IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

WILDEARTH GUARDIANS,

Plaintiff,

v.

U.S. BUREAU OF LAND MANAGEMENT,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Ozone is a poisonous gas. Researchers have linked ozone to asthma, lung disease, other respiratory ailments, and heart attacks. The most recent scientific evidence suggests that excessive ozone exposure contributes to premature death. Ozone is the main ingredient in smog.

2. The legally allowable limit of ozone concentrations in the air is set by the United States Environmental Protection Agency ("EPA") pursuant to the federal Clean Air Act ("CAA"). The limit prescribes the maximum allowable amount of ozone that can be in the air over an 8-hour period without risking public health.

3. In 2008, EPA promulgated a stricter 8-hour limit for ozone concentrations that superseded the previous limit promulgated in 1997. The EPA tightened the 8-hour ozone limit because significant new scientific research demonstrated that serious respiratory and cardiovascular effects occur when humans are exposed to ozone concentrations below the 1997 limit.

4. Prior to EPA's promulgation of the new 2008 ozone standard, part of Weld County, Colorado, was included in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area (the "Area") because the Area violated the 1997 ozone standard in 2005 and again in 2007. The Area remains in nonattainment with the 1997 ozone standard.

5. In part, the elevated levels of ozone in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area are attributable to the significant amount of oil and gas development occurring in the Area, particularly in and around Weld County. Oil and gas development activities, including wellhead compressors, condensate tanks, and other pollutant emitting activities release high levels of the pollutants that contribute to the formation of ozone. Defendant, the Bureau of Land Management ("BLM"), has authorized much of this oil and gas activity through the issuance of Federal oil and gas leases.

6. Despite part of Weld County falling within a nonattainment area for ozone, BLM recently authorized additional oil and gas activity in and adjacent to the County in areas within and immediately adjacent to the nonattainment area. This new activity will contribute to ozone levels in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area, and will contribute to violations of the new, stricter 2008 ozone standard.

7. Accordingly, to protect air quality and public health, Plaintiff WildEarth Guardians ("Guardians") brings the present action alleging that BLM's authorization of increased oil and gas development in and adjacent to Weld County violates the Clean Air Act, 42 U.S.C. § 7401, et seq. ("CAA") and the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. ("NEPA"), within the meaning of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, ("APA").

JURISDICTION, VENUE, AND NOTICE

8. This Court has subject matter jurisdiction over the claims in this Complaint pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Additionally, this Court has subject matter jurisdiction over Guardians' CAA claim pursuant to the citizen suit provision of the CAA, because BLM has violated an emission standard or limitation. 42 U.S.C. § 7604(a)(1) (citizen suit provision of the CAA). The requested relief is authorized by statute. 28 U.S.C. § 2201 (declaratory judgment); 28 U.S.C. § 2202 (injunctive relief); 42 U.S.C. § 7604(a) (power to enforce and apply civil penalties); and 42 U.S.C. § 7604(d) (costs and attorney fees). Additionally, this Court has subject matter jurisdiction over Guardians' NEPA claims pursuant to the APA. 5 U.S.C. §§ 701-706. Finally, as to Guardians' NEPA claims this Court has jurisdiction over Guardians request for costs and attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"). 42 U.S.C. § 2412(d).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) and 42 U.S.C. § 7604(c)(1). A substantial part of the events and omissions giving rise to Guardians' claims occurred in the District of Colorado. All 12 of the oil and gas leases challenged herein are located in Colorado. The Colorado State Office of the BLM, located in Lakewood, was responsible for selling and issuing these 12 leases. Additionally, Guardians maintains a major office in Denver.

10. Guardians properly gave the BLM more than 60-days written notice of the CAA violation alleged in this Complaint and of Guardians' intent to bring suit to remedy that violation. See 42 U.S.C. § 7604(b)(1) and 40 C.F.R. §§ 54.2 and 54.3(b). On April 30, 2010, Guardians provided BLM with written notice of the CAA claim alleged in this Complaint and of its intent to sue. More than 60 days have passed since BLM received Guardians' notice letter.

BLM has not remedied the CAA violation alleged in Guardians' notice letter and this Complaint by making the required conformity determination.

PARTIES

11. Plaintiff WILDEARTH GUARDIANS ("Guardians") is a non-profit conservation organization with a major office in Denver, Colorado. Guardians is dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West, and to safeguarding the Earth's climate and air quality. WildEarth Guardians and its members work to reduce harmful air pollution in order to safeguard public health, welfare, and the environment. Guardians has approximately 4,500 members, many of whom live, work, and/or recreate in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area and elsewhere in Weld County, Colorado.

