. Reg. at 43,372 ("The regulations in this subchapter apply to any NEPA process begun after September 14, 2020"); *see also* Implementation of Procedural Provisions, 43 Fed. Reg. 55,978 (Nov. 29, 1978); Incomplete or Unavailable Information, 51 Fed. Reg. 15,618 (Apr. 25, 1986); Other Requirements of NEPA, 70 Fed. Reg. 41,148 (July 18, 2005).

whether to prepare an environmental impact statement or a finding of no significant impact." *Id*. § 1508.9(a)–(b); *see also id*. § 1500.1(b). If an agency decides not to prepare an EIS, it must supply a "convincing statement of reasons to explain why a project's impacts are insignificant." *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001). "The statement of reasons is crucial to determining whether the agency took a 'hard look' at the potential environmental impact of a project." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1215 (9th Cir. 2008).

II. MINERAL LEASING ACT.

The Mineral Leasing Act authorizes and governs the leasing of public lands for the production of coal and other minerals. Pursuant to the Mineral Leasing Act, the Secretary of the Interior is authorized to lease coal on public lands "as he finds appropriate and in the public interest," provided that every sale is made by competitive bid and provides the public with fair market value. *See* 30 U.S.C. § 201(a)(1). The Mineral Leasing Act further requires that the Secretary only lease coal after consideration of "effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services." *Id.* § 201(a)(3)(C). BLM is the federal agency within the Department of the Interior tasked with administering the federal coal leasing program.

III. FEDERAL LAND POLICY AND MANAGEMENT ACT.

The Federal Land Policy and Management Act establishes the broad framework under which BLM manages public lands for multiple uses in a way "that will best meet the present and future needs of the American people." 43 U.S.C. § 1702(c); *see also id.* § 1712(c)(7) (in developing land use plans, BLM must "weigh long-term benefits to the public against short-term benefits"). Under this statute, Congress declared that it is the policy of the United States that "public lands

be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values." *Id*. § 1701(a)(8). FLPMA further requires that BLM "receive fair market value of the use of the public lands and their resources." *Id*. § 1701(a)(9).

FACTUAL AND PROCEDURAL BACKGROUND

I. THE FEDERAL COAL LEASING PROGRAM.

BLM manages coal resources on 570 million acres of public lands across the United States where the mineral estate is owned by the federal government. AR 5419[4]; AR 19270 (BLM, "Federal Coal Program: Programmatic Environmental Impact Statement – Scoping Report (Jan. 2017) ("Scoping Report") at ES-1). At the time this action was filed, BLM was oversaw 299 coal leases encompassing 458,636 acres in 12 states, with an estimated 6.5 billion tons of recoverable coal reserves. AR 7. Federal coal from the Powder River Basin in Montana and Wyoming accounts for over 85 percent of this production. AR 5420; AR 19270 (Scoping Report at ES-1).

The majority of federal coal is used to generate electricity domestically, accounting for an estimated 14 percent of the Nation's electricity in 2015 and 11 percent of total U.S. greenhouse gas emissions. AR 5420; AR 19270 (Scoping Report at ES-1). Coal is also used for other processes, including making steel (i.e., metallurgical coal). AR 5420; AR 19343 (Scoping Report at 5-12). In 2015, about eight percent of all U.S. coal was exported, and many coal companies are attempting to expand exports in the face of decreasing domestic demand. AR 19360 (Scoping Report at 5-29).

[4] The administrative record in this matter is cited as "AR [page number]," excluding leading zeros.

II. BLM'S ENVIRONMENTAL REVIEW OF THE FEDERAL COAL PROGRAM IS DECADES OLD.

BLM manages federal coal pursuant to regulations and a programmatic EIS that were originally adopted 42 years ago, at a time when the threat of climate change was not fully understood and market conditions, infrastructure development, scientific understanding, and national priorities were dramatically different. *See* 44 Fed. Reg. 42,584 (July 19, 1979) (Coal Management; Federally Owned Coal).

The first PEIS for the federal coal program, adopted in 1975, was found to be unlawful because it failed to adequately discuss, or allow comment on, a new coal leasing system and did not sufficiently consider alternatives. *See Nat. Res. Def. Council v. Hughes*, 437 F. Supp. 981, 989-91 (D.D.C. 1977). Separately, the U.S. Supreme Court recognized, in a case challenging the lack of NEPA review for the development of coal in the Northern Great Plains Region, that the federal coal program required a national-level programmatic EIS because it "is a coherent plan of national scope" with "significant environmental consequences." *See Kleppe v. Sierra Club*, 427 U.S. 390, 400 (1976). Around the same time, Congress passed the Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, 90 Stat. 1083 (1976), which updated sections of the Mineral Leasing Act related to fair market value and speculation. AR 1540 (Scoping Report at 5-2).

