IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:23-cv-01696-NYW

GUNNISON ENERGY LLC,

Plaintiffs,

v.

DEB HAALAND, in her official capacity as United States Secretary of the Interior, NADA CULVER, in her official capacity as Bureau of Land Management Deputy Director, Policy & Programs, LARRY SANDOVAL, in his official capacity as Field Manager of the Bureau of Land Management's Colorado River Valley Field Office, and UNITED STATES BUREAU OF LAND MANAGEMENT,

Defendants.

GUNNISON ENERGY LLC'S FIRST AMENDED COMPLAINT

Gunnison Energy LLC ("Gunnison") submits respectfully this first amended complaint seeking review of agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 ("APA"). Gunnison is an oil and gas producer with federal oil and gas leasehold interests in Gunnison and Delta Counties, Colorado. In March and April 2022, Gunnison submitted two Applications for Permit to Drill ("APDs") for wells on lands under the jurisdiction of Bureau of Land Management ("BLM") Colorado River Valley Field Office ("CRVFO"). 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 CRVFO has failed to process either of the pending APDs in a

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

PARTIES

1. Plaintiff Gunnison Energy LLC is a Delaware limited liability company with its principal place of business in Colorado.

2. Defendant Deb Haaland is the Secretary of the United States Department of the Interior. Secretary Haaland is a cabinet-level officer of the United States government and named herein in her official capacity.

3. Defendant Nada Culver is the Deputy Director, Policy & Programs, for BLM. Deputy Director Culver is named herein in her official capacity.

4. Defendant Larry Sandoval is the Field Manager of BLM's CRVFO, located in Silt, Colorado. Field Manager Sandoval is named herein in his official capacity.

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

JURISDICTION AND VENUE

6. 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.

7. Venus 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 Colorado.

FACTUAL ALLEGATIONS

8. The United States owns more than 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.

9. 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 each State Office's geographic boundaries.

10. BLM's Colorado State Office administers the development of oil and gas on federal lands within the State of Colorado. The CRVFO is a subcomponent of the Colorado State Office.

11. 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.

12. 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.

13. The Colorado State Office conducts competitive oil and gas lease sales for nominated parcels within Colorado. 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.

The North Fork Mancos Master Development Plan

14. 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.

15. 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.").

16. In Spring 2016, BLM and Gunnison initiated discussions concerning the possibility of preparing a master development plan for Gunnison's operations.

17. In January 2017, at BLM's request, Gunnison submitted its proposal for the North Fork Mancos Master Development Plan (the "MDP"). Under the original proposal, Gunnison would drill, complete, and operate up to thirty-five horizontal wells and would construct access roads and gathering pipelines in Gunnison and Delta Counties. The MDP project area includes fourteen project-related federal oil and gas leases grouped into four federal oil and gas units: Trail Gulch Unit in the north, Sheep Park II Unit in the center, Iron Point Unit in the southwest, and Deadman Gulch Unit in the southeast.

18. On January 18, 2017, BLM initiated a sixty-day scoping period for the MDP. The scoping notice sought public comments related to the proposed MDP. On May 10, 2018, BLM issued a Preliminary EA for the MDP and a preliminary finding that the MDP "will not have a significant effect on the human environment." The Preliminary EA was made available for a thirty-day public comment period.

19. On February 28, 2019, BLM published a Revised Preliminary EA (the "Revised PEA"). The Revised PEA explained that, during BLM's preparation of a Final EA, Gunnison's management team informed BLM of modifications to the MDP based on updated technical and operational expectations for Gunnison's development in the area. The Revised PEA was similar to the Preliminary EA but incorporated additional or revised information consistent with the

modifications Gunnison initiated. Because of the scale of some of the modifications, BLM determined that additional public review was appropriate and made the Revised PEA available for a thirty-day public comment period.

20. On August 15, 2019, BLM released a Final EA (the "2019 EA"). On the same day: (i) BLM issued a Decision Record, approving portions of the MDP not involving National Forest System Lands; and (ii) the United States Forest Service issued a Draft Decision Notice indicating the Forest Service's intent to approve the SUPO for the MDP and initiated a 45-day period in which persons or groups that had previously filed comments on the MDP could file an objection to that approval.

