

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

COLORADO ENVIRONMENTAL COALITION;
COLORADO MOUNTAIN CLUB;
COLORADO TROUT UNLIMITED;
CENTER FOR NATIVE ECOSYSTEMS;
ROCK THE EARTH;
NATURAL RESOURCES DEFENSE COUNSEL;
NATIONAL WILDLIFE FEDERATION;
SIERRA CLUB;
THE WILDERNESS SOCIETY; and
WILDERNESS WORKSHOP,

Plaintiffs,

v.

DIRK KEMPTHORNE, in his official capacity as Secretary of the Department of Interior;
BUREAU OF LAND MANAGEMENT;
SALLY WISELY, in her official capacity as Colorado State Director of the Bureau of Land
Management; and
JAMIE L. CONNELL, in her official capacity as Field Manager for the Glenwood Springs Field
Office of the Bureau of Land Management;

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR REVIEW OF AGENCY ACTION**

INTRODUCTION

1. The Bureau of Land Management's 73,000-acre Roan Plateau Planning Area in west-central Colorado is one of the most biologically diverse regions of the state. In addition to encompassing nearly 20,000 acres that BLM recognizes as potential wilderness, the Planning Area provides regionally important habitat for mule deer and elk, Colorado's two most sought-after big game species. The Planning Area is also home to mountain lions, black bears, and several imperiled fish species, including rare genetically pure populations of Colorado River cutthroat trout. Numerous local residents rely on the Planning Area – and especially the 34,000-acre portion of the Planning Area atop the Roan Plateau – for their livelihoods as hunting and fishing guides and for the outstanding hunting, fishing, camping, and hiking opportunities afforded by the area. As a result, many local governments have spoken out in favor of carefully planning and limiting oil and gas development at the base of the Roan Plateau and strictly limiting or proscribing new development atop the Plateau. Those sentiments were echoed by the tens of thousands members of the public who commented on the Bureau of Land Management's (BLM's) various planning documents.

2. The public's call for an ecologically sensitive approach to development of the Roan Plateau fell on deaf ears, and in June 2007 BLM decided to amend the Glenwood Springs Field Office's Resource Management Plan (RMP) to allow aggressive oil and gas development. BLM's Plan Amendment provides for the immediate leasing of 100% of the Federal minerals within the Planning Area. When all is said and done, BLM projects that its Plan Amendment will result in thousands of new oil and gas wells in the Roan Plateau Planning Area, more than 3,000 atop the Plateau. In keeping with its aggressive development approach, BLM announced

in June that it would hold an oil and gas lease sale on August 14, 2008 at which it would lease every unleased Federal acre in the Roan Plateau Planning Area.

3. In addition to rebuffing the public's call for a much more protective approach, BLM's Plan Amendment and leasing decision runs afoul of the National Environmental Policy Act (NEPA). NEPA requires an agency to analyze the environmental impacts of its actions and consider a reasonable range of alternative approaches. BLM has done neither. The environmental impact statement (EIS) upon which BLM relies in this case entirely ignores the vast majority of the oil and gas development that eventually will result from the agency's leasing decision, ignores the impacts of the ozone pollution that will result from the development, ignores the fact that the air quality and wildlife impacts of BLM's Roan leasing and drilling plan will be exacerbated by the impacts associated with the unprecedented oil and gas development boom in the Piceance Basin of northwestern Colorado, and ignores alternatives that would do what so many local governments and citizens and the State of Colorado favored – significantly limit or carefully control new development at the base of the Plateau and limit or proscribe new development on the top. In addition to violating NEPA in numerous respects, BLM's plan violates the Federal Land Policy & Management Act (FLPMA), BLM's organic statute, by failing to provide for compliance with the Clean Air Act.

4. Because BLM's Roan Plateau Plan Amendment violates federal law, the plan must be invalidated and BLM enjoined from taking any action, including the sale of oil and gas leases, that relies on the illegal plan and its inadequate environmental analysis.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1331 (federal question jurisdiction) and the Administrative Procedure Act, 5 U.S.C. § 551 et seq.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claims occurred within this judicial district; BLM has offices in this district; the public lands and resources in question are located in this district; the majority of the environmental impacts resulting from this project will impact this district; and Plaintiffs reside in this district.

PARTIES

7. Plaintiff Colorado Environmental Coalition (CEC) is a state-based environmental advocacy organization with two field offices in western Colorado and a main office in Denver. CEC has more than 3,000 individual members and over 90 affiliated organizations. CEC campaigns work to engage citizens in the protection of Colorado's wild places, open spaces, wildlife, and quality of life. CEC is a known and active participant in public lands management in Colorado, with a demonstrated interest in energy development on Colorado's BLM lands, including lands and resources managed by the Glenwood Springs Field Office. CEC has commented and been involved in every stage of the Roan Plateau planning process. Like every one of the plaintiffs in this action, CEC filed an administrative protest of BLM's Roan Plateau Plan Amendment. CEC members and staff use the disputed lands for recreation and are concerned with protecting wildlife, scenery, water quality and other natural values.

8. Plaintiff Colorado Mountain Club (CMC) is a membership organization devoted to bringing together people who love the Colorado Rockies, study them, or seek recreation in

them. The primary purposes of CMC are to gather and disseminate information regarding the Colorado mountains in the areas of art, science, literature and recreation; to furnish facilities for the enjoyment and study of the mountains by the Club members and the public; and to advocate for the preservation of Colorado's alpine regions. Since its founding in 1912, the Colorado Mountain Club has been an unwavering advocate for the protection of Colorado's wild, remote, and quiet places, including the Roan Plateau. CMC was instrumental in landmark achievements, such as the designation of Rocky Mountain National Park, Dinosaur National Monument, and the passage of the Wilderness Act. Today, CMC continues this tradition by working with land management agencies, partner organizations, and coalitions to protect our last remaining roadless areas and wildlife corridors; protect and restore the quiet recreation experience; and protect the ecological integrity of our region by reducing the impacts of recreation on the natural environment.

9. Plaintiff Center for Native Ecosystems (CNE) is a nonprofit advocacy organization dedicated to conserving and recovering native and naturally functioning ecosystems in the Greater Southern Rockies and Plains, including the Roan Plateau. CNE values the clean water, fresh air, healthy communities, sources of food and medicine, and recreational opportunities provided by native biological diversity. It believes that all species and their natural communities have the right to exist and thrive. CNE uses the best available science to forward its mission through participation in policy, administrative processes, legal action, public outreach and organizing, and education.

10. Plaintiff Colorado Trout Unlimited (CTU) is a Colorado nonprofit corporation with 10,000 members, and is affiliated with the national conservation group Trout Unlimited.

CTU's mission is to conserve, protect, and restore Colorado's coldwater fisheries and their watersheds. CTU members use the Roan Plateau for recreational fishing and have invested hundreds of hours in water quality monitoring and habitat improvement efforts to benefit the rare conservation populations of Colorado River cutthroat trout found within the Roan Plateau Planning Area. CTU has advocated for protection of the Roan Plateau by seeking protective water quality standards, by participation throughout BLM's administrative process, through testimony before Congress, and in public outreach and education. The BLM Plan jeopardizes the unique fishery resources that CTU members have worked and continue to work to conserve, and that support their recreational use of the Roan Plateau.