These changes led to the preparation of a new PEIS in 1979, which analyzed seven alternatives for the federal coal program, including the preferred alternative that was ultimately chosen and largely remains in place today. *See* 44 Fed. Reg. 42,584; AR 5423-24; AR 19337 (Scoping Report at 5-6). This program sets forth two primary leasing procedures. First, under the "regional" leasing program, Defendants lease tracts based on recommendations from the ten DOI regional coal teams. AR 5420, 5425; AR 19338 (Scoping Report at 5-7). Second, under the "leasing by application" program, the process is initiated by industry, which identifies where and how much coal it wants to lease. AR 5420, 5425; AR 19338

(Scoping Report at 5-7). The 1979 PEIS was approximately 1,300 pages long but contained almost no discussion of climate change.[5]

The 1979 PEIS was last revisited in 1985, when BLM updated its coal leasing regulations and completed a limited supplement to the 1979 PEIS in response to recommendations from the Commission on Fair Market Value Policy for Federal Coal Leasing, which addressed continued irregularities in the leasing process (the "1985 Supplement"). AR 5424; AR 19337-38 (Scoping Report at 5-6 through 5-7). The 1985 Supplement examined the continuation of the federal coal management program and three alternatives: (1) Leasing by Application, (2) Preference Right and Emergency Leasing, and (3) No New Federal Leasing. *Id*. BLM's revised regulations incorporated a two-tiered leasing structure. AR 19338 (Scoping Report at 5-7). First, in certified coal producing regions where exploration and new mining were occurring, BLM would select tracts for lease sale. *Id*. Second, in areas outside of those certified coal producing regions, mining companies would apply for specific tracts of lands to be leased, generally adjacent to their existing mines. *Id*. The 1985 Supplement did not consider or evaluate climate change impacts.

Between 1987 and 1990, all six certified coal-producing regions were "decertified" by BLM, such that all federal coal leasing since 1990 has been the result of industry application. *Id*. Reliance on leasing by application substantially impairs the efficacy of competitive lease auctions. Existing lease holders have a financial incentive to submit applications that propose tracts adjacent to their existing leases. AR 19398 (Scoping Report at 6-3). Since coal mining operations are capital-intensive and mining equipment is logistically difficult to move, bidders closest to a proposed lease can generally outbid all other parties. The result is that

[5] In 1982, Defendants issued a final rule which amended certain implementing regulations governing the federal coal program while preserving the program's "essential features." 47 Fed. Reg. 33,114 (July 30, 1982). While Defendants did not prepare any new NEPA document for this rule making, they stated that they "must revise or update the [1979 PEIS] when its assumptions, analyses and conclusions are no longer valid." *Id*. at 33,115.

leasing by application auctions frequently have only one bidder and are effectively noncompetitive, which in turn ensures that the public will not receive fair value on these leases – a result that was not contemplated when the current program was structured.

During the 1990s and 2000s, the Powder River Basin became the primary area of Federal coal leasing and production, and Federal coal commanded a much larger share of national coal production. AR 19339, 19342 (Scoping Report at 5-8, 5-11).

III. REVIEWS OF THE FEDERAL COAL PROGRAM IDENTIFIED MAJOR CONCERNS.

Several federal governmental entities have criticized Defendants' outdated structure for the management of federal coal. AR 5422; AR 19339, 19396-98 (Scoping Report at 5-8, 6-1 through 6-3). In 2013, DOI's Office of the Inspector General issued a report concluding that "BLM faces significant challenges in the areas of coal leasing and mine inspection and enforcement," and that BLM's management of the program resulted in millions of dollars in lost royalties to the federal treasury because the agency was "not receiving the full, fair market value for the leases."[6] The Inspector General made several recommendations necessary to "enhance [BLM's] coal management program significantly" and recover lost revenues.[7]

Also in 2013, the Government Accountability Office ("GAO") concluded that BLM had failed to ensure mining companies pay fair market value for leasing federal coal.[8] The GAO determined that since 1990, "most" federal coal leases were not sold competitively and had only a single bidder.[9] In particular, of the 107

[6] Off. Of Inspector Gen., "Final Evaluation Report-Coal Management Program, CR-EV-BLM-0001-2012 (June 11, 2013) at 1, 19, *available at*: https://www.doioig.gov/sites/doioig.gov/files/CR-EV-BLM-0001-2012Public.pdf;
[7] *Id*. at 19-23.
[8] GAO, Coal Leasing: BLM Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and Provide More Public Information, GAO-14-140 (Dec. 2013), *available at*: https://www.gao.gov/assets/gao-14-140.pdf.
[9] *Id*. at 15.

tracts that were leased between 1990 and 2012, "sales for 96 (about 90 percent) involved a single bidder … which was generally the company that submitted the lease application. More than 90 percent of the lease applications BLM received were for maintenance tracts used to extend the life of an existing mine or to expand that mine's annual production."[10]

Moreover, since 1979, scientific understanding of climate change has grown dramatically, and Defendants have recognized the need to address the problem. For example, as Defendants have acknowledged, "[n]umerous scientific studies indicate that reducing GHG emission from coal use worldwide is critical to addressing climate change." AR 5422; *see* AR 19399 (Scoping Report at 6-4). Defendants have also found that "[v]irtually every community in the US is being impacted by climate change, and Federal programs have an obligation to be administered in a way that will not worsen and help address these impacts." AR 13398 (Scoping Report at 6-3).