21. On January 10, 2020, the Forest Service issued a Final Decision Notice, approving surface disturbance and surface use associated with portions of the MDP proposed to occur on National Forest System lands. On January 27, 2020, BLM issued a second Decision Record consistent with the Forest Service's Final Decision. The January 28, 2020 Decision Record approved portions of the MDP that involve the use of National Forest System lands.

The Remand Request

22. On May 10, 2021, a coalition of special interest groups filed a challenge to BLM's approval of the MDP in the United States District Court for the District of Colorado, contesting the adequacy of BLM's consideration of the climate change impacts from greenhouse gas emissions associated with Gunnison's anticipated development under the MDP. *See Citizens for a Healthy Cmty. v. U.S. Dep't of the Interior*, No. 21-cv-01268-MSK (D. Colo.). Gunnison intervened in that lawsuit on BLM's behalf.

23. More than two months later, on July 16, 2021, BLM filed a response to the special interest groups' petition. BLM's response denied each of the substantive allegations in the special

interest groups' petition asserting inadequacies in the environmental review BLM prepared in association with the MDP.

24. On August 24, 2021, the parties in the special interest groups' lawsuit filed a joint case management plan that contemplated BLM submitting an administrative record supporting BLM's approval of the MDP and filing a merits brief responsive to the special interest groups' claims. On September 15, 2021, the federal district court adopted the parties' proposed case management plan. BLM lodged the administrative record and, on December 17, 2021, the special interest groups filed their opening brief on the merits.

25. At 11:40 pm on February 17, 2022 – twenty minutes before the deadline for BLM and Gunnison to submit their respective merits briefs responsive to the special interest groups' claims – BLM's counsel transmitted an e-mail to counsel for the special interest groups and Gunnison alerting the parties that BLM would be "seeking voluntary remand without vacatur for the [MDP] to undertake supplemental NEPA analysis" and advising that BLM "plan[ned] to move for remand in lieu of filing its motion for summary judgment." BLM's e-mail did not offer any reasoning for its decision to seek remand or identify any aspect of BLM's NEPA review on which the proposed remand might focus.

26. On February 18, 2022 – after eight months of actively litigating against the special interest groups' suit – BLM filed its motion, indicating that BLM would not defend BLM's NEPA review on the merits and requesting that the district court remand the case to BLM so that BLM could undertake supplemental environmental analysis of the MDP. BLM requested, notably, that the remand be *without vacatur* of the agency's underlying approval of the MDP.

27. On May 20, 2022, the federal district court granted BLM's motion in part, remanding the MDP to BLM for further consideration, but also vacating BLM's approval of the

MDP during that reconsideration period. The district court did not rule on any merits issue presented in the special interest groups' petition or require BLM to re-evaluate any aspect of the Final EA prepared for the MDP – the district court merely remanded "the matter back to [BLM] for further consideration."

28. The district court's opinion remanding the MDP acknowledged that approval of the MDP was not required before approval for drilling permits might be granted and recognized that, notwithstanding the district court's decision to vacate BLM's approval of the MDP, Gunnison "might be able to request, and the Agencies might approve, request for permission to dill nevertheless."

Gunnison's Permit Applications

29. On March 16, 2022, Gunnison submitted an APD for the Iron Point Unit 1291 #13-24 H3 well (the "H3 APD") to the CRVFO.

30. On April 26, 2022, Gunnison submitted an APD for the Iron Point Unit 1291 #13-24 H4 well (the "H4 APD") to CRVFO.

31. Both the H3 APD and the H4 APD were complete at the time each APD was submitted 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.

32. 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). BLM did not provide any notice to Gunnison satisfying the requirements of 30 U.S.C. § 226(p)(1)(A)-(B) for either the H3 APD or the H4 APD.

33. Rather than evaluate the H3 and H4 APDs, BLM field personnel communicated to Gunnison that the CRVFO was either unwilling or unauthorized to process any pending APD until BLM completed supplemental environmental analyses for the MDP.

34. On August 5, 2022, Gunnison's counsel sent a letter to BLM seeking additional information concerning BLM's intentions related to the remand of the MDP. Gunnison's letter noted that, although six months had passed since BLM submitted its request to have the MDP remanded to the agency, BLM had not responded to Gunnison's numerous inquiries seeking information about the analytical parameters of the analyses BLM intended to conduct on remand nor offered Gunnison any timeframe for when BLM's supplemental review would be completed.

