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**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH, CENTRAL DIVISION**

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| **WildEarth Guardians**, a non-profit corporation,<br><br>Petitioner/Plaintiff,<br><br>vs.<br><br>**United States Forest Service**, an agency of the United States; **United States Bureau of Land Management**; an agency of the United States; **John R. Erickson**, acting in his official capacity as Forest Supervisor, Ashley National Forest; **Juan Palma**, acting in his official capacity as State Director of the Bureau of Land Management Utah State Office; **Mike Stiewig**, acting in his official capacity as as Field Office Manager of the Vernal Field Office of the Bureau of Land Management,<br><br>Respondent/Defendants. | : | **PETITION FOR REVIEW OF AGENCY ACTION and COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**<br><br>Civil Action No. 2:14-cv-00349-EJF<br><br>Honorable Evelyn J. Furse<br>Magistrate Judge |

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Petitioner/plaintiffs WildEarth Guardians hereby states and alleges the following:

## INTRODUCTION

1. This case asks whether the U.S. Forest Service (Forest Service) and U.S. Bureau of Land Management (BLM) defendants met their statutory and regulatory responsibilities when the agencies authorized a 400-well oil and gas development project in a biologically critical area of the Ashley National Forest plagued by extremely poor air quality and substandard water quality.

2. At risk is the ailing Anthro Mountain population of greater sage grouse, which will be additionally imperiled by the project's roads, traffic, noise and industrial development and intrusion of oil and gas wells into sage habitats considered to be of crucial importance to the survival of the species. Also threatened by the 400-well Project and its industrial infrastructure are the Ashley's Inventoried Roadless Areas (Roadless Areas), the last remaining segments of the Forest still characterized by pristine wildlife habitats, natural vistas, sources of clean water, quiet recreational opportunities and solitude.

3. The 400-well Project will also result in emissions of contaminants into the Uinta Basin, further dirtying an airshed that periodically experiences some of the highest concentrations of ozone in the Nation and where fine particulate matter air pollution that exceeds the national standards can rival the notoriously unhealthy levels of $PM_{2.5}$ found along the Wasatch Front. Water quality in the upper reaches of the Duchene River, where the project and its attendant roads and well pads will be constructed, is not meeting Utah standards and, by introducing more sediments into local streams and drainages, the 400-well Project will move these affected waters farther away from the mandated goal of complying with state criteria.

4. The consequences of the 400-well Project are particularly insidious because energy development in the Uinta Basin is rampant and cumulatively is having profound adverse impact on sage grouse, Roadless Areas and air and water quality. On a regional level, the compounded consequences of these industrial projects are jeopardizing the public health and welfare, continually impinging on sage grouse populations, intact wildlife habitats and chances for recreation and are resulting in violations of Utah Water Quality Standards and National Ambient Air Quality Standards. Yet, the Forest Service and BLM have approved a project that will, by itself and cumulatively, add to environmental degradation that, under the law, must be remedied, not made worse.

5. In this context, it is apparent the Forest Service and BLM failed their legal obligations to take a hard look at the impacts of the 400-well Project on sage grouse, Roadless Areas and air and water quality and, where the law requires it, to prevent and mitigate the adverse consequences the project will have on these natural resource values. By the same token, the Forest Service and BLM failed to articulate and examine alternative actions that would allow development while still protecting sage grouse and Roadless Areas and while moving toward compliance with air and water quality standards.

6. Thus, because the law does not countenance ill-informed decision making, a failure to understand the environmental consequences of agency action or projects that will further exacerbate threats to an imperiled sage grouse population and exceedances of air and water quality standards, WildEarth Guardians seeks remand of the agencies' approval of the 400-well Project and ultimately, a decision on the proposed development that is in keeping with the legal obligations of the Forest Service and BLM.

## JURISDICTION AND VENUE

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

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events and omissions giving rise to the claims herein occurred or will occur within this judicial district, defendants have offices and/or carry out their relevant duties in this district, the public lands and resources in question are located in this district, the environmental harm resulting from defendants' actions will impact this district, and plaintiff WildEarth Guardians and many of its members reside in this district.

## PARTIES

### I. Petitioner/Plaintiffs

9. **WildEarth Guardians** (Guardians) has as its mission the protection and restoration of wildlife, wild places, and wild rivers in the American West. In furtherance of this mission, Guardians also works to safeguard the climate by advocating for clean energy to reduce that greenhouse gas emissions that contribute to global warming. With the support of its members, Guaridans advocates for the protection of imperiled wildlife, public lands and the ecosystems they support, for clean air and healthy waters.

10. In 2013, the conservation organization Utah Environmental Congress, merged with WildEarth Guardians, with Guardians being the surviving corporation. Utah Environmental Congress was dedicated to protecting and preserving Utah's National Forests and native wildlife. WildEarth Guardians now shares in fulfilling this commitment.