On March 17, 2015, due to these concerns and others raised by members of Congress, interested stakeholders, and the public, then-Secretary of the Interior Sally Jewell called for "an honest and open conversation about modernizing the Federal coal program." AR 5420; AR 19272 (Scoping Report at ES-3). Defendants subsequently held listening sessions around the country that summer, heard from 289 individuals during the sessions, and received over 94,000 written comments. AR 5421; AR 19272 (Scoping Report at ES-3). The oral and written comments reflected several recurring concerns, in particular: that American taxpayers are not receiving a fair return for the leasing of public coal resources; that the Federal coal program conflicts with the country's national climate goals; and about the structure of the Federal coal program in light of current market conditions, including how implementation of the Federal leasing program affects

[10] *Id*. at 16.

current and future coal markets, coal-dependent communities and companies, and the reclamation of mined lands. AR 5421.

IV. SECRETARIAL ORDER 3338 PLACES A MORATORIUM ON NEW COAL LEASING AND INITIATES NEPA REVIEW.

On January 15, 2016, Secretary Jewell issued Secretarial Order 3338, commencing a process to prepare a new programmatic EIS for the federal coal program and putting in place a moratorium on most new leasing activity until that review was complete. *See* AR 5419 (Secretarial Order No. 3338, Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016) ("Secretarial Order 3338")).

Secretarial Order 3338 recognized Defendants' legal obligations "to ensure conservation of the public lands, the protection of their scientific, historic, and environmental values, and compliance with applicable environmental laws" as well as Defendants' "statutory duty to ensure a fair return to the taxpayer." AR 5425. Because coal leases can result in decades of leasing with significant climate impacts, Secretary Jewel recognized that it was appropriate to suspend the issuance of new federal coal leases while BLM undertook a comprehensive environmental review. AR 5422–26.

BLM began that comprehensive review in March 2016 with a robust scoping process that elicited more than 214,000 public comments. *See* 81 Fed. Reg. 17,720 (Mar. 30, 2016). BLM's subsequent Scoping Report concluded that the Federal coal program needed modernization that focused "on ensuring a fair return to Americans for the sale of their public coal resources; addressing the coal program's impact on the challenge of climate change; and improving the structure and efficiency of the coal program in light of current market conditions, including impacts on communities." AR 19273 (Scoping Report at ES-4).

Defendants found that significant environmental impacts were not adequately considered in the 1979 PEIS or 1985 Supplement and that these impacts warranted

review. These include climate change impacts, harm to public lands and wildlife from coal mining, air quality impacts from coal transport and combustion, and the disposal of coal ash, which contains hazardous constituents. AR 19271 (Scoping Report at ES-2); AR 19362 (Scoping Report at 5-31); AR 19377-83 (Scoping Report at 5-46 – 5-52); *see also* AR 19399 (Scoping Report at 6-4) ("there is a need for program reform to better protect the nation's other natural resources (e.g., air, water, and wildlife)"). Moreover, Defendants found that the environmental justice impacts related to coal mining and downstream activities such as coal transport and export have never been adequately considered. AR 19446 (Scoping Report at 6-51).

In addition, Defendants found that the federal coal program had failed to fulfill legal mandates to ensure a fair return to American taxpayers due to reliance of the leasing-by-application process and other changes in the program. AR 19398 (Scoping Report at 6-3). Defendants identified concerns about royalty rates in Federal leases, and that the large volumes and relatively low costs of Federal coal, which represented approximately 42 percent of total domestic production, may be artificially lowering market prices for coal, further reducing the amount of royalties received. *Id*; *see also* AR 19339 (Scoping Report at 5-8).

Consequently, Defendants decided to move forward with the preparation of a draft programmatic EIS by January 2018 regarding the modernization of the federal coal program using the information received during the scoping process, and issue a final PEIS by January 2019. AR 19272 (Scoping Report at ES-3).

However, less than three months later, on March 29, 2017, then Secretary Zinke issued Secretarial Order 3348, entitled "Concerning the Federal Coal Moratorium," which revoked Order 3338, restarted the federal coal program, and terminated the environmental review process. AR 4416.

V. STATE PLAINTIFFS' INITIAL CHALLENGE TO DEFENDANTS' DECISION TO RESTART THE FEDERAL COAL LEASING PROGRAM.

On May 9, 2017, State Plaintiffs filed an action in this Court challenging Defendants' decision to restart the federal coal leasing program without conducting any environmental review under NEPA, and without considering whether the program is in the public interest or provides fair market value to the public, in violation of the MLA and FLPMA. *State of California v. Zinke*, Case No. CV-17-42-GF-BMM (complaint filed May 9, 2017). The case was consolidated with an earlier-filed action by citizen and tribal groups. *Citizens for Clean Energy v. U.S. Department of the Interior*, Case No. CV-17-30-GF-BMM (complaint filed Mar. 29, 2017).