35. The only aspect of the NEPA analysis that was prepared in association with the MDP that had been challenged in the special interest groups' lawsuit was BLM's consideration of climate change impacts from greenhouse gas emissions. BLM has never identified any other component of its NEPA work that requires supplementation. To the contrary, BLM's contention that the approved MDP could and should have been remanded *without vacatur* while BLM prepared a supplement to the existing analysis of climate change impacts establishes the sufficiency of the unchallenged aspects of BLM's existing NEPA analyses.

36. Gunnison's August 5, 2022 letter emphasized that there was no legitimate explanation for why the limited and discrete supplemental review of climate change impacts that BLM intended to perform was not already complete, let alone a reason for why a completion date could not be estimated.

37. At the time the August 5, 2022 letter was transmitted, BLM had recently completed a supplemental analysis of similar impacts in association with BLM's approval of the master development plan for the nearby Bull Mountain Unit.

38. On October 14, 2021, BLM adopted a nationally applicable plan for enhanced NEPA review – including enhanced review of climate change impacts – in association with APDs submitted on leases where the underlying NEPA work for the lease is subject to remand. By August 5, 2021, BLM had been processing and issuing APDs under that plan for almost a year.

39. Gunnison's August 5, 2022 letter also explained that any delay in processing authorizations for the individual operations Gunnison proposed – including the H3 APD and H4 APD – pending completion of the MDP remand could not be reconciled with the fact that the existence of an MDP is entirely optional in the first instance. Gunnison requested that BLM confirm that BLM would: (i) timely process all APDs and other operational authorizations that Gunnison has submitted or might submit under the timeframes contemplated in the Mineral Leasing Act and other applicable law; and (ii) confirm that BLM will not delay processing of any APD or operational authorization that Gunnison had submitted or might submit pending the completion of any supplemental analysis of the MDP on remand.

40. On August 5, 2022, BLM knew that Gunnison was already incurring expenses in association with the drilling and completion of the wells that Gunnison planned to drill within the MDP area in 2023 and beyond. BLM knew that, during 2022, Gunnison had undertaken significant projects involving wellpad modifications and infrastructure construction that will allow Gunnison to minimize surface disturbance associated with constructing future wells (including the H3 and H4 wells), concentrate development activity into confined locations, and reduce truck and equipment traffic to the wells. BLM knew that, among other efforts, Gunnison had prepared facilities and executed contracts to deliver hydraulic fracturing sand to the wells by rail, reducing anticipated production emissions by many orders of magnitude. Gunnison's August 5, 2022 letter

explained that constructing this infrastructure is only economic if Gunnison can timely drill the remaining wells contemplated under Gunnison's existing leases, unit agreements, and the MDP.

41. On November 11, 2022, Kemba Anderson, Chief of the Branch of Fluid Minerals for BLM's Colorado State Office transmitted a letter to Gunnison noting that BLM was suspending Gunnison's unit obligations under the Iron Point Unit Agreement until "BLM issues a decision to approve, disapprove, or approve as modified the proposed [MDP], after completing supplemental NEPA analysis."

42. On December 15, 2022, Larry Sandoval, the CRVFO's Field Manager, responded to Gunnison's August 5, 2022 letter. Sandoval represented that BLM was currently preparing a supplemental environmental analysis for the MDP that would "likely consider updated information related to emissions of methane and other greenhouse gases." Sandoval stated that the CRVFO was targeting completion of this supplemental analysis "for the first quarter of calendar year 2023."

43. To assist BLM's supplemental review of the MDP, Sandoval sought information concerning any update to Gunnison's development plans that might differ from the plans that were originally studied in association with BLM's original approval of the MDP. Sandoval requested, among other categories: (i) updated greenhouse gas emissions data; (ii) refined decline curves; (iii) updated mitigation strategies Gunnison planned to use to capture methane and other emissions; and (iv) a description of equipment and techniques Gunnison intended to use to comply with air emissions regulations that the State of Colorado had enacted since the MDP was originally approved.

44. Sandoval stated that, to meet the BLM's goal of completing a supplemental review during the first quarter of 2023, BLM needed to receive the supplemental information by December 16, 2023.

