

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

WILDERNESS WORKSHOP;  
NATURAL RESOURCES DEFENSE COUNCIL;  
THE WILDERNESS SOCIETY;  
and SIERRA CLUB.

Plaintiffs,

v.

ALLEN CROCKETT, in his official capacity as a representative of the Bureau of Land  
Management; and the  
BUREAU OF LAND MANAGEMENT.

Defendants.

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**COMPLAINT AND PETITION FOR REVIEW OF AGENCY ACTION**

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**INTRODUCTION**

1. As natural gas drilling has spread through Western Colorado, air quality in surrounding communities has dramatically worsened. Monitoring has documented high levels of ozone pollution, and health officials are growingly increasingly concerned about the health effects on residents. Moreover, oil and gas-related air pollution contributes to haze that degrades the vistas from some of Colorado's most spectacular public lands.

2. Much of this air pollution has been authorized by the United States Bureau of Land Management (BLM), the agency that oversees oil and gas development on federal lands. BLM

has violated the National Environmental Policy Act (NEPA) by turning a blind eye to the air pollution that results from numerous federal oil and gas projects it authorizes.

3. The agency has adopted a practice of approving oil and gas development in Western Colorado without any analysis of the resulting air pollution. Since 2005 the agency has approved at least 34 oil and gas projects in Garfield and Mesa Counties – covering more than 1,400 wells, with associated industrial infrastructure — based on NEPA documents that contain no analysis at all of their air pollution impacts.

4. This case challenges BLM’s approval of three of those projects: the Spruce Creek Master Development Plan (MDP); the North Castle Springs MDP; and the West Mamm MDP. BLM approved the three projects, with a combined total of nearly 400 oil and gas wells, without conducting any analysis of the air pollution they will cause.

5. BLM’s NEPA violations occurred because the agency’s environmental documents purported to rely on (or “tier” to) an earlier NEPA analysis that was never intended to cover the 34 projects in question. That document, a 2006 environmental impact statement (EIS), addressed only a limited number of wells in a location called the Roan Plateau Planning Area (RPPA) (the RPPA EIS). The RPPA EIS excluded from its analysis the impacts of natural gas development occurring in the region surrounding the RPPA. As a result, the 34 projects, which occur miles away from the RPPA, are not covered by the RPPA EIS.

6. By relying on an air quality analysis that did not address the oil and gas development it was approving, BLM violated NEPA because it failed to take a hard look at the impacts of these projects.

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction). Plaintiffs challenge final agency action by the BLM and pursue their claims under the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq, and NEPA, 42 U.S.C. § 4321 et seq.

8. 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, and Plaintiffs reside in this district.

## **PARTIES**

9. Plaintiff Wilderness Workshop is a Carbondale-based non-profit organization whose mission is to protect and conserve the wilderness and natural resources, including the air quality, of Western Colorado public lands. Wilderness Workshop has 700 members. For more than a decade Wilderness Workshop has been monitoring air quality on Western Colorado public lands and commenting on air quality impacts associated with proposed federal actions. Wilderness Workshop members and staff participated in the administrative process prior to these projects' approval. Wilderness Workshop members live in Western Colorado and have suffered concrete injuries from the increased air pollution due to these projects in their homes, their communities, and the areas where they recreate and work. These injuries include a decreased quality of life and increased human health impacts. Wilderness Workshop members have similarly been injured from decreased visibility in Western Colorado due to these projects.

10. Plaintiff Natural Resources Defense Council (NRDC) is a nonprofit environmental membership organization with more than 390,000 members throughout the United States. 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 live and work in areas of Western Colorado near where the challenged projects are located. Their health and quality of life are adversely affected by air pollution from oil and gas development. As approved by BLM, the three challenged projects will contribute to the air pollution that harms the health and quality of life of NRDC members. NRDC members also use and enjoy public lands in Western Colorado for purposes including recreation, solitude, scientific study, and aesthetic appreciation. Visibility and air quality in those public lands have been impaired by oil and gas-related air pollution. The three challenged projects approved by BLM are adding, and will add to, this pollution.

11. Plaintiff Sierra Club is a national nonprofit organization of approximately 625,000 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 has approximately 16,000 members. Sierra Club members live, work and recreate in areas of Western Colorado near the projects challenged in this case. Their health, quality of life, and enjoyment of public lands have been adversely affected by the air pollution caused by the oil and gas development challenged in this case.