11. Plaintiff National Wildlife Federation (NWF) is a national organization, with forty-eight state affiliate organizations, dedicated to the protection and restoration of wildlife and wildlife habitat for this and future generations. NWF has over four million members, including approximately 22,000 members in Colorado. NWF members use the federal public lands on and around the Roan Plateau for recreational and professional purposes including, but not limited to, hunting, fishing, hiking, camping, wildlife viewing, and scientific study. NWF has actively participated in BLM's planning process for oil and gas development on the Roan Plateau for several years. NWF's participation has included, but not been limited to, participating in scoping meetings, submitting comments on the Draft Environmental Impact Statement for the Roan Plateau Resource Management Plan Amendment in 2005, and filing a protest of the Proposed Plan Amendment in 2006. If the BLM decisions under review in this action are implemented, NWF's members' use and enjoyment of public lands on and around the Roan Plateau will be

impaired by the excessive, hasty, and poorly planned oil and gas development that will be authorized by those actions.

12. Plaintiff Natural Resources Defense Council (NRDC) is a nonprofit environmental membership organization with more than 390,000 members throughout the United States. NRDC members use and enjoy the Roan Plateau and other public lands throughout Colorado for purposes including recreation, solitude, scientific study, and aesthetic appreciation. NRDC has a long history of efforts to protect federal public lands in Colorado, to require the federal government to consider environmental protection when making energy development decisions, and to support long-term solutions to America's energy problems. NRDC members use the Roan Plateau for recreation and other purposes. The organization has been consistently involved with BLM's Roan Plateau planning process, submitting comments and protests.

13. Plaintiff Rock the Earth is a nonprofit conservation organization whose mission is to protect and defend America's natural resources through partnerships with the music industry and the world-wide environmental community. Rock the Earth has approximately 2,000 members nationally, 150 of which reside in Colorado. Rock the Earth is particularly concerned about the natural resources of the Roan Plateau and has participated in, and commented on, BLM's preparation of a Resource Management Plan Amendment and Environmental Impact Statement for the Roan Plateau. Rock the Earth members have routinely used and visited the Roan Plateau for recreational purposes, which have included backpacking, hiking, camping, angling, bird viewing, photography, and other non-motorized activities, in which they can experience the beauty, peace, natural quiet, and solitude found on the Roan Plateau.

14. Plaintiff Sierra Club is a national nonprofit organization of approximately 750,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; and to protecting and restoring the quality of the natural and human environment. The Rocky Mountain Chapter of the Sierra Club is a Colorado-wide chapter that was organized in 1965 and now has 20,000 members. The chapter supports the preservation of the Roan Plateau and other wild areas in Colorado for continued public enjoyment, education and recreation. Sierra Club members routinely visit, explore, and enjoy public lands in the Roan Plateau Planning Area.

15. Plaintiff The Wilderness Society (TWS) is a nonprofit environmental organization formed in 1935, which now has 203,500 members nationwide, including 6,500 members in Colorado. The TWS Central Rockies Office addresses public lands management issues in Colorado and Utah. TWS is devoted to preserving wilderness, forests, parks, rivers, deserts, and shorelands and is committed to fostering an American land ethic. Its mission is to protect America's wilderness and wildlife and to develop a nationwide network of wild lands through public education, scientific analysis, and advocacy. Its goal is to ensure that future generations will enjoy the clean air and water, wildlife, beauty, and opportunities for recreation and renewal that pristine forests, rivers, deserts, and mountains provide. TWS has long worked to enact legislation and policies that provide for the sound management of BLM lands. TWS has participated in every stage of the Roan Plateau planning process.

16. Plaintiff Wilderness Workshop is a nonprofit organization based in Carbondale, Colorado whose mission is to protect and conserve the wilderness and natural resources of the Roaring Fork watershed, the White River National Forest, and adjacent public lands. Wilderness

Workshop engages in research, education, legal advocacy, and grassroots organizing to protect the ecological integrity of local landscapes and public lands, including the Roan Plateau. It focuses on the monitoring and conservation of air and water quality, wildlife species and habitat, natural communities, and lands of wilderness quality.

17. Defendant Dirk Kempthorne is sued in his official capacity as Secretary of the Department of the Interior. Mr. Kempthorne is responsible for ensuring that lands administered by the Department of Interior, including BLM lands, are managed in accordance with all applicable laws and regulations.

18. Defendant Bureau of Land Management is an agency of the United States within the Department of the Interior. BLM is responsible for managing its lands, including the lands within the Roan Plateau Planning Area, in accordance with federal law.

19. Defendant Sally Wisely is sued in her official capacity as the Colorado State Director of BLM. Ms. Wisely is responsible for ensuring that BLM lands in Colorado are managed in accordance with all applicable laws and regulations.

20. Defendant Jamie L. Connell is sued in her official capacity as Field Manager for the Glenwood Springs Field Office of the BLM. Ms. Connell is responsible for preparing and implementing the Roan Plateau Planning Area Amendment and EIS, and Ms. Connell signed the two Records of Decision that approve the Amendment and EIS.

LEGAL FRAMEWORK

A. The Administrative Procedure Act

21. Because neither NEPA nor FLPMA include a citizens suit provision, this case is brought pursuant to the APA.

22. The APA allows persons and organizations to appeal final agency actions to the federal courts. 5 U.S.C. §§ 702, 704. The APA declares that a court shall hold unlawful and set aside agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

B. The National Environmental Policy Act

23. Congress enacted NEPA to, among other things, “encourage productive and enjoyable harmony between man and his environment” and to promote government efforts “that will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321.

24. To fulfill this goal, NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all “major Federal actions significantly affecting the environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. The agency should describe “any adverse environmental effects which cannot be avoided should the proposal be implemented.” 42 U.S.C. § 4332(C)(ii). Overall, an EIS must “provide [a] full and fair discussion of significant impacts” associated with a federal decision and “inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

25. NEPA requires federal agencies, including BLM, to include within an EIS “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The alternatives analysis is the “heart” of a NEPA document, and the statute’s implementing regulations emphasize an agency’s duty to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.16.

26. An EIS also must identify direct, indirect, and cumulative impacts for each reasonable alternative. 40 C.F.R. § 1502.15. Cumulative effects are “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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

C. The Federal Land Policy & Management Act

27. BLM manages its lands pursuant to the Federal Land Policy & Management Act (FLPMA), 43 U.S.C. § 1701 et seq. Prior to FLPMA’s passage in 1976, BLM lands were governed by a mélange of some 3,000 outdated and often-conflicting public lands laws, most of which were written when it was assumed that these “public domain” lands would be conveyed expeditiously to private ownership. FLPMA cleared away many of these outmoded laws and, for the first time, provided BLM with a comprehensive, statutory statement of purposes, goals, and authority for the use and management of BLM lands.

28. Section 202 of FLPMA, 43 U.S.C. § 1712(a), requires that BLM develop and maintain land use plans for each BLM area. BLM’s land use plans, known as Resource Management Plans (RMPs), provide an orderly, public process for balancing among competing demands such as commercial exploitation, recreation, and environmental protection. 43 U.S.C. § 1712; 43 C.F.R. § 1601.0-2.