45. Sandoval's letter indicated that BLM understood that, in 2022, Gunnison had focused on preparing infrastructure to support future development, including drilling the H3 and H4 wells between May 1, 2023 and October 14, 2023. The letter also stated that BLM "agreed that an approved MDP is not required before the BLM can consider individuals [APDs]." Sandoval advised that BLM was nevertheless "prioritizing the supplemental analysis for the MDP." Without explanation, Sandoval concluded that "o[n]going review of APDs and other notices and requested submitted by Gunnison will comport with the Mineral Leasing Act and other applicable law, including NEPA."

46. On December 19, 2022, Allen Crockett, Supervisory Natural Resource Specialist for the CRVFO advised Gunnison that all the information BLM requested from Gunnison in Sandoval's December 15, 2022 letter had been "received timely" and affirmed that "meeting the Q1 timeline is still our intent." Crockett stated that BLM "anticipate[d] the potential for some communication with [Gunnison's environmental] contractor to clarify certain points, but those requests and responses would be to ensure the completeness and accuracy of the supplemental EA and would not be expected to affect its completion date."

47. BLM retained an outside environmental consultant vendor to complete the supplemental analysis for the MDP. Once the technical information BLM requested from Gunnison was received, the calculations necessary to prepare a supplemental air analysis could be completed in less than one week.

48. Upon information and belief, the technical work to complete BLM's supplemental analysis for the MDP was complete no later than February 1, 2023. On that day, a draft of the supplemental analysis was circulated to BLM staff. CRVFO staff were advised that the supplemental analysis would be released for a thirty-day public comment period on February 14,

2023, with the intention of issuing a final decision on the MDP by the end of the first quarter of 2023.

49. On the same day, February 1, 2023, the United States Court of Appeals for the Tenth Circuit issued its decision in *Diné Citizens Against Ruining Our Environment v. Haaland*, 59 F.4th 1016 (10th Cir. 2023). The Tenth Circuit held that the environmental review that BLM prepared in association with a series of APDs in the San Juan Basin of New Mexico was arbitrary and capricious because the review failed to take a hard look at the environmental impacts from greenhouse gas emissions and hazardous air pollutant emissions. More specifically, the Tenth Circuit held that BLM acted arbitrarily and capriciously when BLM's analysis of cumulative impacts from greenhouse gases relied solely on percentage comparisons where at least one other arguably more precise method – the carbon budget method – was available and BLM did not explain why the carbon budget method would not contribute to more informed decisionmaking.

50. On February 14, 2023, the CRVFO advised Gunnison's environmental consultant by telephone that the public comment period for the supplemental environmental assessment being prepared for the MDP would be delayed while BLM evaluated whether the supplemental analysis that had been prepared for the MDP complied with the Tenth Circuit's holding in *Diné Citizens*. The supplemental analysis that BLM had prepared for the MDP already incorporated the use of a carbon budgeting tool.

51. The CRVFO indicated that this legal analysis would take less than one week. The CRVFO further assured Gunnison that the only change to work that had been completed that would postpone release of the supplemental analysis to the public for longer than two weeks would be if, after the legal analysis, BLM determined it need to re-calculate impacts using a different baseline figure derived BLM's Colorado Air Resource Management Modeling Study; even in that

circumstance, the CRVFO would still be able to release the supplemental analysis for public comment within six weeks.

52. On March 7, 2023, Sandoval sent two letters to Gunnison, each purporting to be a "Notice of Deferral letter pursuant to Onshore Oil and Gas Order, Number 1, Section III.E.2.c." Sandoval's letters acknowledged that the H3 APD and H4 APD were complete but stated that "BLM cannot proceed with the potential approval of the H3 and H4 APDs until resolution of a Court-ordered remand of the [MDP]." Sandoval advised that the "H3 and H4 APDs will remain deferred until the remand is resolved (estimated up to 6 months) and completion of any additional NEPA."

53. 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 Sandoval confirmed the H3 APD and the H4 APD were complete, the deadline for BLM to act under this statutory provision for the H3 APD and H4 APD was April 6, 2023. BLM did not issue the permits for these three wells by April 6, 2023.