12. Plaintiff The Wilderness Society (TWS) is a nonprofit environmental organization formed in 1935, which has over 565,000 members and supporters nationwide, including 16,510 in Colorado. 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. The TWS Colorado Office addresses public lands management issues across Colorado, including western Colorado where TWS members are affected by the direct and indirect impacts of increased oil and gas drilling including the subsequent decline in air quality.

13. Defendant BLM is an agency of the United States within the Department of the Interior. BLM is responsible for managing federal lands and minerals, including approval of oil and gas development, in accordance with federal law.

14. Defendant Allen Crockett is the Supervisory Natural Resource Specialist with the BLM's Colorado River Valley Field Office. In that capacity, Mr. Crockett signed the decisions approving the three projects challenged in this case. Mr. Crockett was responsible for ensuring that the approval of the three projects complied with federal law.

## **LEGAL FRAMEWORK**

### **A. The Administrative Procedure Act (APA)**

15. Because NEPA does not include a citizen suit provision, the NEPA claims in this case are brought under the APA. 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 (NEPA)**

16. 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.

17. NEPA requires all federal agencies, including BLM, to take a hard look at the environmental consequences of proposed federal actions. 42 U.S.C. § 4332(C)(i)-(ii). In doing so, an agency must identify and disclose to the public the impacts of a proposed action on the environment. 40 C.F.R. § 1502.1.

18. If an action “may” have a significant impact on the environment, NEPA requires the agency to prepare an environmental impact statement (EIS). 40 C.F.R. § 1508.18; 42 U.S.C. § 4332(C). Where the impacts of a project are not significant, or the agency is uncertain about their significance, it can prepare a shorter analysis called an environmental assessment (EA). 40 C.F.R. §§ 1501.3, 1508.9.

19. Part of NEPA’s hard look mandate requires considering a project’s impacts in context. An agency must analyze the “cumulative impact” to 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.

20. NEPA allows agencies to analyze cumulative impacts, and consider projects in context, through a practice known as “tiering.” Tiering occurs when an agency has completed a “broad environmental impact statement” for a program or policy, and subsequently prepares

another, narrower, NEPA analysis for “an action included within the entire program or policy,” such as a site-specific project implementing a land management plan. 40 C.F.R. § 1502.20. In such cases, the subsequent analysis may rely on and incorporate by reference parts of the discussion of environmental issues contained in the broader EIS. *Id.*; *see also id.* § 1508.28.

21. NEPA, however, only permits tiering when the project being analyzed is actually part of the agency action addressed by the broader NEPA document. 40 C.F.R. § 1502.20.

22. After completion of an EIS, NEPA also requires that it be supplemented when important new information arises, or changes are made to the agency’s project. A supplemental EIS must be prepared when:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.R. § 1502.9(c)(1).

## **STATEMENT OF FACTS**

### **A. Air Pollution From Oil and Gas Development in Western Colorado**

23. Since 1999, oil and gas development has exploded in Colorado. In 1999, just over 1,000 drilling permits were issued in the entire state. By 2008, that figure had ballooned to 8,027 permits. Much of this growth has occurred in Garfield County, Colorado (which has jurisdiction over part of the BLM Field Office where the challenged projects are located). For example, in 2010, 2,037 drilling permits were issued in Garfield County alone.<sup>1</sup>

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<sup>1</sup> Colorado Oil and Gas Conservation Commission, Weekly & Monthly Oil & Gas Statistics (June 7, 2011), [available at: http://cogcc.state.co.us](http://cogcc.state.co.us) .

24. In Colorado and nearby states, the boom in drilling has coincided with large increases in air pollution. In its 2010 report to the public, the Colorado Air Quality Control Commission stated that “[r]educing emissions from oil and gas exploration and production will help reduce ozone pollution and improve visibility, as well as reduce odors and exposure to air toxics.”<sup>2</sup>

25. One of the most significant types of air pollution is ozone. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere. Ozone causes a variety of adverse health impacts, including respiratory problems such as lung inflammation and asthma, and can even lead to premature death. See 73 Fed. Reg. 16436, 16436 (Mar. 27, 2008). Elevated ozone levels also injure vegetation and cost agriculture hundreds of millions of dollars annually in reduced crop yields.