29. FLPMA does not dictate how land use plans must balance competing uses. Instead, Congress directed the agency to manage its lands under the principles of “multiple use

and sustained yield.” 43 U.S.C. § 1732(a); 43 U.S.C. § 1712(c)(1). “Multiple use” is defined broadly as:

[T]he management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; . . . the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

43 U.S.C. § 1702(c).

30. While the multiple-use mandate leaves BLM tremendous discretion in its land use planning, FLPMA requires BLM to comply with certain procedures when adopting or altering plans and requires the agency to consider, *inter alia*, the long-term versus short-term benefits of potential uses, the relative scarcity of the values involved, and the present and potential uses of lands. 43 U.S.C. § 1712(c)(5)-(7); 43 C.F.R. §§ 1610.1-.8. It also requires “the use of some lands for less than all the resources,” i.e., not all resources will be developed or extracted in all areas. In addition, BLM plans must provide “for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans.” 43 U.S.C. § 1712(c)(8); *see also* 43 CFR § 2920.7(b)(3) (requiring the same for land use authorizations).

D. The Clean Air Act

31. The Clean Air Act is intended “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its

population,” 42 U.S.C. § 7401(b)(1). The Act created a system whereby the federal government sets national standards and states implement them. See, e.g., 42 U.S.C. § 7410.

32. The Act directs the Environmental Protection Agency (EPA) Administrator to identify and list “air pollutants” that “may reasonably be anticipated to endanger public health and welfare” and to issue air quality standards for these pollutants. 42 U.S.C. §§ 7408, 7409. The EPA has set such standards, or National Ambient Air Quality Standards (NAAQS), for carbon monoxide, particulate matter smaller than 10 microns (PM₁₀), particulate matter smaller than 2.5 microns (PM_{2.5}), sulfur dioxide (SO₂), nitrogen oxides (NO_x), and ozone. Within three years of having set such standards, states are required to adopt and submit a State Implementation Plan (SIP) that will implement the standards. 42 U.S.C. § 7410; 40 C.F.R. § 52.320 (Colorado’s SIP).

33. Compliance with the NAAQS is mandatory under the Clean Air Act.

34. EPA set the primary NAAQS for ozone at 80 parts per billion (ppb) in 1997. 62 Fed. Reg. 38856 (July 18, 1997). On March 27, 2008, EPA lowered that standard to 75 ppb in order to protect public health. 73 Fed. Reg. 16436 (Mar. 27, 2008).

35. Congress wanted to prevent air quality degradation of the nation’s most pristine areas. To do this, the Clean Air Act sets out a system whereby sources are only allowed to worsen air pollution by certain increments in areas like national parks and some wilderness areas (collectively known as Class I areas). 42 U.S.C. §§ 7472, 7473, 7476. These increments are very small. Congress gave parks and wilderness areas this heightened protection in order to “preserve, protect, and enhance the air quality in national parks [and] national wilderness areas.”

42 U.S.C. § 7470. In the rest of Colorado, Wyoming, and Utah, considered Class II areas, the increments are larger but the principle is the same. 42 U.S.C. § 7473.

36. If an increment is not exceeded by a project, that project may still have air quality impacts, because it has “consumed” some of the increment and generally worsened the air quality in areas where Congress wanted the air to stay as pristine as possible.

37. To assess whether a new project would exceed either Class I or Class II increments, there has to be a baseline date at which to start measuring pollution, or where the increment starts. See 40 C.F.R. § 52.21(b)(13). In the Roan Plateau area, the minor source baseline dates are October 12, 1977 for PM₁₀, March 30, 1989 for nitrogen dioxide (NO₂), and October 12, 1977 for SO₂. State of Colorado Department of Public Health and the Environment, Air Pollution Control Division, PSD Increment Tracking System (Feb. 26, 2001, updated Dec. 28, 2005).

38. After the baseline date, every additional pollution source consumes part of these increments. To figure out how much of the increment is left, meaning how much pollution a new source can add without exceeding the increments, one would start at the baseline date and add all of the sources that have come on-line since that time. Colorado’s Department of Public Health and the Environment maintains a database of these sources. See also Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures, 72 Fed. Reg. 31372 (June 6, 2007) (Increments “specify the maximum extent to which the ambient concentration of these pollutants may be allowed to increase above the legally defined baseline concentration.”).

39. As a Federal land manager, the Secretary of the Interior has “an affirmative responsibility to protect the air quality related values (including visibility)” of Class I areas. 42 U.S.C. § 7475(d)(2)(B).

STATEMENT OF FACTS

A. The Roan Plateau Planning Area

40. The Roan Plateau Planning Area is located just northwest of the City of Rifle in west-central Colorado. The Planning Area encompasses 73,602 acres of federal land. The area consists of three distinct areas: (1) semi-desert habitat at lower elevations; (2) moist montane and subalpine habitats at higher elevations atop the Roan Plateau; and (3) a band of high and nearly unbroken cliffs, known as the Roan Cliffs, that separate those two areas.

41. While significant oil and gas exploration and development have occurred on the public and private lands around the base of the Roan Plateau, BLM lands atop the Plateau, and on the Roan cliffs, have been almost entirely spared. Very little of these high elevation lands have been leased and approximately 32,000 acres remain roadless to this day. In 2000, BLM concluded that 19,322 of roadless lands within the Planning Area were so pristine and remarkable that they would qualify for Congressional wilderness designation pursuant to The Wilderness Act of 1964.

42. The Roan Plateau’s varied soils and elevation (from 5,200 to 9,300 feet) create spectacular scenery and support a diverse collection of rare plant communities. These include Quaking Aspen/Rocky Mountain maple forests, Great Basin grasslands, old-growth Douglas-fir forests, sagebrush bottomland shrublands, and Western Slope grasslands. The area hosts a number of exceedingly rare plants. For instance, BLM’s Final EIS describes the parachute

penstemon as “one of rarest plants in North America,” existing in only five locations, two of which are on the Roan Plateau. Roan Plateau Planning Area [Final] Resource Management Plan and Environmental Impact Statement (June 2006) (Final EIS) at 3-50 tbl.3-14. The Roan also hosts sixty-two percent of the known occurrences in the world of a extraordinarily uncommon species of hanging garden. Id. at 3-117. According to the Colorado Natural Heritage Program, Roan exhibits a degree of biodiversity rivaled by only three other areas in western Colorado, of which Roan is the only area lacking protection for its unique ecology.

43. The Roan Plateau is also home to thriving animal populations. Threatened and sensitive species in the area include the federally listed peregrine falcon and bald eagle, as well as Colombian sharp-tailed grouse, sage grouse, Great Basin spadefoot toads, northern leopard frogs, and several kinds of bats. In total, the Final EIS estimates that 57 threatened or sensitive animal species are known to live, or could live, on the Plateau. Final EIS at 3-59 to 3-61.

44. The Planning Area provides regionally important habitat for two native ungulates: the mule deer and Rocky Mountain elk. These are the most intensively managed and sought-after big game species in Colorado. Consequently, they are of special interest in the region due to their monetary value to the Colorado Division of Wildlife and the tourist industry, as well as their recreational value to hunters. These species migrate from summer range at higher elevations to winter range at lower elevations, and depend on several different crucial habitats within the planning area, including fawning and calving (“production”) areas, security (seclusion) areas, and migration routes.