11. Guardians participated in the decision making process that is being challenged in this action. Guardians submitted comments expressing detailed concerns regarding defendants' decisions and actions challenged herein and urging different courses of action. Guardians availed itself of the appeal procedures necessary to exhaust administrative remedies prior to bringing this action. Over the years, Guardians has repeatedly sought to influence oil and gas leasing and development decisions and actions that impact Utah's National Forests, including the Ashley National Forest, through comments, appeals, the gathering and dissemination of information to the public and ongoing communication with federal agencies.

12. The staff and members of Guardians have significant recreational, educational, scientific, health and aesthetic interests in the Ashley National Forest. Members and staff of Guardians have regularly used, for at least during the past several decades, and will continue to use the lands and waters of the Ashley National Forest, including those exact areas encompassed and affected by the operations and development that may occur as a result of the February 2012 Record of Decision for the South Unit Oil and Gas Development Final Environmental Impact Statement, Duchesne Ranger District, Ashley National Forest, Duchesne County, Utah (ROD) and other subsequent related agency decisions and actions detailed herein. These staff and members have visited and will continue to visit repeatedly in the near future the areas subject to the approved and pending development**.** Members and staff of Guardians are and will be harmed and their recreational, educational, scientific, health and aesthetic interests impaired by the failure of defendants to comply with the laws, regulations and planning documents that relate to oil and gas development activities in the Ashley National Forest.

13. The recreational, scientific, spiritual, aesthetic, health and other interests of the staff and members of Guardians have been, are being and will continue to be harmed and irreparably injured by the actions of defendants unless this Court grants the relief Guardians requests. Impacts to wildlife, wildlife habitat, native plant communities, air, soils, surface water and ground water, including sedimentation of high quality fishing streams and rivers, degradation of Inventoried Roadless Areas, marring of landscapes and other environmental harms caused by defendants' decisions and actions and the development and operations that can occur on the lands subject to those decisions and actions will eliminate or reduce the value of many aesthetic, scholarly, spiritual and recreational opportunities enjoyed by Guardians' staff and members and will have an adverse impact on their health as they undertake these activities. The interests of Guardians and its staff and members in preserving and protecting their health and recreational, spiritual, scholarly and aesthetic opportunities and that of their children and grandchildren are being, and will continue to be damaged by the ROD and defendants' failure to acquire, analyze and act on the information necessary to make well-informed decisions.

14. Given their advocacy on behalf of protecting and improving stream and water quality and protecting wildlife, wildlife habitat and other natural resources on the Ashley National Forest, Guardians, its staff and its members have a compelling interest in ensuring that defendants comply with their legal and regulatory responsibilities, including their information gathering and disclosure obligations. Unless the relief sought by Guardians is granted, Guardians will be hampered in its ability to carry out its missions and advocacy work, will be prevented from adequately informing its members and the public of the consequences of the decisions and

actions challenges herein and will be unable to participate fully in government decisions affecting the interests of its members.

15. On October 12, 2007, Guardians filed scoping comments on the 400-well Project and on April 26, 2010, they filed comments on the Draft Environmental Impact Statement during the requisite public comment period. To the extent that the issues were ascertainable, Guardians adequately raised all the issues and claims stated herein in their scoping comments and comments on the Draft Environmental Impact Statement.

16. On April 16, 2012, Guardians filed a timely appeal of the ROD and the Final Environmental Impact Statement (FEIS), Biological Assessment (BA), Biological Evaluation (BE), and Management Indicator Species Report (MIS Report), on which the ROD was based. To the extent that the issues were ascertainable, Guardians adequately raised all the issues and claims stated herein in its appeal.

## II. Defendants

17. The **United States Forest Service** (Forest Service) is a federal agency within the United States Department of Agriculture that has responsibility for managing the national forests, including the Ashley National Forest. The Forest Service has the responsibility of complying with relevant laws and regulations in managing and authorizing oil and gas leasing and surface development on the Ashley National Forest.

18. **John R. Erickson** is sued in his official capacity as Forest Supervisor of the Ashley National Forest. His predecessor, Marie-Louise Smith, then Acting-Forest Supervisor of the Ashley National Forest, signed the February 2012 Record of Decision for the South Unit Oil and Gas Development Final Environmental Impact Statement, Duchesne Ranger District, Ashley

National Forest, Duchesne County, Utah. Mr. Erickson is responsible for ensuring that National Forest System lands administered by the Forest Service in Utah, including those located on the Ashley National Forest, are managed and administered in accordance with all applicable laws and regulations.