26. Colorado estimates that oil and gas development is the largest source of ozone-generating VOC pollution in the state. For example, oil and gas development accounts for more than 87 percent of all human-caused VOC emissions in Garfield County. The industry is also responsible for 72.5 percent of the human-caused NO<sub>x</sub> emissions there.<sup>3</sup> Oil and gas operations produce ozone-generating VOCs and NO<sub>x</sub> emissions from equipment such as condensate tanks, drill rig engines, compressor engines, glycol dehydrators, separators, and the increased vehicle traffic needed to construct, operate and maintain each well.

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<sup>2</sup> Colo. Dep’t of Public Health and Env’t, Colo. Air Quality Control Comm’n, Report to the Public 2009-2010 at 2, available at: <http://www.cdphe.state.co.us/ap/down/RTTP09-10web.pdf> .

<sup>3</sup> [www.colorado.gov/airquality/inv\\_maps\\_2008.aspx](http://www.colorado.gov/airquality/inv_maps_2008.aspx) (last viewed June 9, 2011).

27. Under the Clean Air Act, the United States Environmental Protection Agency (EPA) sets national ambient air quality standards (NAAQSs). 42 U.S.C. §§ 7409, 7410. The EPA has established such NAAQSs for six air pollutants, including ozone, that can “endanger public health and welfare.” *id.* §§ 7408(a)(1)(A), 7409. The NAAQS for ozone is currently .075 parts per million (ppm) over an eight-hour period, but the EPA has proposed that the standard “instead be set at a lower level within the range of 0.060 to 0.070” ppm. 75 Fed. Reg. 2938, 2938 (Jan. 19, 2010).

28. EPA designated metropolitan Denver in 2007 as a “nonattainment” area that violates the current ozone NAAQS, due in part to oil and gas development in northeastern Colorado.<sup>4</sup> Garfield County monitoring also has recorded ozone levels that may violate the NAAQS, especially if the standard is tightened. For example, a 2007 study recorded ozone levels that approached or exceeded .075 ppm.<sup>5</sup>

29. Another air pollutant emitted during oil and gas development is benzene, a known human carcinogen.<sup>6</sup> Colorado estimates that oil and gas sources emit 67 percent of the benzene

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<sup>4</sup> See Colorado Air Quality Control Commission, Denver Metro Area & North Front Range Ozone Action Plan, at III-6, i, and III-1, available at <http://www.cdphe.state.co.us/ap/ozone/ozoneplan.pdf> (last viewed June 8, 2011); see also 40 C.F.R. § 81.306 (Colorado non-attainment areas).

<sup>5</sup> Phillip Yates, Garfield County ozone levels are high, Glenwood Springs Post Independent, available at: <http://www.postindependent.com/article/20080318/VALLEYNEWS/207716530> (last viewed June 8, 2011); see also State of Colorado Technical Support Document for Recommended 8-Hour Ozone Designations at 65 (March 9, 2009), available at <http://www.cdphe.state.co.us/ap/ozone/OZDesignations.pdf> (last viewed June 13, 2011).

<sup>6</sup> Center for Disease Control Agency for Toxic Substances and Disease Registry, Toxic Substances Portal – Benzene (2007), available at <http://www.atsdr.cdc.gov/toxfaqs/TF.asp?id=38&tid=14> (last viewed June 8, 2011).

emissions in Garfield County.<sup>7</sup>

30. In addition to the health threats posed by ozone and benzene emissions, the industrial engines, earth moving and traffic associated with oil and gas development generate large quantities of dust and other air pollutants. In recent years, this dust and pollution has contributed to atmospheric haze that has markedly degraded visibility on some of Colorado's most pristine public lands.

31. The Clean Air Act designates wilderness areas and national parks as "Class I" areas, and sets a national goal of avoiding any human-caused impairment of visibility there. 42 U.S.C. § 7491(a)(1). Several Class I areas are located in Western Colorado, including the Black Canyon of the Gunnison National Park, Maroon Bells-Snowmass Wilderness Area, Flat Tops Wilderness Area, and West Elk Wilderness Area. Emissions from oil and gas development and other human activities have caused substantial adverse effects to air quality in these Class I areas.

32. While authorizing much of the oil and gas development that occurs in Western Colorado, BLM has failed to address the resulting ozone and benzene pollution, or its contribution to degrading some of the best vistas in the state. In large part, this has resulted because the agency put on blinders when developing its NEPA analyses. For example, the State of Colorado's Department of Public Health and Environment complained in 2008 that BLM's project-specific "Air Quality Analyses are generally disconnected from what is occurring at the regional level," and recommended that "[m]ore focus is needed on how individual site-specific projects collectively impact regional air quality." Similarly, the United States Forest Service has declined to use certain BLM air quality analyses (including the RPPA EIS) because they have

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<sup>7</sup> [www.colorado.gov/airquality/inv\\_maps\\_2008.aspx](http://www.colorado.gov/airquality/inv_maps_2008.aspx) (last viewed June 9, 2011).

numerous flaws, such as underestimating impacts by failing to “include all emissions sources” in their modeling and cumulative impacts analyses.