45. The mule deer population unit, as defined by the Colorado Division of Wildlife, that relies on the Roan Plateau area is currently below the Division of Wildlife’s population

objective, which has resulted in restrictive hunting regulations. The maintenance or recovery of big game, particularly mule deer, populations in the area are limited by the availability of winter range – lower-elevation, moderate slope, generally south-facing terrain below the Plateau rim that provide winter forage. Six movement corridors permitting deer movement through the Roan Cliffs have been mapped and identified as essential for providing passage between seasonal ranges. Under the BLM’s own estimates, the BLM plan will result in an effective loss of 32 percent of the mapped winter range in the Planning Area. Final EIS 4-59. The Final EIS admits that outfitters and the big game they hunt will be displaced and “[s]ome areas of high quality wildlife habitat would be lost or permanently altered.” Id. at 4-130.

46. The Planning Area also supports genetically pure Colorado River cutthroat trout in portions of Northwater Creek, Trapper Creek, East Fork Parachute Creek, East Middle Fork, Parachute Creek, mainstem Parachute Creek, JQS Gulch, First Anvil Creek, and Second Anvil Creek., including five designated conservation populations and two core conservation populations. The Colorado River cutthroat trout is the only indigenous salmonid in the Upper Colorado River Basin; few genetically pure populations remain, and those are largely in isolated streams or lakes. The Roan Plateau’s relative isolation has prevented upstream dispersal of non-native species. The Colorado River cutthroat trout is a BLM sensitive species and designated a Species of Special Concern by the State of Colorado, and the Roan Plateau populations “are considered nationally and regionally significant.” Final EIS 3-123. These Colorado River cutthroat trout populations are considered unique and irreplaceable, and their viability depends upon the healthy ecological functioning of the entire watershed.

47. According to the BLM, “[t]he Roan Plateau contains one of only a few remaining watersheds where genetically pure, reproducing populations of Colorado River cutthroat trout are found in all streams capable of sustaining a fishery. Maintaining or expanding these populations would play an important role in the overall recovery of this subspecies.” Final EIS 3-64. Oil and gas development within cutthroat trout watersheds may have negative impacts, including sediment transport to streams or contamination by drilling mud, produced water, or tanker truck spills. The BLM acknowledges that road and well construction will result in permanent loss or alteration of habitat: “Some of these impacts could never be reversed, especially those that eliminate genetically unique resources represented by populations of rare or disjunct species,” such as genetically pure Colorado River cutthroat trout. Id. at 4-129 to 130.

48. The Roan Plateau supports a significant economy in hunting, fishing and backcountry recreation. Tourism supported eighteen percent of all jobs in Garfield County in 2003. As BLM acknowledges in its Final EIS, “[i]n central Garfield County, big game hunting in particular is viewed as critical to the economy . . . hunting gives a seasonal boost to many local businesses that could not otherwise survive.” Final EIS at 3-83. In 2002, hunters spent nearly 6,000 hunter-days in and immediately nearby the planning area, contributing some \$3.1 million annually to the local economy. Id. at 4-101 tbl. 4-26.

B. The Transfer Act

49. Prior to 1997, 56,238 acres of what is now the Roan Plateau Planning Area were managed by the Department of Energy as Naval Oil Shale Reserves (NOSR) 1 and 3. In 1997, Congress passed the National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105-

85 (“Transfer Act”), which transferred management authority over the Roan Plateau Planning Area to BLM.

50. The Transfer Act states that “the Secretary of the Interior shall enter into leases with one or more private entities for the purpose of exploration for, and development and production of, petroleum (other than in the form of oil shale) located on or in public domain lands in Oil Shale Reserves Numbered 1 and 3.” 10 U.S.C. § 7439(b)(1).

51. The Transfer Act mandates that “any such lease shall be made in accordance with the requirements of the Mineral Leasing Act.” 10 U.S.C. § 7439(b)(1). Under the Mineral Leasing Act, the Secretary of Interior has total discretion regarding whether or not to lease federal lands for mineral development. See 30 U.S.C. § 226(a).

52. The Transfer Act also requires that the transferred area be managed in accordance with FLPMA. See 10 U.S.C. § 7439(c).

53. Generally speaking, Oil Shale Reserve Number 1 encompasses the area atop the Roan Plateau while Reserve Number 3 includes the lower elevation areas at the base of the Plateau.

54. The Transfer Act also requires that BLM issue leases for the developed portion of Oil Shale Reserve 3 by November 18, 1998. 10 U.S.C. § 7439(b)(2).

55. BLM fulfilled the Transfer Act’s requirements in 1999 when it issued oil and gas leases for 8,379 acres within the Oil Shale Reserves for oil and gas development. The agency leased 8,213 acres within NOSR 3 and 166 acres within NOSR 1. Final EIS at 3-103 to 3-108 and Table 3-31. See also Glenwood Springs Resource Area Oil & Gas Leasing & Development Record of Decision and Resource Management Plan Amendment (Mar. 1999) at 1.

C. The Roan Plateau Planning Process

56. In November 2000, BLM began its plan amendment process for the transferred lands and 17,364 acres previously managed by BLM. Final EIS at 3-91 tbl.3-29; 65 Fed. Reg. 69323 (Nov. 16, 2000). The project's stated goal was "to protect key ecological, visual, and recreational values while allowing for the leasing and subsequent development of oil and gas resources under strict performance-based standards." Final EIS at S-2 to S-3.

57. During the initial "scoping" period, the first step in the NEPA analysis processes, (see 40 C.F.R. § 1501.7), BLM invited public, tribal, and other government comment regarding the range of alternatives and issues that should be considered in BLM's analysis and decisionmaking.

58. In the fall of 2002, BLM held an additional public comment period during which it sought comments on, among other things, the agency's preliminary alternative management approaches. The most ecologically protective of BLM's proposed alternatives was Alternative F, the so-called "Naturalness and Primitive Recreation Alternative." That alternative emphasized "[p]reservation of the natural character, landscape features, ecological richness, [and] unique ecosystem values through natural processes." Alternative F also promised to "[p]reserve present recreational setting and experience." During the comment period, nearly 12,000 citizens sent in letters supporting Alternative F. Alternative F also was endorsed by all six town councils in Garfield County (Rifle, Silt, Parachute, Glenwood Springs, New Castle, and Carbondale), and by many local businesses and citizens' groups. Congressman John Salazar wrote in support of Alternative F as did the editorial pages of the Glenwood Springs Post Independent, the Grand Junction Daily Sentinel, and the Denver Post.

59. Despite this avalanche of public support for Alternative F, BLM eliminated the alternative from consideration and it does not appear in either the Draft or Final EISs. BLM based its decision to exclude this popular alternative on the legal grounds that the Alternative F would allegedly violate the Transfer Act. As BLM explained in its Final EIS, “BLM concluded, and continues to believe, that Alternative F did not meet the fundamental requirement of the Transfer Act.” Final EIS at 6-79.

60. EPA apparently disagreed, warning BLM in its comments on the Draft EIS that “alternatives which include further leasing at the base of the plateau while setting aside the upper plateau for no leasing may be within the reasonable range of alternatives to be analyzed under NEPA.” EPA Comment (May 25, 2005) at 2.