Following briefing on cross-motions for summary judgment, this Court issued an order granting in part and denying in part the motions on April 19, 2019. ECF No. 141. In particular, the Court found that Defendants' decision to restart the federal coal leasing program constituted a "major federal action" subject to the requirements of NEPA. *Id*. at 24. The Court further stated that this litigation "'may be [Plaintiffs] only opportunity to challenge [the coal-leasing program] on a nationwide, programmatic basis.'" *Id*. at 14 (citation omitted). The Court determined that it could not decide State Plaintiffs' MLA and FLPMA claims "until Federal Defendants have completed their environmental review." *Id*. at 31.

VI. DEFENDANTS' RESPONSE TO THE COURT'S ORDER.

On May 22, 2019, Defendants' issued a 35-page Draft Environmental Assessment ("Draft EA") which purported "to be responsive to" the Court's ruling. AR 78. However, the Draft EA limited its analysis to just three leases that were issued since Secretarial Order 3348 was signed in March 2017. These three leases are (1) the Alton Coal Tract Lease by Application; (2) Pollyanna 8 Coal Lease; and (3) the South Fork Federal Coal Lease Modification. AR 85-86. According to the Draft EA, these "leases and their respective issue dates represent the universe of

lease issuances traceable to the [Secretarial Order 3348's] resumption of normal leasing procedures." AR 85.

The Draft EA considered only two alternatives: (1) Alternative 1, the "No Action Alternative," which assumed that Secretarial Order 3338 would have remained in place for an additional 24 months, until March 2019; and (2) Alternative 2, entitled "Resume Normal Leasing Procedures in March 2017," which considered BLM's processing of new lease application in the 24 months since March 2017. AR 90-91. The Draft EA further assumed that the only difference between the two alternatives was that Alternative 2 would cause environmental impacts earlier than Alternative 1. *Id*. With regard to the environmental effects, the Draft EA summarized portions of already-completed NEPA reviews for the three leases and with regard to just three "issues": (1) greenhouse gas emissions; (2) socioeconomic impacts; and (3) impacts to water quality, quantity, and riparian areas. AR 87, 93-111.

Defendants allowed only a 15-day period to submit comments on the Draft EA, which was extended by a few days due to technical issues. AR 86. State Plaintiffs submitted comments on June 10, 2019, contending that the Draft EA improperly limited the scope of the NEPA review, failed to consider reasonable alternatives to the proposed action, and failed to consider the environmental impacts of restarting the federal coal leasing program, among other arguments. AR 19240-455.

On February 25, 2020, Defendants issued the Final EA and FONSI, which remained largely unchanged from the Draft EA with the addition of one lease modification (the 170-acre South Fork Federal Coal Lease Modification (SUFCO) (U-63214)) that was reclassified from exempt to non-exempt under Secretarial Order 3338. AR 1, 10-11, 67-77. The Final EA evaluated the same two alternatives and considered only the effects of these four leases with regard to

greenhouse gas emissions, socioeconomic impacts, and impacts to water quality, quantity, and riparian areas. AR 15-39. And, despite this Court's Order, Defendants continued to dispute NEPA's application to the decision to restart the federal coal leasing program. AR 6.

On March 10, 2021, Plaintiffs filed an amended remedy brief in response to the Final EA and FONSI, requesting that the Court vacate Defendants' decision to restart the federal coal leasing program. ECF No. 153. On May 22, 2020, the Court denied this request. ECF No. 170. State Plaintiffs filed their operative First Supplemental Complaint on July 23, 2020. ECF No. 176.

STANDARD OF REVIEW

Summary judgment is appropriate when the record shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Judicial review of agency compliance with NEPA, the MLA, and FLPMA is governed by Section 706 of the APA, 5 U.S.C. § 706. *See, e.g., Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 554 (9th Cir. 2006); *Nat'l Wildlife Fed'n v. Burford*, 871 F.2d 849, 855 (9th Cir. 1989). Under this standard, agency actions are subject to judicial reversal where they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C), (D). An agency action is arbitrary and capricious where the agency (i) has relied on factors which Congress has not intended it to consider; (ii) entirely failed to consider an important aspect of the problem; (iii) offered an explanation for its decision that runs counter to the evidence before the agency; or (iv) is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*").

When an agency reverses course by changing a prior policy, the agency must provide a "reasoned explanation" and "display awareness that it is changing position." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("*Fox*"); *see also Organized Village of Kake v. U.S. Dept. of Agric.*, 795 F.3d 956, 968 (9th Cir. 2015) ("[E]ven when reversing a policy after an election, an agency may not simply discard prior factual findings without a reasoned explanation."). The agency must show that "the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better." *Fox*, 556 U.S. at 515. Moreover, when an agency's "new policy rests upon factual findings that contradict those which underlay its prior policy," it must "provide a more detailed justification than what would suffice for a new policy created on a blank slate." *Id.*; *see City and Cnty. of San Francisco v. U.S. Citizenship and Immigration Servs.*, 981 F.3d 742, 761 (9th Cir. 2020) (applying "more detailed justification" standard to agency's "abrupt change in policy"). Any "'[u]nexplained inconsistency' in agency policy is 'a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (citation omitted).