54. If the provisions of NEPA and other applicable law are not satisfied within thirty days of BLM receiving a completed APD, the Mineral Leasing Act states that 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). If BLM defers a decision on an applicant's APD, BLM's notice under 30 U.S.C. § 226(p)(2)(B)(i)-(ii) must provide a reason for the deferral that is not arbitrary or capricious and that is supported by substantial evidence. Based on the date that Sandoval confirmed the H3 APD

ad H4 APD were complete, the deadline for BLM to provide notice under this statutory provision for the H3 APD and H4 APD was April 6, 2023. BLM has never provided Gunnison with any notice that complies with the requirements of 30 U.S.C. § 226(p)(2)(B)(i)-(ii).

55. On March 21, 2023, Crockett sent an e-mail to Gunnison confirming that the H3 and H4 APDs were complete but advising that decisions on those APDs were being deferred until September 3, 2023. The next day, March 22, 2023, Crockett sent another e-mail stating that BLM was deferring a decision on these APDs "because [the CRVFO] do[es] not have guidance on when the supplemental EA [for the MDP] will be released for public review," offering that the CRVFO "must await that guidance, at which time we will make any needed revisions to the document and prepare it for release as a preliminary EA."

56. On March 27, 2023, Gunnison's counsel sent a letter to Sandoval and Greg Larson, District Manager for BLM's Upper Colorado District Office, requesting expressly that BLM process the H3 APD and H4 APD immediately. The March 27, 2023 letter explained that, because BLM may not lawfully delay APD approvals to perform supplemental analysis that is not required for permit processing, deferring APD processing pending the completion of the remand on the MDP is arbitrary and capricious.

57. Gunnison's March 27, 2023 letter advised that Gunnison was already incurring expenses in association with the drilling and completion of the H3 and H4 wells. Gunnison estimated that, if Gunnison is forced to abandon its 2023 operations, the cost of lost production, demobilizing Gunnison's operations, re-locating Gunnison's personnel and equipment to alternative locations, and then re-initiating operations in 2024 (or beyond) could exceed $43 million.

58. On April 11, 2023, BLM suspended each of the leases committed to the federal units within the MDP until "BLM issues a decision to approve, disapprove, or approve as modified the proposed [MDP] after completing supplemental NEPA analysis." Gunnison did not request this suspension.

59. On April 20, 2023, Sandoval responded to Gunnison's March 27, 2023 letter. Sandoval stated that preparation of the supplemental analysis "has required additional time," representing that BLM was "working diligently to complete the final review of the [supplemental EA] document and will post it for public comment as soon as possible."

60. Sandoval again recognized that "approval of the MDP is not required for BLM to process individual well permits." Sandoval offered that, "[i]n recognition of Gunnison's concerns about its operational objectives for the Iron Point Unit and other federal leases, BLM has granted appropriate lease and unit suspensions while the additional NEPA analysis is being completed." Sandoval repeated in the April 20, 2023 letter, again without explanation, that "[o]ngoing review of APDs and other notices and requests submitted by Gunnison will comport with the Mineral Leasing Act and other applicable law, including NEPA."

61. After receiving the April 20, 2023 letter, Gunnison contacted various officials within BLM's Colorado State Office to discuss BLM's refusal to process the H3 APD and H4 APD. Those officials referred Gunnison to Danielle Dimauro of the Department of the Interior's Office of the Solicitor. It is Gunnison's understanding that Dimauro was the Interior Department attorney responsible for overseeing legal issues related to the MDP.

62. On April 23, 2023, Gunnison's counsel contacted Dimauro by e-mail. Gunnison's counsel advised Dimauro that because of the harm BLM's delay was causing Gunnison, Gunnison intended to seek immediate judicial intervention. Gunnison's counsel also explained, however,

that because it remained Gunnison's preference to work collaboratively with BLM, Gunnison was also requesting a final meeting with responsible BLM officials to see if there was any way to avoid having to initiate litigation. Gunnison's counsel informed Dimauro that Gunnison's leadership were prepared to assemble for a Zoom meeting as early as the following day.

63. The next day, Monday, April 24, 2023, Dimauro advised Gunnison's counsel that Nada Culver, BLM's Deputy Director, Policy & Programs, would contact Gunnison for a conversation during that week.