61. BLM released a Draft EIS for the Roan Plateau Planning Area Plan Amendment on November 19, 2004, and initiated the required 90-day public comment period. Although the agency later claimed that the “major components” of Alternative F were “modified and recombined” in the Draft EIS’s alternatives, the simple fact is that none of the Draft EIS’s action alternatives included the “major component” of Alternative F; i.e., putting the federal lands atop of the Roan Plateau off limits to oil and gas leasing and development. The agency’s preferred alternative in the Draft EIS, for example, would have offered the top of the Plateau only a temporary reprieve, opening all of the Planning Area to mineral development, but providing that leases for oil and gas development on the top of the Plateau would not be sold until a certain amount of development had taken place below the Plateau’s rim.

62. Because BLM eliminated Alternative F from consideration in the Draft EIS, local communities and citizens created and supported a compromise plan, dubbed the “Community

Alternative.” The Community Alternative allowed for large volumes of gas to be produced from the Roan Plateau Planning Area by permitting directional drilling in the lower elevation areas. At the same time, the Community Alternative would protect BLM lands atop the Roan Plateau – including its twenty-some thousand acres of wilderness quality lands – by placing those lands off limits to surface development. The Community Alternative was explicitly endorsed by Summit and Pitkin counties and the cities of Carbondale, Silt, New Castle, and Aspen.

63. Nearly 75,000 comments were received on the Draft EIS during the comment period. Approximately 98% of these supported the Community Alternative or otherwise favored keeping oil and gas drilling off the top of the Roan Plateau.

64. Again, BLM turned a deaf ear to the desires of the local public. Its Final EIS refused to even consider the Community Alternative. And again, BLM relied on the Transfer Act to justify its elimination of this extremely popular alternative. Responding to comments supporting the Community Alternative, the agency stated that “BLM believes that the Transfer Act requires that all of the N[aval]O[il]S[hale]R[eserve] areas be made available for oil and gas leasing, consistent with multiple-use management under FLPMA and BLM policies.” Final EIS at 6-112 (emphasis added).

65. The BLM failed to adopt several specific alternative wildlife conservation measures recommended by the Colorado Division of Wildlife, including designation of approximately 36,000 acres of the planning area as Areas of Critical Environmental Concern (ACECs) where surface-disturbing activity would be restricted to protect big game winter range, Colorado River cutthroat trout watersheds, and other important wildlife values. This plan would

have also provided wildlife seclusion areas below the Plateau rim in the proposed Magpie Gulch and Anvil Points ACECs, and would have afforded greater levels of protection for the ecological health of Colorado River cutthroat trout watersheds within the East Parachute Creek and Trapper/Northwater Creek ACECs.

66. In keeping with its legal interpretation of the Transfer Act, every one of the action alternatives in BLM's Final EIS provided for significant development atop the Roan Plateau. While the statutorily mandated "No Action" Alternative I, see 40 C.F.R. § 1502.14(d), nominally sets out a no-development approach to the Plateau area, the Final EIS makes perfectly plain that BLM never actually considered adopting this alternative precisely because its protections were, to BLM's mind, too stringent and so would violate the Transfer Act. When speaking of the no-action alternative, for example, BLM emphasized that "[b]ecause of the specific language of the Transfer Act . . . , selecting an alternative that does not consider making a significant portion of NOSR 1 available for oil and gas leasing may require additional legislation." Final EIS at 2-16.

67. BLM's Final EIS jettisons the Draft EIS's preferred alternative in favor of an altogether different approach in its Proposed Plan. Although BLM justified its move away from the Draft EIS's preferred alternative by citing the public's criticism, Final EIS at S-2, the Proposed Plan does not offer additional protections for the top of the Roan Plateau – which is what the vast majority of the public supported. To the contrary, the Proposed Plan would allow BLM to lease the entire Planning Area immediately, including the wilderness quality and other roadless lands atop the Roan Plateau, rather than the deferred leasing of the top in the Draft EIS's preferred alternative.

68. BLM freely admits that the Proposed Plan's aggressive development approach would not protect the wilderness values of these lands, writing that "the Proposed Plan would not apply management prescriptions specific to the protection of roadlessness, naturalness, and outstanding opportunities for solitude and primitive and unconfined types of recreation, and values identified in the wilderness inventories would not be protected . . . no contribution would be made toward preservation of wilderness characteristics." Final EIS at 4-125. Similarly, the agency projects that development below the Plateau will directly or indirectly affect one-third of the area's big game winter range.

69. BLM also explicitly rejected enhanced habitat protections for crucial big game winter range at the base of the Plateau in an alternative proposal recommended by the State of Colorado. In order to reduce adverse impacts of wildlife, Colorado's plan provided for expanded ACECs for big game winter range and cutthroat trout watersheds, and for the phased leasing of the planning area. In rejecting the State of Colorado's December 2007 alternative, the BLM claimed that the operator will "work with the BLM and the State to complete a detailed, site-specific plan for drilling. This site-specific plan of development will then be subject to additional NEPA analysis." BLM Response (Allred) to Ritter proposal (March 13, 2008). No such site-specific plan has yet been proposed or analyzed.

70. All of the Planning Area's minerals would be leased immediately under the Proposed Plan, and BLM has since announced it will sell these on August 14, 2008. Development atop the Roan Plateau, however, will take place in a staged fashion over many years. Under the Proposed Plan, exploration and development would be sequenced within six geographic areas, so-called "phased development areas," on the Plateau, and non-exploratory

drilling would be restricted to one of these areas at a time. Final EIS at 2-6 to 2-7. Each new area would be opened for drilling when the previous area satisfied certain mineral reclamation standards.

D. BLM's Adoption of the Roan Plateau Planning Area Resource Management Plan Amendment and the Administrative Protests

71. BLM received forty-two formal administrative protests to the Roan Plateau Resource Management Plan Amendment and Final EIS, several of which were submitted by plaintiffs to this action. Those protests offered myriad arguments for why BLM's Proposed Plan violated federal environmental law and was unwise as a matter of policy.

72. BLM denied these protests on June 7, 2007 in their entirety.

73. Having disposed of the administrative protests, BLM proceeded to conclude the Roan Plateau Plan Amendment process by issuing two records of decision (ROD). In the first ROD, issued in June 2007, BLM adopted the Proposed Plan described in its Final EIS with what the agency described as clarifications and minor modifications.

74. In March 2008, BLM issued a second ROD in which the agency amended the Roan Plateau Management Plan to designate 21,034 acres within the Planning Area as four ACECs. This ACEC acreage represented only 58% of the 36,184 acres that would have been designated under the Alternative II of the Draft EIS. Final EIS at 4-124. According to the State of Colorado, the proposed ACECs "are inadequate to protect all of the valuable fish and wildlife habitat within the planning area." Letter to Sally Wisely, BLM from Harris D. Sherman, State of Colorado Department of Natural Resource (Dec. 27, 2007).

E. BLM's Decision to Offer Leases for the Entire Planning Area on August 14, 2008

75. BLM's Plan Amendment provides for the immediate leasing of the federal minerals in the Roan Plateau Planning Area. On June 9, 2008, BLM announced it would offer leases for all of the available minerals in the Planning Area at its August 14, 2008 lease sale.