STANDING

Pursuant to the Court's April 19, 2019 Order, ECF No. 141, and the Affidavits of Sally Toteff and Keita Ebisu, ECF Nos. 116-1 and 116-2, State Plaintiffs have standing to bring this action.

ARGUMENT

As this Court has already determined when ruling on Secretarial Order 3348, Defendants' decision to restart the federal coal leasing program constituted a major federal action triggering NEPA review. However, Defendants' Final EA, issued two years later and only in response to this Court's Order, failed to consider or evaluate the environmental impacts of the federal coal leasing program and does

not remedy this clear statutory violation. In particular, rather than consider the impacts of the program itself, the Final EA arbitrarily limited its analysis to just four leases out of several hundred; three environmental "issues"; and only two nearly identical alternatives, and reached the absurd conclusion that federal coal leasing has no significant environmental impacts.

Moreover, the Final EA says nothing about Defendants' legal obligations under the MLA and FLPMA. Just weeks before its decision to restart federal coal leasing, Defendants expressed concerns regarding whether the program was in the public interest or achieving a fair economic return for the public, and determined that an updated review was warranted to consider these issues. Defendants' complete reversal in policy without any reasoned explanation or consideration of these earlier findings should be held unlawful and set aside.

I. DEFENDANTS FAILED TO COMPLY WITH NEPA BY RESTARTING THE FEDERAL COAL LEASING PROGRAM WITHOUT ADEQUATE ENVIRONMENTAL REVIEW.

A. Defendants Impermissibly Limited the Scope of the Final EA.

NEPA requires that an agency consider the full scope of activities encompassed by its Proposed Action. *See* 40 C.F.R. § 1508.25. This includes an evaluation of connected, cumulative, and similar actions, all reasonable alternatives, as well as all direct, indirect, and cumulative impacts of a proposal. *Id*. "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration." *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (internal quotation marks omitted).

"Connected actions" are actions that "are closely related and therefore should be discussed in the same impact statement." 40 C.F.R. § 1508.25(a)(1). Connected actions must be considered together in order to preclude an agency from "divid[ing]

a project into several smaller actions, each of which might have an insignificant environmental impact when considered in isolation, but which taken as a whole have a substantial impact." *Northwest Resource Info. Ctr., Inc. v. National Marine Fisheries Serv.*, 56 F.3d 1060, 1068 (9th Cir. 1995). Similarly, "cumulative actions" are those "which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement." 40 C.F.R. § 1508.25(a)(2). Moreover, "similar actions" are actions "which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." 40 C.F.R. § 1508.25(a)(3).

Here, the Final EA does not attempt to analyze the environmental impacts of the federal coal leasing program. Instead, as discussed above, Defendants impermissibly restricted the scope of its analysis to cover just four leases that were issued during the 24 months between the March 29, 2017 date of Secretarial Order 3348 and the "anticipated date" that the moratorium would have been lifted. AR 9-10. However, Defendants had no legitimate basis for limiting the scope of their NEPA review in this manner, which effectively excluded other connected, cumulative, and similar actions that should have been consider as part of the same analysis.

As Defendants acknowledged in the Final EA, the scope of the federal coal leasing program is broad: "As of Fiscal Year 2018, the BLM administered 299 Federal coal leases, encompassing 458,636 acres in 12 states, with an estimated 6.5 billion tons of recoverable Federal coal reserves." AR 7. Moreover, there were dozens of other lease applications pending with BLM that at a minimum should have been included within the scope of the Final EA. AR 8; *see Kleppe*, 427 U.S. at 400 (federal coal leasing program "is a coherent plan of national scope").

In the Final EA, Defendants state that they "considered, but did not analyze in detail, the effects resumption of normal leasing procedures would have on leasing and evaluation of its potential effects because this issue does not relate to the purpose and need or inform a question of significance." AR 14. Yet this is exactly what was required by the Court, and the very "purpose and need" of the Final EA was to respond to the Court's decision. AR 11. In particular, this Court found that State Plaintiffs' claims were ripe because this litigation "'may be their only opportunity to challenge [the coal-leasing program] on a *nationwide, programmatic* basis.'" ECF No. 141 at 14 (quoting *California ex rel. Lockyer v. U.S. Dep't of Agric*., 575 F.3d 999 (9th Cir. 2009)) (brackets in original) (emphasis added). In addition to finding that Defendants' decision to restart the program constituted a "major federal action" triggering NEPA, the Court described the scope of this decision as "lift[ing] the moratorium and direct[ing] BLM to 'process coal lease applications and modifications expeditiously" in accordance with existing leasing procedures. *Id*. at 5, 24.

Consequently, Defendants' decision to restart the federal coal leasing program without preparing a NEPA document that evaluates the full scope of activities that are part of that action was arbitrary and capricious, an abuse of discretion, and contrary to the requirements of NEPA and the APA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.25; 5 U.S.C. § 706(2). Consequently, the Final EA and FONSI should be held unlawful and set aside.