64. On May 1, 2023, Culver conducted a telephone conference with Salar Nabavian, Gunnison's President, Tyson Johnston, Gunnison's Vice President, and Gunnison's counsel concerning the deferred APDs. During the conference, Gunnison stated expressly that Gunnison remains committed to assisting BLM complete the MDP. But Gunnison also re-emphasized its position that the H3 APD and H4 APD must be detached from the MDP and processed immediately.

65. At the conclusion of the May 1 conference, Culver represented that a Draft Supplemental Environment Assessment for the MDP (the "Draft SEA") would soon be released for public comment and asked Gunnison to refrain from taking any legal action to enforce BLM's permitting obligations before the Draft EA was issued. Culver also acknowledged Gunnison's request that the H3 APD and H4 APD be processed immediately, separate from the MDP. Culver told Gunnison's representatives that she would speak to officials at the Colorado State Office to facilitate that request.

66. On May 10, 2023, BLM released the Draft SEA. The Draft SEA recommends approval of the MDP. The Draft SEA was made subject to a thirty-day public comment period, expiring on June 10, 2023.

67. The Draft SEA recognizes that, after the issuance of the 2019 EA, the State of Colorado implemented enhanced air quality regulations that apply to all oil and gas development within the state. Colorado's operational regulations meet or exceed all the Environmental Protection Agency's air quality standards and satisfy the objectives of each of BLM's regulations and policies. At the time the 2019 EA was finalized, Colorado's new standards had been proposed and the standards' implementation was anticipated. But because those standards were not in effect, the 2019 EA did not presume that Gunnison would employ in its operations *every* category of equipment and operational technique necessary to comply with the standards. And to the extent that Gunnison did anticipate utilizing enhanced operational strategies, Gunnison was doing so as a best practice, not as a regulatory requirement. Now that Colorado's enhanced air quality standards have the force of law, BLM's Draft SEA properly assumes that Gunnison will meet all applicable emissions limitations.

68. Gunnison's existing operations already meet all Colorado's air quality standards. To date, Gunnison has been reporting its annual air emissions to the 95-98% attainment standards using Colorado-required emissions calculations based on pressurized tank tests designed to test the hydrocarbon content in produced water. Because Gunnison's production does not contain any oil or natural gas liquids in the production stream or produced water tanks, beginning in Spring 2023, Gunnison will begin conducting pressurized tank testing that will target the actual production stream content of Gunnison's wells. This more well-specific testing method is likely to produce emissions figures substantially lower than those reported previously to Colorado regulators and which BLM relied upon in preparing the Draft SEA.

69. The 2019 EA considered emissions from development under the MDP significantly higher than those the Draft SEA reasonably anticipates and still determined that those emissions

were unlikely to have significant impacts on air resources or climate change. It also reasonable to assume that, as time progresses, additional regulatory measures and technological improvements will further reduce emissions from future operations.

70. On June 10, 2023, Gunnison submitted technical comments supporting BLM's analyses in the Draft SEA. Gunnison has refrained from taking any public or private action – legal or otherwise – that could disrupt or delay final approval of the MDP.

71. BLM has not taken any action on the H3 APD or H4 APD since the May 1, 2023 conference between Culver and Gunnison. To the contrary, as recently as July 17, 2023, BLM personnel advised Gunnison officials that BLM does not intend to process Gunnison's APDs until the MDP is finalized. BLM's approach is inconsistent with both applicable law and Culver's personal representations to Gunnison during and after the May 1, 2023 conference

72. BLM has not provided Gunnison any information about when BLM expects to complete work on the MDP or issue a decision on Gunnison's APDs.

Impact on Development

73. BLM's illegal administration of its APD processing has injured and will continue to injure Gunnison. Gunnison's 2023 drilling program was expected to consist of at least two wells drilled. Initial work to prepare the well sites was scheduled to begin no later than May 2023 with drilling conducted through the summer of 2023. Work on the H3 and H4 wells would have continued through October 2023. BLM's failure to process the H3 APD and H4 APD will cause Gunnison to lose the current present value associated with the wells. Revenue from the H3 and H4 wells is conservatively estimated at $16 million in the first year of production alone.