12. Guardians is a "person" within the meaning of 42 U.S.C. § 7602(e). As such, Guardians may commence a civil action under 42 U.S.C. § 7604(a).

13. Guardians' members who live, work, recreate, and conduct other activities in the North Front Range nonattainment area and elsewhere in and near Weld County, Colorado are affected by poor air quality associated with existing oil and gas leasing in the nonattainment area, and have a substantial interest in ensuring they breath the cleanest air possible. Guardians and its members use and enjoy the areas in the North Front Range nonattainment area and elsewhere in and near Weld County for work, residential, recreational, scientific, aesthetic, conservation and other purposes, and will continue to do so. Guardians and its members are harmed by the local aesthetic and environmental impacts of smog, ozone pollution, and oil and gas development in the North Front Range nonattainment area and elsewhere in and near Weld County, Colorado. Guardians and its members also have a substantial interest in ensuring that

BLM complies with federal law, including the requirements of the CAA and NEPA. Guardians' and its respective members' interests have been, are being, and will continue to be irreparably harmed by BLM's authorization and issuance of oil and gas leases in the North Front Range nonattainment area and elsewhere in and near Weld County, Colorado that will further degrade air quality.

14. Defendant BUREAU OF LAND MANAGEMENT ("BLM") is a federal agency within the Department of Interior. BLM is directly responsible for carrying out the Department's obligations under statutes and regulations governing oil and gas leasing and development, including the CAA and NEPA.

LEGAL FRAMEWORK

I. Applicable Clean Air Act Requirements.

15. The Clean Air Act ("CAA") aims "to protect and enhance the quality of the Nation's air resources . . . ." 42 U.S.C. § 7401(b)(1). To help meet this goal, the CAA prohibits any federal agency from authorizing activities that do not conform to the appropriate State Implementation Plan ("SIP"). See 42 U.S.C. § 7506(c)(1). A SIP is a federally approved set of state regulations that are designed to prevent air quality deterioration and to restore clean air in areas that are out of attainment with federal standards.

16. Conformity to a SIP is defined in the CAA, 42 U.S.C. § 7506(c)(1)(A-B) as

> (A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and
>
> (B) that such activities will not—
>
> > (i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

17. In 1993 EPA promulgated the General Conformity Rule which established criteria and procedures governing conformity determinations for all Federal actions. See 58 Fed. Reg. 63,247 (Nov. 23, 1993), 40 C.F.R. § 51.850 et seq. These rules were incorporated by reference into Colorado's SIP in 1999. See 64 Fed. Reg. 63,206 (Nov. 19, 1999).

18. On April 5, 2010, EPA revised the general conformity regulations. See 75 Fed. Reg. 17,254-79 (April 5, 2010). The newly promulgated 40 C.F.R. part 93, subpart B (§§ 93.150-93.160), "essentially duplicates" the old 40 C.F.R. part 51, subpart W (§§ 51.850-51.860) conformity regulations, deleting all of subpart W except for § 51.851 which was revised. Id. at 17,256. 40 C.F.R. § 51.851(g) provides that "[a]ny previously applicable SIP or TIP requirements relating to conformity remain enforceable until EPA approves the revision to the SIP or TIP to specifically remove them."

19. For federal actions not related to transportation plans, "a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a Federal action would equal or exceed. . . 100 [tons/year.]" 40 C.F.R. § 51.853(b)(1); see also 40 C.F.R. § 95.153(b)(1).

20. "Direct emissions" are defined as "those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action." 40 CFR § 51.852; see also 40 C.F.R. § 95.152. "Indirect emissions" are defined

as "those emissions of a criteria pollutant or its precursors that [a]re caused by the Federal action, but may occur later in time and/or [distance and are reasonably foreseeable,] and [which] the Federal agency can practically control and will maintain control over due to a continuing program responsibility of the Federal agency." Id.

21. Federal agencies must make a determination that a federal action conforms to the applicable SIP before undertaking the action. See 40 C.F.R. § 51.850(b); see also 40 C.F.R. § 93.150(b).

22. To demonstrate conformity with a SIP, the agency must follow the procedures at 40 C.F.R. §§ 51.858, 51.859, 93.158 and 93.159. See 40 C.F.R. §§ 51.850(b) and 93.150(b).