B. The Final EA Did Not Take a "Hard Look" at the Environmental Impacts of Restarting the Federal Coal Leasing Program.

As the Ninth Circuit has stated, "the fundamental purpose of NEPA … is to ensure that federal agencies take a 'hard look' at the environmental consequences of their actions … early enough so that it can serve as an important contribution to the decision making process." *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir.

2002) (citation omitted). This includes preparing an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3. An EIS must "consider every significant aspect of the environmental impact of a proposed action," including the direct, indirect, and cumulative impacts. *Oregon Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1100 (9th Cir. 2011).

As this Court has already determined, Defendants' decision to restart the federal coal leasing program constituted a "major federal action" subject to NEPA review. ECF No. 141 at 24, 27, 31.[11] Given the magnitude of the program, Defendants have no credible basis for their position that this action has no significant environmental consequences requiring the preparation of an EIS. *See Kleppe*, 427 U.S. at 400 (finding that federal coal program "surely has significant environmental consequences"); *Cady v. Morton*, 527 F.2d 786, 793 (9th Cir. 1975) (holding that approval by the Secretary of the Interior of coal leases covering 30,876 acres constituted "major federal action" and required preparation of an EIS).

Despite the breadth of the federal coal leasing program, the Final EA and FONSI prepared by Defendants did not actually consider or evaluate the environmental impacts of restarting the program, generally. Instead, the Final EA limited its impacts analysis to just four leases and three "issues": greenhouse gas emissions, socioeconomic impacts, and impacts to water quality, quantity, and riparian areas. AR 19-39. In doing so, the Final EA completely ignored other potentially significant impacts associated with the federal coal leasing program. These impacts include harm to public lands and wildlife from coal mining, air quality impacts from coal transport and combustion, the disposal of coal ash, impacts to environmental justice communities, and the cumulative climate change impacts from the program, which BLM previously found accounts for 11 percent of

[11] As discussed above, the recent issuance of Secretarial Order 3398 did not restore the moratorium or otherwise limit the federal coal leasing program.

total U.S. greenhouse gas emissions. *See* AR 19251-55; AR 19377-83 (Scoping Report at 5-46 through 5-52) (discussing impacts from federal coal program not considered in prior NEPA reviews).

For example, coal mining can have significant negative impacts resulting from increased air pollution and harm to wildlife. AR 19377-78. The shipment of coal from mining sites in Montana and Wyoming to west coast ports in open top train cars has significant negative impacts on local air quality and the environment due to the release of particulate matter pollution and toxic materials. AR 19251, 19449-55. The transport, warehousing, and loading of coal for export also has negative health consequences for workers and nearby communities exposed to coal dust, and can have disproportionate effects on environmental justice communities. AR 19251-52, 19377-78. Defendants provided no reasoned basis for ignoring these impacts.

Moreover, even with regard to the three issues addressed in the Final EA, Defendants' analysis is superficial and insufficient. For example, with regard to impacts to water quality, quantity, and riparian areas, the Final EA simply summarized the conclusions of existing NEPA reviews for each of the four leases, and then summarily claimed that cumulative effects "are not anticipated because there is no hydrologic connection between water resources or riparian areas of the four locations." AR 39.

With regard to socioeconomic impacts, Defendants found no such impacts because "each of the four coal leases issued already had sufficient reserves to continue operations through March 2019" and "would have been able to continue producing" under both alternatives. AR 32. For eight other pending leases, Defendants simply stated that the socioeconomic impacts "are too speculative to ascertain with any meaningful precision." *Id*. Such conclusory assertions do not provide the "hard look" at impacts required by NEPA. *See Great Basin Mine*

Watch v. Hankins, 456 F.3d 955, 973 (9th Cir. 2006) (holding that "vague and conclusory statements, without any supporting data, do not constitute a 'hard look' at the environmental consequences of the action as required by NEPA").

On climate change, Defendants' consideration of just four leases represented only a small fraction of the significant climate impacts from the federal coal leasing program. *Compare* AR 25 *with* AR 19362 (finding that federal coal accounted for 11 percent of total U.S. greenhouse gases). Even in the Final EA's discussion of cumulative impacts, which considered a larger range of 57 federal coal lease applications either received or pending since the issuance of Secretarial Order 3338, Defendants simply assumed that greenhouse gas emissions would occur earlier under Secretarial Order 3348 than otherwise. AR 26. In doing so, Defendants completely ignored many other active coal leases as well as reasonably foreseeable future actions that would result in additional cumulative climate impacts. In addition, the Final EA arbitrarily refused to use the social cost of carbon—or any other meaningful metric—to accurately assess the greenhouse gas impacts of the program, claiming that such an analysis is neither useful nor required. AR 29-30.

Courts have made it clear that such considerations must be included in NEPA reviews, especially at the programmatic level. As the Ninth Circuit has found, "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." *Ctr. for Biological Diversity*, 538 F.3d at 1217; *see also Ctr. for Biological Diversity*, 982 F.3d at 740 (holding that EIS "should have either given a quantitative estimate of the downstream greenhouse gas emissions" that will result from consuming oil abroad, or "explained more specifically why it could not have done so") (citation omitted); *Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003) (agency approval of rail line project that would increase coal consumption violated NEPA by failing to consider impacts of increased coal use).