74. Gunnison'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 Gunnison's APDs; (ii) Gunnison's knowledge that virtually all of the work necessary to complete environmental review for the APDs had already been conducted as part of the 2019 EA; (iii) the Colorado federal district court's recognition that, notwithstanding vacatur of the MDP, Gunnison might still submit and BLM might still approve individual APDs; (iv) BLM's repeated acknowledgement – made both in verbal conversations and in writing to Gunnison – that approval of the MDP is not a prerequisite for the approval of APDs; (v) BLM's October 2021 issuance of, and regular reliance on, an instruction memorandum adopting a nationally applicable plan for enhanced NEPA review – including enhanced review of climate change impacts – in association with APDs submitted on leases where the underlying NEPA work for the lease is subject to remand; (vi) BLM's regular practice of approving APDs on federal leases not covered by an MDP; (vii) Gunnison's knowledge that supplemental analysis for the MDP was complete no later than February 1, 2023; (viii) BLM's representations that the supplemental analysis of the MDP would be finalized by the first quarter of 2023; and (ix) BLM's awareness of the drilling obligations Gunnison must satisfy to maintain the Iron Point Unit.

75. BLM has denied Gunnison's procedural right to have APDs that Gunnison submits processed in accordance with the mandatory procedures, and within the obligatory deadlines, that the Mineral Leasing Act establishes.

76. Gunnison will also lose existing contractual options to transport hydraulic fracturing sand by rail, eliminating the significant environmental benefits that arrangement would have afforded Gunnison's operations. Transport by rail significantly reduces the greenhouse gas emissions associated with Gunnison's operations, eliminates the surface impacts to both roads and natural areas that would otherwise result from thousands of additional truck trips, and improves roadway safety and convenience for local community members.

77. Gunnison's inability to guaranty and meet commitments to service providers and vendors has compromised Gunnison's ability to optimize relationships with those third parties, increasing the costs Gunnison pays for services and supplies and limiting the pool of preferred service providers and vendors that are willing to work with Gunnison. If Gunnison is unable to meet existing contractual commitments to services providers and vendors within the timelines Gunnison's existing contracts contemplate, Gunnison may not be able to secure all the equipment and services necessary to execute each of the environmental mitigation measures the MDP contemplates.

78. Gunnison has invested more than $100 million in gathering, compression, and treatment facilities intended to serve the wells contemplated in the MDP area. Those facilities have fixed operating costs. BLM's continued deferral of Gunnison's permits denies Gunnison the ability to bring additional production volumes into the facilities, artificially (and exponentially) increasing Gunnison's operating expenses on a per energy unit basis. Running these facilities below capacity negates Gunnison's objectives to be a low-cost producer and keeps Gunnison from achieving an internal rate of return on Gunnison's investment in these facilities.

79. Over the better part of a decade, innumerable Gunnison employees, contractors, and vendors spent significant time on the MDP project area that could have been redirected to identify and develop opportunities in other basins.

80. Given the volatile commodity markets, unnecessary and illegal delay in processing APDs injures Gunnison's economic interest. The delay in processing the permits obviously delays Gunnison's ability to obtain revenue from production, but also restricts Gunnison's ability to market its project to third parties that might have been interested in funding development or acquiring Gunnison's assets. The market for oil and gas production is extraordinarily dynamic;

diverse factors like the COVID-19 pandemic, geopolitical developments, and technological innovation all influence the availability and 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, threaten Gunnison's ability to satisfy contractual commitments, and jeopardizes the entire field economics in a manner that will compel Gunnison 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)

81. Gunnison reasserts and incorporates by reference the preceding paragraphs 1 to 80.

82. 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).

83. In March and April 2022, Gunnison submitted the H3 APD and H4 APD. BLM did not provide Gunnison with the timely notice that 30 U.S.C. § 226(p)(1) requires on either APD.

84. On March 7, 2023, BLM provided Gunnison with written notice that the H3 APD and H4 APD were complete. BLM's March 7, 2023 notice represented that "BLM cannot proceed with the potential approval of the H3 and H4 APDs until resolution of a Court-ordered remand of the [MDP]" and advised that the "H3 and H4 APDs will remain deferred until the remand is resolved (estimated up to 6 months) and completion of any additional NEPA."

85. 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)(2)(A)-(B).

86. If BLM defers a decision on an applicant's APD, BLM's notice under 30 U.S.C. § 226(p)(2)(B)(i)-(ii) must provide a reason for the deferral that is not arbitrary or capricious and that is supported by substantial evidence. BLM's subjective preference that work on the MDP be completed before BLM processes the H3 APD or H4 APD is an arbitrary and capricious reason for delaying processing of those permit applications.