23. Failure by any person, including an agency of the United States, to comply with an emission standard or limitation, such as the conformity requirements incorporated into Colorado's SIP, can result in enforcement actions and the application of civil penalties. See 42 U.S.C. § 7604(a).

II. Applicable NEPA Requirements.

24. NEPA was enacted to ensure that federal projects do not proceed until the environmental effects associated with those projects are completely assessed and analyzed by the proponent federal agency. See 42 U.S.C. § 4332(2)(C).

25. NEPA requires the preparation of an environmental impact statement ("EIS") if a proposed federal action has the potential to "significantly affect" the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4.

26. When a federal agency is not certain whether an EIS is required, it must prepare an environmental assessment ("EA"). If the EA concludes that the proposed action will not have significant impacts on the environment, the agency may issue a Finding of No Significant Impact

("FONSI") and proceed with the proposed action. If, on the other hand, the agency concludes that there is the possibility that its action may directly or indirectly cause a significant impact, then it must prepare an EIS. See 40 C.F.R. §§ 1501.3, 1501.4, and 1508.9.

27. All NEPA analyses—EISs and EAs—must, inter alia, analyze alternatives to the proposed action as well as the direct, indirect, and cumulative impacts associated with the proposed action. See 42 U.S.C. § 4332(2), 40 C.F.R. § 1508.9. The discussion of "alternatives to the proposed action" is the heart of the NEPA process. 42 U.S.C. § 4332(C)(iii) & (E) and 40 C.F.R. § 1502.14. This discussion is intended to provide "a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14. Federal agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives . . . ." Id. This includes consideration of a "no action" alternative. 40 C.F.R. § 1502.14(d).

FACTUAL ALLEGATIONS

I. Ozone Levels and Impacts.

28. Ground-level ozone is a dangerous pollutant which causes a variety of significant adverse impacts to human health. According to the U.S. Environmental Protection Agency ("EPA"), elevated levels of ozone have a "causal relationship[] with a range of respiratory morbidity effects, including lung function decrements, increased respiratory symptoms, airway inflammation, increased airway responsiveness, and respiratory-related hospitalizations and emergency department visits . . . ." 73 Fed. Reg. 16,436, 16,443-46 (March 27, 2008). Furthermore, the EPA has stated that the latest scientific evidence on ozone effects is "highly suggestive that [ozone] directly or indirectly contributes to non-accidental and cardiorespiratory-related mortality," including "premature mortality." Id. at 16,443-44. The EPA has concluded that individuals with asthma are at particular risk from the adverse effects of ozone. Id.

29. Ozone forms when sunlight reacts with two key air pollutants—volatile organic compounds ("VOCs") and nitrogen oxides ("NOx"), referred to as ozone precursors.

30. Ozone is a criteria pollutant under the federal Clean Air Act, 42 U.S.C. § 7408 ("CAA"). The CAA establishes a National Ambient Air Quality Standard ("NAAQS") for each criteria pollutant that represents the maximum allowable concentration of each pollutant that can occur in the air and still protect public health. See 42 U.S.C. § 7409.

31. Until recently, the effective NAAQS for ozone was 0.084 parts per million ("ppm") over an 8-hour period.[1] This standard is referred to as the 1997 ozone standard.

32. On March 27, 2008, EPA published a final rule for a new ozone NAAQS that significantly lowered the 8-hour standard to 0.075 ppm. See 73 Fed. Reg. 16,436 (March 27, 2008). This new ozone standard became effective on May 27, 2008, superseding the prior 1997 ozone NAAQS as of that time. The new standard is referred to as the 2008 ozone standard.

33. EPA's decision to lower the ozone standard was based on numerous human health studies conducted over the past decade documenting the adverse effects of ozone on public health. After examining the data from these studies, EPA concluded that "the current [1997 ozone] standard is not requisite to protect public health with an adequate margin of safety because it does not provide sufficient protection and that revision of the current [ozone] standard is needed to provide increased public health protection." 73 Fed. Reg. 16,436, 16,471 (March 27, 2008).

[1] The actual NAAQS for ozone was 0.08 ppm. Because older air quality monitors were only able to measure ozone concentrations to two decimal places, the EPA employed a "rounding convention" in which it rounded values below 0.085 ppm down to 0.08, so that the ozone NAAQS was effectively 0.084 ppm. The "rounding convention" is not used in the implementation of the new 0.075 ppm ozone standard.