Courts have also found that agencies cannot simply refuse to quantify the impacts of increased greenhouse gas emissions given the availability of tools for this very purpose. *See, e.g.*, *High County Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1189-90 (D. Colo. 2014) (BLM violated NEPA by failing to assess social cost of carbon associated with new coal leases); *Western Org. of Res. Councils v. U.S. Bureau of Land Mgmt*., 2018 WL 1475470, *13 (D. Mont. Mar. 26, 2018) (BLM violated NEPA by failing to consider indirect effects of downstream combustion of fossil fuel resources that would be developed pursuant to the resource management plans); *San Juan Citizens Alliance v. U.S. Bureau of Land Mgmt.*, 2018 WL 2994406, *11 (D.N.M. June 14, 2018) (BLM violated NEPA by failing to estimate greenhouse gas emissions and climate impacts from downstream combustion resulting from oil and gas development on leased areas).

In sum, Defendants' decision to restart the federal coal leasing program without preparing a NEPA document that takes a "hard look" at the environmental impacts of the program was arbitrary and capricious, an abuse of discretion, and contrary to the requirements of NEPA and the APA, and accordingly violated NEPA and the APA. 42 U.S.C. § 4332(2)(C); 5 U.S.C. § 706(2). Consequently, the Final EA and FONSI should be held unlawful and set aside.

C. Defendants Failed to Consider Reasonable Alternatives to the Proposed Action.

NEPA requires that Defendants provide a "detailed statement" regarding the "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C); *see* 40 C.F.R. §§ 1508.9(b), 1502.14(a). The requirement to consider reasonable alternatives "lies at the heart of any NEPA analysis." *California ex rel. Lockyer v. U.S. Dept. of Agric*., 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). Agencies must "rigorously explore and objectively evaluate all reasonable alternatives" to a proposed action, and briefly discuss the reasons for eliminating any alternatives from detailed study. 40 C.F.R. § 1502.14(a). "The existence of a viable but unexamined alternative

renders" an EIS inadequate. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (internal quotations and citations omitted).

Here, the Final EA considered just two alternatives: (1) a "No Action Alternative" that assumed Secretarial Order 3338 would have simply delayed the federal coal leasing program for 24 months, and (2) the action alternative, which evaluated BLM's processing of four new lease applications in this 24-month time period. AR 15-19. Defendants assumed that the only difference between these two alternatives was that Alternative 2 would cause environmental impacts earlier that Alternative 1. *Id*.

This analysis is fundamentally flawed and contrary to NEPA. In particular, the lack of any meaningful difference between the alternatives did not allow for informed decision making or public participation in evaluating the impacts of the federal coal leasing program. *See Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (federal agency violated NEPA where two action alternatives considered were "virtually identical").

Moreover, as discussed in State Plaintiffs' comments, Defendants' narrow analysis ignored without explanation several other reasonable alternatives for the federal coal leasing program that BLM previously identified in its January 2017 Scoping Report. AR 19249-51, 19396-427. These alternatives were raised in response to concerns that the program could better ensure a fair return to Americans for the sale of their public coal resources; provide for more efficient administration of the program in light of current market conditions, including impacts on communities; and reduce the impacts with regard to climate change and other environmental issues. *Id*. For example, to reduce greenhouse gas emissions, BLM identified potential alternatives such as (1) accounting for carbon-based externalities through a royalty rate increase or royalty adder; (2) adopting requirements for the use of compensatory mitigation; (3) establishing a carbon

budget to guide federal coal leasing in an effort to limit the amount of greenhouse gas emissions associated with federal coal production; (4) considering opportunities to address methane emissions associated with coal mining operations; and (5) fully analyzing a no new leasing alternative. AR 19408-15. Yet the Final EA failed to consider any of these reasonable alternatives identified by BLM itself.

In sum, Defendants' failure to consider reasonable alternatives in the Final EA was arbitrary and capricious, an abuse of discretion, and contrary to the requirements of NEPA and the APA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9; 5 U.S.C. § 706(2). Consequently, the Final EA and FONSI should be held unlawful and set aside.

II. DEFENDANTS' DECISION TO RESTART THE FEDERAL COAL LEASING PROGRAM WITHOUT CONSIDERING THEIR STATUTORY MANDATES OR PROVIDING A REASONED EXPLANATION FOR THEIR REVERSAL IN POLICY VIOLATED THE MLA, FLPMA, AND THE APA.

When reversing course by changing a prior policy, an agency is required to provide a "reasoned explanation" for the change, and show that the new policy is "permissible under the statute" and that "there are good reasons for it." *Fox*, 556 U.S. at 515; *see also Kake*, 795 F.3d at 968 ("even when reversing a policy after an election, an agency may not simply discard prior factual findings without a reasoned explanation"). Simply reversing course without offering a "rational connection between the facts found and the choice made" does not pass muster under the APA. *State Farm*, 463 U.S. at 43. Without providing any reasoned explanation, a court "cannot ascertain whether [the agency] has complied with its statutory mandate." *Humane Soc'y of U.S. v. Locke*, 626 F.3d 1040, 1052 (9th Cir. 2010).