76. BLM has not, and apparently will not, prepare any additional environmental analysis for the August 14 lease sale. Instead, the agency will apparently rely on the environmental analysis it prepared for the Plan Amendment.

F. The Environmental Analysis of the Roan Plateau Plan Amendment

77. The Plan Amendment provides for the immediate leasing of all of the federal minerals within the Planning Area. However, BLM's NEPA analysis only addresses the impacts of a small fraction of the development authorized by these leases. On the top of the Plateau, the agency looks only at the impacts of the 210 wells BLM expects in the first twenty years and ignores entirely the impacts of development that will take place after that. As a consequence, BLM's environmental analysis ignores the majority of the impacts that will flow from its decisions. Put differently, BLM's analysis considers the impacts of only a subset of the leases it will issue and ignores entirely the impacts of the leases that, because of BLM's sequencing approach, will be developed more than twenty years from now.

78. The potential magnitude of BLM's omission is revealed by the Final EIS's "Reasonably Foreseeable Development" (RFD) analysis, which states that the wells it predicts for the next twenty years on the Upper Plateau's federal and private lands represent only "about 15% of the number of wells . . . that will eventually be drilled on the upper plateau." Final EIS

at H-14 (emphasis added). The RDF also projects that more than 3,000 wells may eventually be drilled atop the Plateau. Id.

79. In addition to ignoring the majority of the impacts that could flow from the Plan Amendment, comments from the oil and gas industry indicate that far more than 210 wells will be drilled on the Upper Plateau, even during the limited timeframe BLM considered. In response to the Draft EIS, the Colorado Oil and Gas Association declared that:

The RFD and DEIS unrealistically assume that drilling will proceed more slowly atop the plateau due to economics, weather, access, etc. This “naturally phased development” results in a grossly unrealistic assumption of the amount of development and impacts atop the plateau. In reality, with 16 rigs operating year-round throughout the planning area, a total of 3,000 wells would produce more than 80% of the natural gas resources during the life of the RMP.

Final EIS at 6-70 (emphasis added).

80. BLM’s NEPA analysis also fails to take full and meaningful account of the fact that Colorado – and specifically the Piceance Basin in northwest Colorado, of which the Roan Plateau is a part – is in the midst of a tremendous oil and gas boom on both federal and private lands and that the environmental impacts to air quality, wildlife, and other resources resulting from the agency’s aggressive development scheme for the Roan Plateau will be exacerbated by this ongoing boom – a boom that is certain to continue for some time into the future.

81. While BLM’s Final EIS includes what it calls a “cumulative impacts analysis,” the document does not consider or disclose what the combined impacts of Roan Plateau oil and gas development and other development on adjoining federal and private leases will be, but says only that its impacts will be additive. See, e.g., Final EIS at 4-59, 4-77. Such a cursory and uninformative “analysis” tells the reader nothing whatsoever about how severe the impacts will

be; e.g., whether health problems might arise as a result of worsening air pollution or whether wildlife migration might be hampered or populations decreased as a result of habitat loss.

82. Moreover, the Final EIS's cumulative impacts analysis mentions only "existing and anticipated drilling on private lands in the Planning Area and on both Federal and private lands in adjacent areas of the [Glenwood Springs Resource Area]." Final EIS at 4-54 (emphasis added). In so doing, BLM overlooked the fact that cumulative impacts to some resources, particularly air quality, may result from somewhat more distant projects. Many such projects exist and were unquestionably reasonably foreseeable when BLM issued the Roan Plateau Final EIS in 2006. These include:

- (1) the Figure Four Gas Development Project in Rio Blanco and Garfield counties, whose 2004 Final Environmental Assessment (EA) forecasts the development of 327 new wells on 120 well pads;
- (2) new wells in Grand Mesa, Uncompahgre, and Gunnison National Forests, which lie immediately south of the Roan Plateau, where the Forest Service's 2004 RFD projected 45 new wells;
- (3) new wells in the Little Snake Resource Area, lying next to the Roan Plateau on the north, where the BLM 2005 RFD projected 3,031 wells;
- (4) new wells for the Vernal Resource Area, lying next to the Roan Plateau on the west, where BLM in 2005 stated in its RFD that 2,055 oil wells, 4,345 gas wells, and 130 coal bed methane wells were reasonably foreseeable;
- (5) up to 7,900 new wells on already-leased lands within the existing Continental Divide and Creston Blue Gap natural gas fields, announced in a March 2006 scoping notice;

(6) 582 new wells at already-leased sites in the Desolation Flats area of Carbon and Sweetwater counties, authorized in a 2004 ROD;

(7) 2,130 new wells in the Continental Divide/Wamsutter II Natural Gas Project in Sweetwater and Carbon counties, Wyoming, adjacent to the Colorado border, authorized by a 2000 ROD;

(8) up to 2,000 wells in the Atlantic Rim Natural Gas Field Development Project in Carbon County, recommended in the project's December 2005 Draft EIS.

None of these projects are considered in the cumulative impacts discussion in the Final EIS.

83. BLM also ignored the majority of the area's dramatically expanding private oil and gas development. In conducting its technical air quality modeling, BLM excluded emissions from almost all of the area's wells, drill rigs, and all of the associated emissions from increased traffic and construction. See Air Quality Technical Support Document at 33 (excluding vehicle exhaust from model); §§ 5.1.3, 5.2.2; App. C tbl.C-1 and tbl.C-2.

84. By ignoring this other development, the Final EIS and the air quality document ignore a substantial fraction of the development in the areas. See Colorado Oil and Gas Commission Weekly and Monthly Oil and Gas Statistics (July 7, 2008) at 10, 14 (4,850 active federal and private wells in Garfield County, the 2,630 federal and private wells in Rio Blanco County, and the 67 drilling rigs are running just in Garfield County).

85. Class I areas like National Parks and wilderness areas were protected under the Clean Air Act by Congress in an effort to maintain, or even improve, their air quality. 42 U.S.C. § 7470(2). They require particular analysis in a NEPA document in order to determine whether new pollution sources will impair their extraordinary viewsheds and clean air. 42 U.S.C. §§

7472, 7473, 7476. There are a large number of Class I areas around the Roan Plateau. BLM includes Black Canyon of the Gunnison National Park (25 mi), Maroon Bells-Snowmass Wilderness Area (25 mi), Flat Tops Wilderness Area (30 mi), West Elk Wilderness Area (35 mi), Eagles Nest Wilderness Area (65 mi), La Garita Wilderness Area (80 mi), Mount Zirkel Wilderness Area (90 mi), Weminuche Wilderness Area (100 mi), and Rawah Wilderness Area (120 mi) in its Class I areas analysis. Final EIS at 3-23 tbl.3-10. BLM did not consider the air impacts on Rocky Mountain National Park, a Class I area 130 miles away, even though the Park has had numerous exceedances of federal ozone standards, including 92 ppb in 2003. BLM never explains why it excluded Rocky Mountain National Park from its analysis.