34. Ozone concentrations are measured on an hourly basis. 40 C.F.R. § 50.15. An exceedance of the ozone standard occurs if the average of eight consecutive hourly readings exceeds 0.075 ppm, which is the new 2008 NAAQS for ozone. Id. A CAA violation occurs when the 3-year average of the annual fourth highest 8-hour ozone concentrations exceeds 0.075 ppm. Id.

35. When the 3-year average for any given region falls below the ozone NAAQS, the region is considered to be in attainment with the NAAQS. See 42 U.S.C. § 7407(d)(1)(A)(ii). Conversely, when the 3-year average is above the ozone NAAQS, the region is considered a nonattainment area for ozone. See 42 U.S.C. § 7407(d)(1)(A)(i).

II. BLM's Oil and Gas Leasing and Development Process.

36. BLM manages onshore oil and gas development through a three-phase process.

37. In the first stage, BLM prepares a Resource Management Plan ("RMP") in accordance with 43 C.F.R. Part 1600. The RMP broadly assesses the entire BLM resource area to determine, with respect to oil and gas development, which lands should be open to leasing, which lands must or should be closed to leasing, and which lands are open to leasing subject to certain constraints such as timing restrictions. BLM does not identify specific leaseholds for sale at the RMP stage.

38. In the second stage, BLM identifies the boundaries for lands to be offered for sale and proceeds to sell those leases through a lease sale. The leases offered for sale are nominated by oil and gas companies through the submission of an "Expression of Interest." 43 C.F.R. § 3120.3-1. BLM proceeds by preparing a list of oil and gas lease parcels to be offered for actual sale. BLM solicits bids on a specific sale day and, based on those bids, BLM awards and issues leases for the identified sale parcels. At this stage, BLM retains discretion to include or exclude

specific lands from the lease sale, even when those lands are identified as "open" for leasing pursuant to the RMP.

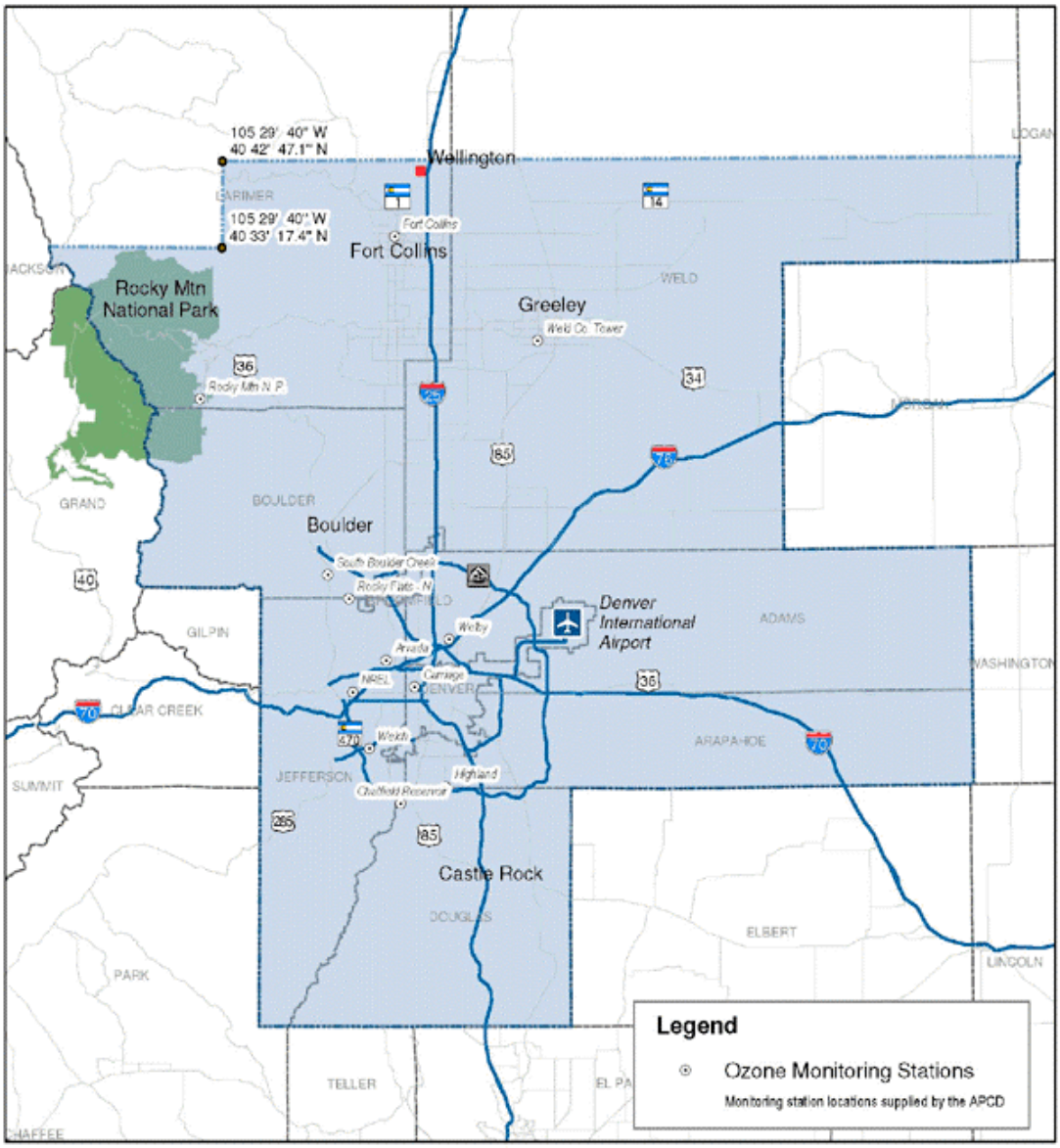
39. Once a lease is issued, the lessee, in the third stage of the oil and gas development process, must submit an application for permit to drill ("APD") to BLM prior to drilling. Prior to submitting an APD, BLM requires the lessee or the lessee's operator to obtain all necessary right-of-way permits. In addition, the lessee or lessee's operator must include details in the APD about access to, and development of, proposed well sites.