**B. The 2006 RPPA EIS**

33. Oil and gas development in the Colorado River Valley Field Office (formerly known as the Glenwood Springs Field Office) (the Field Office) is governed by a resource management plan (RMP). In developing an RMP, BLM prepares an EIS describing the impacts of implementing that plan. In 1999, BLM amended its RMP for the Field Office, and prepared an EIS addressing the impacts of expected oil and gas development in the Field Office. The 1999 EIS was called the Glenwood Springs Oil and Gas Leasing and Development Final Supplemental EIS (Glenwood EIS). The Glenwood EIS analyzed the impacts from drilling only about 300 oil and gas wells in the Field Office over a 20-year period.

34. The explosion of oil and gas development since 1999 dramatically affected the Field Office. The 300 federal wells analyzed in the Glenwood EIS were permitted and drilled by approximately 2002. By 2006, BLM had approved thousands of wells in the Field Office, and continues to approve numerous new wells each year. BLM, however, has never completed a supplemental EIS that updates the Field Office-wide analysis in the Glenwood EIS.

35. In 2006, BLM issued an EIS analyzing potential oil and gas development of the Roan Plateau, a mesa located just northwest of Rifle, Colorado. BLM’s EIS covered a discrete part of the Field Office known as the Roan Plateau Planning Area (RPPA). The RPPA comprises only about 13 percent of the federal lands managed by the Field Office.

36. The RPPA EIS analyzed the air pollution impacts of drilling approximately 1,570 oil and gas wells within the RPPA over a period of 20 years. It did not analyze the air emissions

from any future oil and gas wells drilled in Colorado outside the RPPA. Rather, the RPPA EIS's analysis of future drilling within the Field Office is limited solely to wells drilled within the RPPA.<sup>8</sup> Despite the limited scope of the RPPA EIS, BLM has improperly tiered to it in the NEPA analyses for at least 34 projects outside the RPPA, totaling more than 1,400 federal oil and gas wells. See Ex.1 (table listing 34 projects); Ex. 2 (map of projects).

37. In addition to approving development outside the geographic scope of the RPPA EIS, BLM improperly relied on that EIS to approve a larger number of wells than were ever contemplated by the RPPA EIS. While the 2006 RPPA EIS analyzes the impact of 1,570 federal wells over 20 years, BLM already has tiered to its air quality analysis for NEPA documents supporting projects involving 2,000 or more wells.<sup>9</sup>

38. This case challenges BLM's failure to comply with NEPA in approving three of the projects outside the RPPA.

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<sup>8</sup> In 2009, BLM explained its rationale for the narrow scope of the RPPA EIS: the agency asserted that oil and gas drilling outside the RPPA was purely "hypothetical," and any attempt to analyze such drilling in the RPPA EIS would "be reduced to predicting speculative impacts." CEC v. Salazar, No. 1:08-cv-01460 (D. Colo.), Dkt. # 92 at 34 (federal brief).

That explanation contrasted sharply with BLM's actual practices. For example, when BLM issued its RPPA EIS in 2006, it had already relied on the draft version of the EIS to approve several oil and gas projects totaling more than 200 wells outside the RPPA. None of those projects were included in the RPPA EIS analysis. By early 2009, when BLM asserted that oil and gas drilling outside the RPPA was "hypothetical," the agency had already tiered the NEPA analyses for at least 18 projects outside the RPPA (totaling several hundred wells) to that same RPPA EIS.

<sup>9</sup> The 2,000-well figure includes the 1,400-plus wells approved for the 34 projects outside the RPPA, as well as hundreds of additional wells approved as part of projects inside the RPPA.

### C. The Spruce Creek Master Development Plan

39. BLM approved the Spruce Creek MDP (BLM No. CO-140-2007-167-EA) in 2008.<sup>10</sup> The Spruce Creek project lies outside the Roan Plateau Planning Area. See Ex. 2 (map). It involves drilling 45 new oil and gas wells, constructing nearly a mile of new road that will be used for substantial volumes of heavy truck traffic, laying nearly two miles of pipelines, installing a variety of equipment that will generate air pollution (including drilling rigs, gas separation and dehydration units, and tanks for storage of liquid petroleum and produced water), and the building of three to four large pits. Spruce Creek MDP at 3.