86. To assess the air quality impacts of the project, including its effects upon listed Class I areas, BLM used an air quality model. With it, BLM found “no exceedances of the NAAQS for any pollutant, nor were any predicted potential concentrations found that could exceed the Class I or Class II increments for emissions from BLM Sources.” Final EIS at 4-33. Writing that “actual air quality values are likely to be less than the modeled values,” *id.* at 4-35, BLM used this model to conclude that the project would have little or no air quality impacts. *Id.* at 4-37.

87. However, BLM’s modeling cannot support the conclusion that there will be little or no air quality impacts nor can it accurately predict whether any increments may or may be exceeded.

88. “A PSD Increment is the maximum increase in ambient concentrations that is allowed to occur above a baseline concentration for a pollutant.” Air Quality Technical Support Document at 58 (emphasis added); see also 42 U.S.C. § 7473. A baseline concentration is the

concentration of a pollutant at a certain time. The date is set according to statutory criteria. 42 U.S.C. § 7479(4). At the Roan Plateau, minor source baselines are set at 1977 (SO₂), 1978 (PM₁₀), or 1988 (NO₂). State of Colorado Department of Public Health and the Environment, Air Pollution Control Division, PSD Increment Tracking System (Feb. 26, 2001, updated Dec. 28, 2005).

89. BLM did not use the statutory 1977, 1978, 1988 baseline dates, however. Instead it relied upon the concept of “background concentrations,” where “if an emission source was in operation before the monitoring date [i.e., 2000 or 2001], it was assumed that its emissions were part of the background” and so “excluded from the modeling of inventory sources.” Trinity Consultants Air Quality Assessment Report – Vernal and Glenwood Springs (July 2005) [Air Quality Technical Support Document] at 52 (emphasis added); see also id. at 16.

90. This exclusion of any source before 2000 from the model may not have doomed the legitimacy of the analysis if BLM had combined the “background” emissions with the post-2000 emissions. Final EIS at 6-37. It did not, however. As BLM later admitted to EPA, “background concentrations are not added to modeled concentrations to determine compliance with PSD increments.” Id.

91. EPA recognized the flaw in BLM’s approach and wrote to the agency to criticize its analysis. Final EIS at 6-37. EPA also noted that if the post-2000 emissions and the background emissions were added together – as they should have been – BLM would have recognized that the development allowed by the Plan Amendment would violate the PM₁₀ increment. Id.

92. BLM bluntly brushed EPA's comments aside, telling EPA that this analysis was "not intended to be, and should not be interpreted as a regulatory PSD Increment Consumption Analysis." Final EIS at 6-37. This statement is difficult to reconcile with BLM's reassuring statement to the public in the Final EIS that the project would not exceed any Clean Air Act increments and so would have little air impacts. Final EIS at 4-33, 4-37.

93. In addition to failing to carry out a legitimate analysis of possible increment violations, BLM failed to even attempt to measure the ozone created by the project or determine whether project ozone pollution would violate the ozone NAAQS. See Air Quality Technical Support Document at 53 - 54 (NAAQS Analysis By Alternative tables do not list ozone). Heightened levels of ozone have serious health effects upon the public. See 73 Fed. Reg. 16436, 16436 (Mar. 27, 2008) (discussing "an array of O₃-related adverse health effects," including decreased lung and cardiovascular function, increased emergency department visits and hospital admissions for respiratory causes, and potential increases in mortality).

94. Again, EPA criticized BLM's faulty air quality analysis, recommending "that BLM estimate potential ozone impacts using a screening table or other non-regulatory method." Final EIS at 6-37. EPA stressed that an ozone analysis is necessary because "the additional development proposed in the DEIS" might "significantly" increase emissions of VOCs and NO_x, which together produce ozone. Id. (emphasis added). These emissions are produced by drill rig engines, well-head compressor engines, centralized compressor stations, gas processing plants, glycol dehydrators, separators, and increased vehicular traffic needed to construct, operate and maintain each well and its associated development.

95. In response to EPA's criticism of its lack of ozone analysis, BLM wrote that ozone modeling was "impractical." It then rejected EPA's recommendation that BLM use a screening method because BLM felt that such screening "is too conservative." Final EIS at 6-37. BLM did not explain in what manner screening "is too conservative," leaving the reader to suspect that BLM chose not to use screening because the agency would not welcome the results. Though it rejected EPA's suggestion, BLM did not suggest any alternative ozone analysis approach that would meet BLM's apparently less "conservative" standards.

96. In point of fact, BLM has used screening to estimate ozone impacts for other oil and gas projects, like Jonah Field, Wyoming Infill Project. See Jonah Infill Drilling Project Final Environmental Impact Statement (Jan. 2006) at 4-6; Air Quality Technical Support Document, Jonah Infill Drilling Project (Jan. 2006) at 33-34. BLM also carried out an ozone analysis for the Pinedale Anticline Oil and Gas Exploration Project, though that analysis has also fallen short in EPA's estimation. See Final Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project (June 2008) at 4-81; Letter to Mr. Robert A. Bennett, State Director, [BLM] from Robert E. Roberts, EPA Regional Administrator re: Revised Draft Supplemental Environmental Impact (Feb. 14, 2008)

97. An ozone analysis is particularly important for the Roan Plateau because, as oil and gas drilling increases in the region, so has ozone pollution. The Forest Service conducted a Garfield County ozone study in 2006 and 2007 that monitored approximately twelve area sites. In 2007, several sites showed eight-hour ozone levels near or even above the national standard. See Andrea Holland-Sears, White River National Forest Presentation to Board of Garfield County Commissioners, WRNF & GarCo Ozone Monitoring Program Summary of 2007 Data

(March 17, 2008). On top of Ajax Mountain, levels went as high as 77 ppb, and Bell Ranch near Rifle had a high eight-hour level of ozone measured at 69 ppb. Id.; see also Phillip Yates, Garfield County ozone levels are high; Several monitored locations approach new air quality standards, Glenwood Springs Post Independent (Mar. 18, 2008).

98. Ozone pollution is a region-wide problem. A 2005 Western Governors' Association report found that oil and gas production operations released more than 245,000 tons of VOCs and 92,000 tons of NO_x in Colorado, Utah, and Wyoming in 2002. Russell, J. and A. Pollack, Oil and Gas Emission Inventories for the Western States, Final Report Prepared for the Western Governors' Association by ENVIRON (Dec. 27, 2005) at 2-2. The report projected that oil and gas operations in these states will more than double their VOCs to 600,000 tons annually by 2018. Id. at 4-2, 2-2. Total NO_x emissions would rise to over 128,000 tons per year. Id. at 4-2.

99. Despite its lack of an ozone analysis, BLM concludes in the EIS that the Proposed Plan would not “cause any exceedance of any applicable standard or threshold affecting human health and the environment,” including, apparently, the ozone NAAQS. Final EIS at 4-27.

FIRST CAUSE OF ACTION

(NEPA: Failure to Include a Reasonable Range of Alternatives)

100. The allegations in paragraphs 1-99 are incorporated herein by reference.

101. NEPA requires federal agencies, including BLM, to include within an EIS “alternatives to the proposed action.” 42 U.S.C. § 4332(C)(iii). The alternatives analysis is the “heart” of a NEPA document, and the statute’s implementing regulations direct BLM to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a).