40. This case concerns the second stage of BLM's leasing process, and the implications of decisions made at this stage on the subsequent APD stage. Specifically, this case involves the consequences of issuing a binding mineral lease before making a CAA conformity determination and completing a site-specific assessment of environmental impacts from lease development, and the agency's consequent inability to prohibit energy development within that parcel regardless of the air quality and other environmental impacts.

III. The Denver Metro/North Front Range Ozone Nonattainment Area, Colorado SIP Requirements, and Ozone Precursor Emissions from Oil and Gas Activity.

41. The Denver Metro/North Front Range 8-hour Ozone Nonattainment Area was designated in November 2007 after the region violated the 1997 ozone NAAQS. See 40 C.F.R. § 81.306. The Denver Metro/North Front Range 8-hour Ozone Nonattainment Area includes much of the Denver metropolitan region, including most of Weld County. According to State and federal regulations, all of Weld County south of 40 degrees, 42 minutes, 47.1 seconds north latitude, which generally includes all of Weld County south of the town of Nunn, is within the designated nonattainment area. See id., 5 CCR 1001-14 § III.M, and figure[2] below.

[2] Denver Metropolitan/North Front Range 8-hour ozone NAAQS nonattainment area (http://www.cdphe.state.co.us/ap/images/ozoneareamap.gif (last visited Oct. 20, 2010)).



Denver-Boulder-Greeley-Fort Collins, Colorado
Eight-Hour Ozone Control Area

DRCOG
Denver Regional Council of Governments
Metro Vision Resource Center

June 2004

42. In November 1999, EPA approved a revision to the Colorado SIP that incorporated by reference the general conformity rule. 64 Fed. Reg. 63,206 (Nov. 19, 1999).

This action made the conformity requirement part of the Colorado Air Quality Control Commission regulations. See 5 CCR 1001-12, Part A.

43. Therefore, Colorado's SIP embodies the regulatory structure that prohibits a federal agency from undertaking any activity in a nonattainment area that does not conform to an applicable SIP. See 5 CCR 1001-12, Part A, 40 C.F.R. § 51.850(a), and 40 C.F.R. § 93.150(a).

44. The development of oil and gas has been identified as a significant source of VOC and NOx emissions in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area. Recent inventories show that stationary sources of air pollution related to oil and gas development operations in Weld County alone release 41 percent of all VOC emissions and 10 percent of all NOx emissions in the nonattainment area. The most recent inventories also show that in Weld County, where the lease parcels challenged herein are located, stationary oil and gas emissions amount to 12,311 tons of NOx and 64,111 tons of VOCs annually.

45. Most recently, the State of Colorado released present and projected NOx and VOC emissions from oil and gas operations. Based on these actual and projected emission levels for ozone precursors, the State determined that by 2020, oil and gas operations would comprise nearly 20 percent of all NOx emissions and 43 percent of all VOC emissions in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area.