40. In approving the Spruce Creek MDP, BLM concluded that the project would not result in a significant impact upon the environment, and thus NEPA required only an EA rather than a full EIS. The Spruce Creek EA, however, provides no analysis of the project's air pollution impacts. Instead, the EA purports to tier to the RPPA EIS, stating:

**The Roan Plateau RMPA and EIS describe potential effects from oil and gas development (BLM 2006:4-26 - 4-37).** Analysis was completed with regard to greenhouse gas emissions, a near-field and far-field analysis for carbon monoxide, particulate matter (PM10 and PM2.5), sulfur dioxide, hazardous air pollutants including: benzene, ethylbenzene, formaldehyde, hydrogen sulfide, toluene, and xylenes. Sulfur and nitrogen deposition analysis, acid neutralizing capacity, and visibility screening-level analysis were also completed in the Roan Plateau RMPA and EIS. Findings indicate that no adverse long-term effects would result under that plan. **Since the proposed action is within the scope of the reasonable foreseeable development (RFD) scenario analyzed in that document, it is anticipated that the proposed action would be unlikely to have adverse effects on air quality.**

Spruce Creek MDP at 25 (emphasis added); see also id. at 23 (same).

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<sup>10</sup> See Spruce Creek MDP, available at: [http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/glenwood\\_springs\\_field/2007\\_documents0.Par.91401.File.dat/CO140\\_2007\\_167ea.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/glenwood_springs_field/2007_documents0.Par.91401.File.dat/CO140_2007_167ea.pdf) (last viewed June 8, 2011).

41. The Spruce Creek EA includes no other analysis of the air pollution that will result from the Spruce Creek project.

42. The Spruce Creek EA also fails to analyze and disclose the cumulative impacts of the project's air emissions "when added to other past, present, and reasonably foreseeable future" pollution from other oil and gas development in the area. See 40 C.F.R. § 1508.7. Such actions include, for example, the numerous other federal projects approved in the Field Office in recent years. See Ex. 1 (chart of 34 EAs).

43. Following approval of the Spruce Creek MDP, BLM has begun approving drilling permits to implement the project. On information and belief, BLM has done no additional NEPA analysis for any of the individual drilling permit approvals.

#### **D. The North Castle Springs MDP**

44. In 2010, BLM approved the North Castle Springs MDP (No. CO-N040-2010-0032-EA).<sup>11</sup> The North Castle Springs project lies outside the RPPA. See Ex. 2. The approved project includes 284 federal wells on more than nine square miles of federal land, eight miles of new roads, and eight miles of new pipelines. It will require a variety of industrial equipment that emit air pollution, including the operation of four drilling rigs for four to five years, a new compressor engine, and numerous large petroleum storage and produced water tanks and separators. North Castle Springs MDP at 13, 22.

45. In approving the North Castle Springs MDP, BLM concluded that the project would not result in a significant impact upon the environment, and thus required only an EA

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<sup>11</sup> See North Castle Springs MDP, available at: [http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/glenwood\\_springs\\_field/2010\\_documents.Par.97596.File.dat/DOI-BLM-CO-N040-2010-0032-EA.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/glenwood_springs_field/2010_documents.Par.97596.File.dat/DOI-BLM-CO-N040-2010-0032-EA.pdf) (last viewed June 8, 2011).

rather than a full EIS. The North Castle Springs EA, however, provides no analysis of the project's air pollution impacts. Instead, the EA tiers to the RPPA EIS's discussion of air quality impacts:

**The Roan Plateau RMPA/EIS describes potential effects from oil and gas development (BLM 2006:4-26 to 4-37).** Analysis was completed with regard to greenhouse gas emissions, a near-field and far-field analysis for "criteria pollutants" (particulate matter [PM10 and PM2.5], carbon monoxide, sulfur dioxide, and nitrogen oxides) and hazardous air pollutants (benzene, ethylbenzene, formaldehyde, hydrogen sulfide, toluene, and xylenes. Sulfur and nitrogen deposition, acid neutralizing capacity, and a visibility screening analysis were also completed in the Roan Plateau RMPAEIS. Because the visibility screening analysis showed potential impacts at one or more Class I areas, a refined visibility analysis was also completed. The refined visibility analysis indicated a "just noticeable" impact on visibility for one day each at two Class I areas (Black Canyon of the Gunnison National Park and Mt. Zirkel Wilderness). For the other pollutants analyzed, implementation of oil and gas development under the Roan Plateau RMPA/EIS would have no or negligible long-term adverse impacts on air quality. **Since the number of wells under the Proposed Action is within the level of development anticipated in the Roan Plateau air quality analysis, it is not expected to have adverse effects on air quality.**

North Castle Springs MDP at 22 (emphasis added).