102. BLM's failure to consider anything other than aggressive leasing for the Roan Plateau and its failure to consider expanded ACECs, Colorado Division of Wildlife recommendations, Alternative F, the Community Alternative, or any other alternative that significantly restricted or proscribed new oil and gas development atop the Plateau violated NEPA's range of alternatives requirement and was arbitrary and capricious, or abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SECOND CAUSE OF ACTION

(NEPA: Failure to Analyze the Action's Full Environmental Impacts)

103. The allegations in paragraphs 1-99 are incorporated herein by reference.

104. NEPA requires federal agencies, including BLM, to take a "hard look" in an EIS at the environmental consequences of these proposed major federal actions. 42 U.S.C. § 4332(C)(i)-(ii).

105. BLM's Plan Amendment provides for the leasing of 100% of the federal mineral estate in the Roan Plateau Planning Area. BLM's NEPA analysis, however, considers only the development that will occur in the first twenty years, which the agency admits is only a small fraction of the development that will occur as a result of the leasing. Because BLM ignored the impacts of development that will take place after twenty years, the agency effectively ignores the impacts of much – indeed, the large majority – of the foreseeable development that will result from its Plan Amendment.

106. BLM also failed to adequately account for the fact that development of the Roan Plateau will take place against the backdrop of a tremendous oil and gas boom in the region.

107. BLM's failure to take the requisite "hard look" at the full impacts of its entire decision and its failure to consider its decision in the context of the ongoing oil and gas boom is

arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

THIRD CAUSE OF ACTION
(NEPA: Failure to Consider Cumulative Impacts)

108. The allegations in paragraphs 1-99 are incorporated herein by reference.

109. NEPA requires that an EIS include a cumulative impacts analysis, which is an analysis of the project's "incremental impact . . . when added to other past, present, and reasonably foreseeable future [Federal and non-Federal] actions." 40 C.F.R. § 1508.7.

110. BLM failed to adequately analyze the cumulative impacts to wildlife, air quality, and other resources from its Plan Amendment in combination with other past, present, and reasonably foreseeable oil and gas development on public and private lands in the Piceance Basin and elsewhere in the affected region. BLM's failure to adequately consider these cumulative impacts was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

FOURTH CAUSE OF ACTION
(NEPA: Failure to Analyze Impacts from Ozone)

111. The allegations in paragraphs 1-99 are incorporated herein by reference.

112. NEPA requires federal agencies, including BLM, to take a "hard look" in an EIS at the environmental consequences of a proposed major federal action. 42 U.S.C. § 4332(C)(i)-(ii).

113. BLM failed to analyze the impacts associated with the ozone emissions that will result from the Plan Amendment. This failure was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

FIFTH CAUSE OF ACTION

(FLPMA: Failure to Provide for Compliance With Clean Air Act Ozone Mandates)

114. The allegations in paragraphs 1-99 are incorporated herein by reference.

115. FLPMA requires that land use plans “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans.” 43 U.S.C. § 1712(c)(8).

116. BLM failed to analyze the impacts associated with the ozone emissions that will result from the Plan Amendment. Because it lacked any analysis of the Plan Amendment’s ozone-related impacts, BLM’s conclusion that the Plan Amendment would comply with all Clean Air Act requirements and standards, including the National Ambient Air Quality Standard for ozone is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SIXTH CAUSE OF ACTION

(NEPA: Failure to Accurately Assess Air Quality Impacts on Class I or Class II Areas)

117. The allegations in paragraphs 1-99 are incorporated herein by reference.

118. NEPA requires a thorough description of the environmental impacts of the proposed activity, 42 USC § 4332(C)(i)-(ii), including the project’s compliance with all environmental laws and policies. 40 C.F.R. § 1502.2(d).

119. BLM’s conclusion that this project will have no air quality impacts, including that it will not exceed any Class I or Class II increments, is unsupported. The agency ignored a Class I area, Rocky Mountain National Park, that could be significantly impacted by project emissions. Critically, it used an air quality model that ignored a significant share of increment-consuming

sources (those constructed before 2000) to make conclusions about whether the project would consume Class I and Class II increments.

120. BLM violated NEPA by making an unsupported conclusion regarding the project's air quality impacts; it did not accurately assess the project's impacts. Accordingly, its decision to approve the project is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SEVENTH CAUSE OF ACTION

(NEPA: Failure To Analyze Impacts of August 14, 2008 Lease Sale)

121. The allegations in paragraphs 1-99 are incorporated herein by reference.

122. NEPA requires federal agencies, including BLM, to take a "hard look" in an EIS at the environmental consequences of a proposed major federal action. 42 U.S.C. § 4332(C)(i)-(ii).

123. On June 9, 2008, BLM announced its decision to offer oil and gas leases for 73,552 acres of land within the Roan Plateau Planning Area. This includes all of the unleased land in the Planning Area. BLM announced that its lease sale would take place on August 14, 2008.

124. No existing NEPA document adequately analyzes the direct, indirect, and cumulative environmental impacts of leasing this huge area

125. Because it has never analyzed the environmental impacts of leasing these 73,552 acres for oil and gas development, BLM's decision to offer the leases violates NEPA and is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

EIGHTH CAUSE OF ACTION

(FLPMA: Failure to Provide for Compliance With Clean Air Act Ozone Mandates)

126. The allegations in paragraphs 1-99 are incorporated herein by reference.

127. FLPMA's implementing regulations require that land use authorizations, including oil and gas leases, require compliance with "air and water quality standards established pursuant to applicable Federal or State law." 43 C.F.R. 2920.7(b)(3)

128. BLM has never analyzed the impacts associated with the ozone emissions that will result from the development of the leases BLM decided to offer at its August 14, 2008 lease sale. Because it lacks any analysis of the ozone-related impacts of the leasing, the agency has failed to require that the leasing will comply with the Clean Air Act's ozone standards. This failure violates FLPMA's regulations and is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that BLM's adoption of the Roan Plateau Resource Management Plan Amendment violated NEPA as set forth above;

2. Declare that BLM's adoption of the Roan Plateau Resource Management Plan Amendment violated FLPMA as set forth above;

3. Declare that BLM's decision to lease all of the unleased portions of the Roan Plateau Planning Area on August 14, 2008, without preparing any additional NEPA analysis violated NEPA as set forth above;

4. Declare that BLM's decision to lease all of the unleased portions of the Roan Plateau Planning Area on August 14, 2008, violated FLPMA as set forth above;

5. Issue an Injunction setting aside the records of decision approving the Roan Plateau Resource Management Plan Amendment;

6. Enjoin BLM from implementing or relying upon the Roan Plateau Resource Management Plan Amendment, including the sale or issuance of any oil and gas leases or drilling permits within the planning area, until such time as BLM has complied with NEPA and FLPMA as set forth above;

7. Enjoin BLM from selling or issuing any leases within the Roan Plateau Planning Area at the August 14, 2008, lease sale and at later lease sales until such time as BLM has complied with NEPA and FLPMA as set forth above;

8. Award Plaintiffs costs and reasonable attorneys' fees as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other statute;

9. Retain jurisdiction of this action to ensure compliance with its decree; and

10. Provide such other declaratory and injunctive relief as the Court deems just and proper.

Respectfully submitted July 11, 2008

s/ James S. Angell

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