IV. Emissions Estimates for Ozone Precursors from Wells on the Challenged Leases.

46. Emissions estimates indicate that oil and gas wells in and adjacent to Weld County release as much as 350 tons of VOCs per billion cubic feet ("Bcf") of natural gas produced per well (see www.epa.gov/ttnchie1/conference/ei19/session8/barilan.pdf at 20). These emissions come from a variety of sources associated with the drilling, completion, and production of oil and gas wells.

47. In 2009, natural gas production in Weld County averaged 0.011286 Bcf /well (based on Colorado Oil and Gas Conservation Commission data query, see http://cogcc.state.co.us/COGIS/LiveQuery.html).

48. The total acreage of the leases challenged herein is 3,680.48.

49. In and adjacent to Weld County, well spacing is generally established at 40 acres. At a 40 acre spacing, the leases challenged herein could support upwards of 92 wells.

50. 92 wells could produce 1.04 Bcf of natural gas based on 2009 averages. 1.04 Bcf of natural gas production would lead to the release of around 363 tons of VOCs/year.

51. Even at a lower VOC emission estimate, such as 250 tons/Bcf/well, total emissions could be as high as 260 tons/year.

52. If the number of wells is only half of the estimated maximum, or 46 wells, the total VOC emissions could be as high as 182 tons/year or as low as 130 tons/year.

53. If the average production estimate was halved to 0.0056 Bcf/well, the total VOC emissions would still exceed 100 tons/year.

54. Emissions estimates also indicate that oil and gas wells in this region release between 1 and 1.25 tons of NOx per well per year. 92 wells would therefore lead to the release of between 92 and 115 tons of NOx per year. Even if only 80 wells are drilled, emissions would equal 100 tons of NOx per year.

55. These estimates are likely conservative. In the first years of well production both NOx and VOC emissions are higher due to the drilling and completion of new wells. Emissions would therefore be above average while the wells are initially developed. Over time, NOx and VOC emissions would normalize with the average.

56. These estimates do not take into account NOx or VOC emissions from any compressor stations or processing facilities that would be constructed to process the gas produced from the leases challenged herein.

57. Guardians is forced to estimate the emission figures provided above because BLM has never conducted the requisite environmental analysis either through a conformity determination or the NEPA process. Guardians used publicly available data to make the estimates as referenced above.

V. BLM's February 2009 Oil and Gas Lease Sale.

58. BLM oil and gas lease sales for lease parcels under the jurisdiction of the Royal Gorge Field Office fall under the purview of the 1996 Royal Gorge Resource Management Plan ("RMP") and the 1986 Northeast RMP. Decisions as to which lands are open for leasing and what stipulations can be placed on those leases were made during that land use planning process.

59. The planning area for the 1996 Royal Gorge RMP consists of the southern half of the Royal Gorge Resource Area which encompasses all of eastern Colorado east of the Continental Divide except the San Luis Valley. The planning area for the 1986 Northeast RMP consists of the northern half of the Royal Gorge Resource Area. The Denver Metro/North Front Range 8-hour Ozone Nonattainment Area and the leases challenged herein are located in the northern half of the Royal Gorge Resource Area and are governed by the 1986 Northeast RMP.

60. On December 12, 2008, BLM issued a Notice of Competitive Lease Sale for 120 parcels under the jurisdiction of BLM's Royal Gorge Field Office. This lease sale included the 12 leases challenged herein.

61. On November 20, 2008, BLM completed a Documentation of Land Use Plan Conformance and NEPA Adequacy ("DNA") for the lease parcels listed in the Notice. The

DNA asserted that the leasing action conformed to the 1996 Royal Gorge Resource Management Plan ("RMP") and the 1986 Northeast RMP. The DNA also asserted that the FEIS completed for the 1986 Northeast RMP and the 1991 Colorado Oil and Gas EIS were sufficient to authorize the February 2009 competitive lease sale of the identified parcels. Neither the DNA nor the 1986 Northeast RMP and 1991 Colorado Oil and Gas EIS even mention the impacts of oil and gas development on ozone levels in the North Front Range nonattainment area.

62. Seven of the leases included in the Notice are located in Weld County and five of the leases are located in Morgan County, located directly east of Weld County. Four of the Weld County lease parcels are located in the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area.[3] The remaining 8 parcels are outside but immediately adjacent to the nonattainment area.[4]

63. On January 28, 2009, WildEarth Guardians timely protested the lease sale on the basis that BLM had entirely failed to demonstrate compliance with general conformity requirements under the Clean Air Act for four lease parcels within the Denver Metropolitan/North Front Range 8-hour Ozone Nonattainment Area. Guardians' protest also claimed that BLM failed to conduct the requisite NEPA analysis of direct, indirect, and cumulative impacts of the agency's leasing decision on the North Front Range's air quality, and that BLM failed to consider a reasonable range of alternatives including a "No Action" alternative.