46. The North Castle Springs EA includes no other analysis of the air pollution that will result from the project.

47. The North Castle Springs EA also fails to analyze and disclose the cumulative impacts of the project's air emissions "when added to other past, present, and reasonably foreseeable future" emissions from other oil and gas development in the area. See 40 C.F.R. § 1508.7. Such actions include, for example, the numerous other federal projects approved in the Field Office in recent years. See Ex. 1 (chart of 34 EAs).

48. Following approval of the North Castle Springs MDP, BLM has begun approving drilling permits to implement the project. On information and belief, BLM has done no additional NEPA analysis for any of the individual drilling permit approvals.

**E. The West Mamm MDP**

49. Also in 2010, BLM approved the West Mamm MDP (No. CO-NO40-2010-0008-EA).<sup>12</sup> The West Mamm project is outside the RPPA. The project includes drilling 68 new federal wells and constructing several new waste pits. West Mamm MDP at 1, 13.

50. BLM concluded that the West Mamm project would not have a significant environmental impact requiring an EIS. The EA for the project, however, provides no analysis of its air pollution impacts. Instead, the EA tiers to the RPPA EIS for its analysis of the project's air quality impacts. The West Mamm EA states:

**The Roan Plateau RMPA/EIS (BLM 2006) describes potential effects from oil and gas development (BLM 2006:4-26 to 4-37).** Analysis was completed with regard to greenhouse gas emissions, a near-field and far-field analysis for "criteria pollutants" (PM<sub>10</sub>, PM<sub>2.5</sub>, CO, SO<sub>2</sub>, and NO<sub>2</sub>), and hazardous air pollutants (benzene, ethylbenzene, formaldehyde, hydrogen sulfide, toluene, and xylenes). Sulfur and nitrogen deposition, acid neutralizing capacity, and a visibility screening analysis were also completed in the Roan Plateau RMPA/EIS. Because the visibility screening analysis for the Roan Plateau RMPA/EIS showed potential visibility impacts at one or more Class I areas, a refined visibility analysis was also completed. The refined visibility analysis indicated a "just noticeable" incremental impact on visibility for one day each at two Class I areas (Black Canyon of the Gunnison National Park and the Mt. Zirkel Wilderness). For the other pollutants analyzed, BLM concluded that implementation of oil and gas development at the level anticipated in the Roan Plateau RMPA/EIS would have no or negligible long-term adverse impacts on air quality. **Since the number of wells under the Proposed Action is within the level of development anticipated in the Roan Plateau analysis it is not**

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<sup>12</sup> See West Mamm MDP, available at: [http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/glenwood\\_springs\\_field/2010\\_documents.Par.87062.File.dat/DOI-BLM-CO-N040-2010-0008-EA.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/glenwood_springs_field/2010_documents.Par.87062.File.dat/DOI-BLM-CO-N040-2010-0008-EA.pdf) (last viewed June 8, 2011).

**expected to have adverse effects on air quality beyond those previously disclosed in the Roan Plateau RMPA/EIS.**

West Mamm MDP at 23 (emphasis added).

51. The West Mamm EA contains no other discussion of the air pollution impacts that will result from the project.

52. The West Mamm EA also fails to analyze and disclose the cumulative impacts of the project's air emissions "when added to other past, present, and reasonably foreseeable future" emissions from other oil and gas development in the area. See 40 C.F.R. § 1508.7. Such actions include, for example, the numerous other federal projects approved in the Field Office in recent years. See Ex. 1 (chart of 34 EAs).

53. Following approval of the West Mamm MDP, BLM has begun approving drilling permits to implement the project. On information and belief, BLM has done no additional NEPA analysis for any of the individual drilling permit approvals.