87. BLM has completed all the NEPA necessary to process the H3 APD and H4 APD. BLM has not identified any analysis – including analysis bearing on the cumulative impacts from greenhouse gas emissions – that would still need to be conducted before BLM could issue a decision on the H3 APD or H4 APD. 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 April 20, 2023.

88. BLM has never provided Gunnison 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. BLM has never offered Gunnison a reason to defer processing the H3 APD or H4 APD that is not arbitrary and capricious and that is supported by substantial evidence.

89. BLM refusal to process the H3 APD or the H4 APD violates BLM's non-discretionary, mandatory obligations under 30 U.S.C. § 226(p).

COUNT II

BLM'S ACTION IS ARBITRARY AND CAPRICIOUS (5 U.S.C. § 706)

90. Gunnison reasserts and incorporate by reference the preceding paragraphs 1 to 89.

91. 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)(2)(A)-(B).

92. The H3 APD and H4 APD were complete no later than March 7, 2023.

93. BLM has completed all the NEPA review necessary to process the H3 APD and H4 APD. BLM has not identified any analysis – including analysis bearing on the cumulative impacts from greenhouse gas emissions – that would still need to be conducted before BLM could issue a decision on the H3 APD or H4 APD. 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 April 6, 2023.

94. The only reason that BLM has ever provided for BLM's refusal to process is the H3 APD or the H4 APD is BLM's subjective desire to issue a supplemental environmental analysis for the MDP before processing the APDs.

95. The existence of an MDP is entirely optional. There is no legal requirement that the MDP be approved before operations can commence.

96. BLM has admitted to Gunnison – both in writing and in verbal communications – that approval of the MDP is not a legal prerequisite for the approval of the H3 APD or the H4 APD.

97. Because BLM may not lawfully delay APD approvals to perform supplemental analysis that is not required for permit processing, deferring processing of the H3 APD or H4 APD pending the completion of the remand on the MDP is arbitrary and capricious.

COUNT III

AGENCY ACTION UNLAWFULLY WITHHELD

(5 U.S.C. § 706)

98. Gunnison reasserts and incorporates by reference the preceding paragraphs 1 to 97.

99. The Administrative Procedure Act empowers federal district courts to compel agency action unlawfully withheld or unreasonably delayed.

100. 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)(2)(A)-(B).

101. If BLM defers a decision on an applicant's APD, BLM's notice under 30 U.S.C. § 226(p)(2)(B)(i)-(ii) must provide a reason for the deferral that is not arbitrary or capricious and that is supported by substantial evidence. BLM's subjective preference that work on the MDP be completed before BLM processes the H3 APD or H4 APD is an arbitrary and capricious reason for delaying processing of those permit applications.

102. The H3 APD and H4 APD were complete no later than March 7, 2023.

103. BLM has completed all the work necessary to satisfy the requirements that NEPA and other applicable law impose before the H3 APD and H4 APD may be issued.

104. BLM has acknowledged that approval of the MDP is not a legal requirement for the approval of the H3 APD or H4 APD.

105. BLM does not have discretion to defer processing an APD when all steps required for evaluation of that permit application have been completed.

106. BLM has not issued the H3 APD or H4 APD.

107. BLM has never provided Gunnison 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. BLM has never offered Gunnison a reason to defer processing the H3 APD or H4 APD that is not arbitrary and capricious and that is supported by substantial evidence.

108. BLM's continued refusal to process the H3 APD or H4 APD is inconsistent with the Secretary's non-discretionary obligation to process APDs within the timeframes provided under the Mineral Leasing Act.

PRAYER FOR RELIEF

Gunnison requests respectfully that the Court grant the following relief:

1. Direct BLM to immediately issue the H3 APD and H4 APD 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 Gunnison may be entitled.

Submitted respectfully this 19th day of July, 2023,

By: */s/ Mark S. Barron*

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Counsel for Gunnison Energy LLC

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 19th day of July, 2022, a true and correct copy of the foregoing Gunnison Energy LLC's First Amended Complaint was served by filing a copy of that document with the Court's CM/ECF system, which will send notice of electric filing to counsel of record, as follows:

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/s/ Mark S. Barron
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