64. On February 10, 2009, Guardians filed an addendum to that protest expressly arguing that, in addition to the four parcels previously protested, BLM had failed to ensure

[3] The 4 lease parcels within the boundaries Denver Metro/North Front Range 8-hour Ozone Nonattainment Area are COC73444, COC73443, COC73442, and COC73424.
[4] The 8 lease parcels immediately adjacent to the nonattainment area are COC73422, COC73423, COC73426, COC73427, COC73428, COC73439, COC73440, and COC73441.

compliance with Clean Air Act general conformity requirements for the eight lease parcels outside but immediately adjacent to the Denver Metropolitan/North Front Range 8-hour Ozone Nonattainment Area. In its addendum, Guardians informed BLM that Clean Air Act conformity rules require the agency to ensure conformity for all actions that may lead to direct and indirect emissions of a criteria pollutant or precursor in a nonattainment area, whether or not the actions occur within the nonattainment area itself.

65. On February 12, 2009, the Colorado State Office of the BLM sold the four oil and gas lease parcels located in the Denver Metropolitan/North Front Range 8-hour Ozone Nonattainment Area, and the eight parcels adjacent to the nonattainment area.

66. On November 5, 2009, former Deputy State Director, Lynn Rust, dismissed Guardians' protest. In his dismissal, Mr. Rust did not even address Guardians' arguments that the BLM had failed to demonstrate compliance with Clean Air Act general conformity requirements.

67. BLM's protest dismissal did not deny that BLM failed to perform a NEPA analysis of the parcels offered for sale. Mr. Rust's protest dismissal stated that "[t]he alternatives analyzed and environmental impacts addressed in the 1991 Colorado Oil and Gas Leasing Development FEIS…adequately address current environmental concerns, interests, and resources values…Environmental impacts are addressed again at a site-specific level upon receiving oil and gas Applications for Permits to Drill."

68. On November 6, 2009, Guardians sought clarification from Mr. Rust with regards to his November 5, 2009, protest dismissal. In a certified letter, Guardians requested clarification as to whether the BLM intended to ignore the issue of ensuring compliance with

general conformity requirements under the Clean Air Act, or whether there was an oversight in Mr. Rust's response. Mr. Rust did not respond to this letter, nor did anyone else at the BLM.

69. Since the November 5, 2009 dismissal of WildEarth Guardians' protest, the aforementioned lease parcels have all been issued and, to the best of WildEarth Guardians' knowledge, are being or will soon be developed.

70. On January 6, 2010, WildEarth Guardians submitted a Freedom of Information Act ("FOIA") request to the BLM seeking records related to general conformity determinations made pursuant to the Clean Air Act with regards to the sale and issuance of the aforementioned lease parcels. In a February 7, 2010 response letter, the BLM stated that no such records exist.

CLAIMS FOR RELIEF

First Claim for Relief: Violation of the Clean Air Act Failure to Make a Conformity Determination for Authorizing Leasing in and Adjacent to an Ozone Nonattainment Area.

71. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint.

72. The citizen suit provision of the Clean Air Act allows citizens to commence a civil action against any person, including the United States, who is alleged to have violated or to be in violation of an emission standard or limitation under the Clean Air Act. See 42 U.S.C. § 7604(a)(1).

73. An emission standard or limitation is defined as any "standard, limitation, or schedule established…under any applicable State implementation plan approved by the [EPA] Administrator[.]" 42 U.S.C. § 7604(f)(4).

74. The general conformity requirements of the Colorado SIP are standards and limitations. See 5 CCR § 1001-12.

75. Development and production of the leases challenged herein will result in the release of greater than 100 tons/year of the ozone precursors NOx and VOCs.

76. BLM violated the conformity requirement of the CAA and its implementing regulations when the agency authorized 12 leases within and immediately adjacent to the Denver Metropolitan/North Front Range 8-hour Ozone Nonattainment Area without making the required determination that leasing activities would conform with the requirements of the Colorado SIP. See 42 U.S.C. § 7506(c)(1), 40 C.F.R. § 51.850(b); see also 40 C.F.R. § 93.150(b).