**FIRST CAUSE OF ACTION  
(NEPA: Failure to Analyze Air Quality Impacts)**

54. The allegations in paragraphs 1-53 are incorporated herein by reference.

55. NEPA requires federal agencies, including BLM, to take a hard look at the environmental consequences of proposed federal actions. 42 U.S.C. § 4332(C)(i)-(ii).

56. When BLM approved the Spruce Creek MDP, the North Castle Springs MDP, and the West Mamm MDP, it did not conduct any NEPA analysis of the impacts from air emissions caused by those projects. Instead, it purported to tier to the air pollution discussion in the RPPA EIS.

57. BLM's attempt to tier to the RPPA EIS was arbitrary and capricious, because that EIS never analyzed the impacts of oil and gas projects outside the RPPA, such as the Spruce Creek, North Castle Springs, and West Mamm projects. In effect, BLM has done no analysis of the impacts of the three projects on air pollution.

58. In approving the three projects without analyzing and disclosing their air quality impacts, BLM violated NEPA. Its approvals of the three projects are arbitrary and capricious, an 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 Cumulative Impacts)**

59. The allegations in paragraphs 1-58 are incorporated herein by reference.

60. An agency's NEPA analysis must include a cumulative impacts analysis that considers the project's "incremental impact . . . when added to other past, present, and reasonably foreseeable future [Federal and non-Federal] actions." See 40 C.F.R. § 1508.7.

61. BLM's EAs for the Spruce Creek, North Castle Springs and West Mamm MDPs fail to discuss the cumulative air pollution impacts of the three projects together and when added to other past, present, and reasonably foreseeable future oil and gas development in the Field Office, including the federal projects listed in Ex. 1 (table listing all 34 projects).

62. BLM violated NEPA by approving the Spruce Creek, North Castle Springs, and West Mamm MDPs without analyzing and disclosing the cumulative impacts of those projects in combination with other past, present, and reasonably foreseeable future oil and gas development in the region. BLM's approvals of the MDPs were 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 Prepare EIS)**

63. The allegations in paragraphs 1-62 are incorporated herein by reference.

64. NEPA requires an agency to prepare an EIS if the action “may” have a significant impact on the environment. 40 C.F.R. § 1508.18; 42 U.S.C. § 4332(C). BLM’s approval of thousands of wells in the Field Office has a cumulatively significant impact on air quality. NEPA therefore required BLM to prepare an EIS as part of approving the Spruce Creek, North Castle Springs, and West Mamm MDPs.

65. In addition, NEPA requires an agency to prepare a supplemental EIS when:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

40 C.F.R. § 1502.9(c)(1).

66. BLM’s approval of thousands of wells that were not covered by its 1999 Glenwood EIS represents significant new information relevant to environmental concerns, as well as a substantial change in its implementation of the RMP for the Field Office. NEPA therefore required BLM to prepare a supplemental EIS before approving the Spruce Creek, North Castle Springs, and West Mamm MDPs.

67. BLM violated NEPA by failing to prepare an EIS or supplemental EIS before approving the three projects and associated drilling permits. The agency’s failure 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: Approvals of Drilling Permits)**

68. The allegations in paragraphs 1-67 are incorporated herein by reference.

69. Following approval of the Spruce Creek, North Castle Springs, and West Mamm MDPs, BLM has begun implementing those projects by approving applications for permits to drill individual wells. On information and belief, the agency has prepared no additional NEPA analysis for any of the individual wells approved to date.

70. For the same reasons as the MDP approvals, the approvals of individual drilling permits violated NEPA and were arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

**PRAYER FOR RELIEF**

Plaintiffs respectfully request that this Court:

1. Declare that BLM's approvals of the Spruce Creek, North Castle Springs, and West Mamm MDPs, and drilling permits to implement those projects, violated NEPA;
2. Vacate the BLM decisions approving the Spruce Creek, North Castle Springs, and West Mamm MDPs and related drilling permits;
3. Enjoin BLM from approving any drilling permits for the Spruce Creek, North Castle Springs, and West Mamm MDPs until the agency complies with NEPA, including by preparing an EIS that fully analyzes the projects' cumulative impacts "when added to other past, present, and reasonably foreseeable future" oil and gas projects in the region;
4. Enjoin BLM from relying on the air pollution analysis in the RPPA EIS to support the approval of any oil and gas projects outside the RPPA;

5. Award Plaintiffs their costs and reasonable attorneys' fees as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A), and any other statute; and

6. Provide such other relief as the Court deems just and proper.

Respectfully submitted June 13, 2011.

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