Here, in restarting the federal coal leasing program without undertaking the programmatic review they themselves deemed necessary, Defendants disregarded their statutory mandates under the MLA and FLPMA to ensure that leasing is in the

"public interest" and that the public is receiving "fair market value" for the development of these resources.

As discussed above, the MLA authorizes the Secretary of the Interior to lease the production of coal on public lands if it is "in the public interest." 30 U.S.C. § 201(a)(1); *see also id*. § 201(a)(3) (Secretary may only lease coal in a manner that balances "long-term benefits to the public against short-term benefits."). The MLA further requires that every sale of such mineral be made by competitive bid and provide the public with "fair market value." *Id*. In managing public lands for multiple uses, FLPMA requires that Defendants manage such lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values," and that Defendants "receive fair market value of the use of the public lands and their resources." 43 U.S.C. § 1701(a)(8), (9).

Just weeks before the issuance of Secretarial Order 3348, Defendants expressed serious concerns regarding whether these statutory mandates were being fulfilled. For example, Defendants stated that "[c]onsideration of the implications of Federal coal leasing for climate change, as an extensively documented threat to the health and welfare of the American people, falls squarely within the factors to be considered in determining the public interest" under FLPMA. AR 19271. Defendants also acknowledged the likelihood that the public was not receiving fair market value from the sale of federal coal resources. For example, Secretary Jewell noted that "there is currently very little competition for Federal coal leases," since "[a]bout 90 percent of lease sales receive bids from only one bidder, typically the operator of a mine adjacent to the new lease." AR 5422. In addition, the Secretary stated that the royalty rates set in Federal leases "do not adequately compensate the public for the removal of the coal and the externalities associated with its use." *Id*. The Secretary expressed further concern regarding lower returns from certain types

of leasing actions such as lease modifications, as well as royalty rate reductions, "which may result in royalty rates as low as 2 percent." *Id*. (noting that royalty rates for federal leases are set by regulation at a fixed 8 percent for underground mines and not less than 12.5 percent for surface mines).

In the Scoping Report, Defendants found that modernization of the federal coal program was warranted with respect to "ensur[ing] that the public owners of this coal receive a full and fair return for this resource." AR 19397 (Scoping Report at 6-2). Thus, to the end of complying with their statutory mandates to ensure that federal coal leasing is in the public interest and that the public is receiving fair market value for the sale of these resources, Defendants stated their intent to consider the climate impacts of the federal coal program and determine whether the program undermines national climate goals; to address the lack of competitive bidding for leases; to determine appropriate royalty rates; and to determine whether "large volumes and relatively low costs of Federal coal" are "artificially lowering market prices for coal." AR 19398 (Scoping Report at 6-3).

In issuing Secretarial Order 3348 and restarting the federal coal leasing program, Defendants did an about-face with respect to these previously identified deficiencies in the program without providing a reasoned explanation regarding their reversals of position. Nothing in that Order explains how restarting the program without careful consideration of these issues would fulfill the Defendants' statutory mandates to ensure that leasing is in the public interest and the public is receiving fair market value for the sale of these resources. Moreover, the Final EA and FONSI issued by Defendants in February 2020 failed to provide any consideration of these issues. *See* AR 1-77. In doing so, Defendants failed to comply with their statutory mandates under the MLA and FLPMA. *See Humane Soc'y*, 636 F.3d at 1051-53 (finding that agency failed to provide "satisfactory explanation" for its decision "in light of seemingly inconsistent factual

determinations in earlier" assessment, and that court "cannot ascertain whether [the agency] had complied with its statutory mandate"); *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 49-51 (D.D.C. 2003) (remanding federal mining regulations that failed to consider duty to receive "fair market value" for use of public lands).

In sum, Defendants' decision to restart federal coal leasing was arbitrary and capricious, an abuse of discretion, and contrary to the requirements of the MLA, FLPMA, and the APA. 30 U.S.C. § 201(a)(1), (3); 43 U.S.C. § 1701(a); 5 U.S.C. § 706(2). Consequently, Defendants' decision should be held unlawful and set aside.

CONCLUSION

For the reasons given above, State Plaintiffs respectfully request that this Court grant their motion for summary judgment, declare that Defendants' decision to restart the federal coal leasing program and issuance of the Final EA and FONSI were unlawful, vacate and set aside the Final EA and FONSI, and require Defendants to resume the moratorium on new federal coal leases unless and until Defendants comply with applicable law, including NEPA, the MLA, and FLPMA.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

Pursuant to Local Rule 7.1(d)(2)(E) and the Orders of this Court (ECF Nos. 193 and 198), I certify that this brief contains 8,692 words, excluding the parts of the brief exempted under the Local Rule, according to the count of Microsoft Word.

Respectfully submitted on May 18, 2021.

/s/ George Torgun
George Torgun

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2021, a copy of the foregoing STATE PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was served via the Court's CM/ECF system on all counsel of record.

/s/ George Torgun
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