Second Claim for Relief: Violation of NEPA
Failure to Complete an EA or EIS for the February 2009 Lease Sale.

77. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint.

78. In carrying out the February 2009 lease sale of the leases challenged herein, BLM violated NEPA by not preparing an Environmental Assessment ("EA") or Environmental Impact Statement (EIS"). See 42 U.S.C. § 4332(2)(c), 40 C.F.R. §§ 1508.9, 1508.11.

79. Federal agencies must comply with NEPA—i.e., complete an EA or EIS—"at the earliest possible time" and, at the latest, before the point of any "irreversible and irretrievable commitment of resources." 42 U.S.C. § 4332(2)(c)(v), 40 C.F.R. §§ 1501.2, 1502.5(a).

80. BLM makes an irreversible and irretrievable commitment of resources when it sells and issues a lease. Once a lease is issued, the lessee obtains contractual rights such that the agency, in accord with its regulations, is bound by the terms, conditions, and stipulations of the lease. See 43 C.F.R. § 3101.1-2.

81. BLM violated NEPA by authorizing leasing of the 12 parcels challenged herein without first completing an EA or EIS. Sale and issuance of the 12 leases constitutes an

irreversible and irretrievable commitment of resources and a major federal action with potential significant impacts necessitating completion of an EA or EIS.

82. BLM's failure to complete an EA or EIS prior to selling and issuing the 12 parcels was arbitrary and capricious, and constitutes a violation of NEPA and the APA. See 5 U.S.C. § 706(2)(A).

Third Claim for Relief: Violation of NEPA
Failure to Assess Direct, Indirect, and Cumulative Effects for the February 2009 Lease Sale.

83. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint.

84. NEPA obligates federal agencies to assess the direct, indirect, and cumulative environmental consequences of a proposed action and its alternatives to the environment. See 42 U.S.C. § 4332(2)(C)(i), 40 C.F.R. §§ 1502.14(a), 1502.16, 1508.7, 1508.8, 1508.14.

85. BLM violated NEPA by not assessing the direct, indirect, and cumulative environmental consequences of selling and issuing the 12 leases challenged herein to the air quality of the North Front Range nonattainment area.

86. BLM's failure to assess the direct, indirect, and cumulative environmental consequences of selling and issuing the 12 leases to the air quality of Weld County was arbitrary and capricious, and constitutes a violation of NEPA and the APA. See 5 U.S.C. § 706(2)(A).

Fourth Claim for Relief: Violation of NEPA
Failure to Consider a Reasonable Range of Alternatives, Including a No Action Alternative.

87. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint.

88. NEPA obligated federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E); see also 42 U.S.C. § 4332(2)(C)(iii). This mandate requires, inter alia, that federal agencies rigorously explore and objectively evaluate all reasonable alternatives" to a proposed action. 40 C.F.R. § 1502.14(a).

89. Federal agencies must consider a "no action" alternative. 40 C.F.R. § 1502.14(d).

90. BLM's failure to consider a reasonable range of alternatives to its decision to sell and issue the 12 leases challenged herein, including a No Action alternative, was arbitrary and capricious, and constitutes a violation of NEPA and the APA. See 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff WildEarth Guardians respectfully requests that the Court:

A. Declare that BLM's actions are in violation of the Clean Air Act, and its implementing regulations, as set forth above;

B. Declare that BLM's actions are in violation of NEPA, and its implementing regulations, as set forth above;

C. Declare unlawful and set aside BLM's decisions authorizing and issuing the 12 lease parcels challenged herein until such a time as BLM has complied with the Clean Air Act and NEPA;

D. Enjoin execution of the 12 leases, and any oil and gas activities on said lease parcels, including issuance of permits to drill, until such a time as BLM has complied with the Clean Air Act and NEPA, prepared a conformity determination for lease development, and

prepared an EA or EIS to analyze the direct, indirect, and cumulative impacts of lease development and a reasonable range of alternatives;

E. Enter such temporary, preliminary, or permanent injunctive relief as specifically prayed for by Plaintiff WildEarth Guardians hereinafter;

F. Assess civil penalties against BLM for authorizing the 12 leases without making the required conformity determination in violation of the CAA;

G. Award Plaintiff WildEarth Guardians its reasonable fees, costs, expenses, and disbursements, including attorneys' fees, associated with this litigation pursuant to the Clean Air Act, 42 U.S.C. § 7604(d), Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable statutes; and

H. Grant such additional and further relief as the Court may deem just and appropriate.

Respectfully submitted on this 18th day of January 2011,

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