19. The **U.S. Bureau of Land Management** (BLM) is a federal agency within the United States Department of the Interior that manages all federally-owned subsurface minerals and has legal authority to manage oil and gas development activities on National Forest lands, including to issue leases and to approve applications for permit to drill (APDs). BLM has the responsibility to comply with all relevant laws and regulations in managing, conducting and authorizing oil and gas leasing, exploration and development activities on the Ashley National Forest.

20. **Juan Palma** is sued in his official capacity as Utah State Director of BLM. Mr. Palma is responsible for managing all federally-owned subsurface minerals in accordance with all applicable laws and regulations and ensuring that adequate environmental information and analysis is incorporated into decision documents and use authorizations and that that information informs BLM activities, programs, projects, and permits.

21. **Mike Stiewig** is sued in his official capacity as Field Office Manager of the Vernal Field Office of BLM. Mr. Stiewig is responsible for managing all federally-owned subsurface minerals in accordance with all applicable laws and regulations. Members of the staff of the Vernal Field Office under the supervision of Mr. Stiewig participated in the drafting of the FEIS and the ROD and have signed approvals of APDs pursuant to the FEIS and ROD.

## STATEMENT OF FACTS

### I. The Ashley National Forest and Project Area

22. President Theodore Roosevelt established the Ashley National Forest in 1908. Managed by the Forest Service, the Ashley National Forest encompasses 1.3 million acres in northeastern Utah and southwestern Wyoming. Each year, 2.5 million visitors flock to the Ashley to appreciate its outstanding vistas, wildlife and solitude and to pursue recreational opportunities such as angling, camping, hiking, backpacking, horseback riding, cross-country skiing, snowmobiling and boating.

23. The Ashley's landscapes range from high desert country to high mountains and start at 6,000 feet in elevation, reaching a high of 13,528 feet above sea level at the summit of Kings Peak. The vast Uinta Mountains watershed within the Forest boundary provides vital water supplies for municipal and agricultural use in Utah, Nevada, Wyoming, and California.

24. The area slated for development (Project Area) is located on the South Unit of the Ashley National Forest. The South Unit is situated on the scenic and biologically important West Tavaputs Plateau in the southern foothills of the Uinta Basin. The lands encompassed by the Project Area range in elevation from 6,375 feet above sea level in the north to over 8,000 feet high in the south.

25. The Tavaputs Plateau is a two-mile-thick block of sedimentary strata that was uplifted directly in the path of the Green River. As the land rose, the Green River scoured its channel deeper, gradually cutting the Tavaputs Plateau in half. Between those two halves – the East Tavaputs and West Tavaputs plateaus – the Green River winds for 80 miles in a gorge nearly as deep as the Grand Canyon.

26. The Project Area consists of slanting drainages flanked by a mix of very steep rocky slopes and gentler sagebrush-grassland covered plateaus with stands of mountain mahogany. North aspects are covered by dense stands of Douglas-fir and aspen interspersed with shrub lands. Southern aspects of the Project Area support sparse pinyon pine and Douglas-fir or sagebrush grasslands.

27. The project is located in the southwestern foothills of the Duchesne River watershed – specifically, the Antelope Creek and Upper Pariette Draw watersheds. The Duchesne River is a tributary of the Green River Basin and supplies water to millions of people in Utah and other downstream Colorado River Basin states.

28. Portions of the Project Area are designated by Utah Division of Wildlife Resources as high value winter and summer habitats for deer and elk, including crucial summer, winter and yearlong range for Rocky Mountain elk and crucial summer and winter range for mule deer. The area provides summer habitat for pronghorn, consists of important corridors for migration of large mammals and is home to highly valued wildlife species, many of which are experiencing a rapid decline in numbers, such as the Townsend's big-eared bats, spotted bat, flammulated owl, northern goshawk, American three-toed woodpecker, Lincoln's sparrow, warbling vireo and red-naped sapsucker.

29. The Project Area also contains greater sage-grouse (sage-grouse) habitat.[1] The sage-grouse is the largest of all grouse in North America. At 65 to 75 cm long (25-30 inches) and weigh 1.7 to 2.9 kg (4 to 6 lbs), males are nearly twice the size and weight of females. Both sexes have small heads and long tails, with black bellies and clean white underwings, easily

[1] All references herein to "sage-grouse" are references to "greater sage-grouse."

spotted in flight. Sage-grouse live in big, open sagebrush and grassland country. Males gather to dance and compete with each other in leks each spring. A lek is an aggregation of males that gather to engage in competitive displays that may entice visiting females who are surveying prospective partners for breeding opportunities.

## II. The 400-Well Project

30. On February 21, 2012, the Forest Service approved the 400-well Project in a Record of Decision (ROD), which was based on the February 2012 South Unit Oil and Gas Development Final Environmental Impact Statement (FEIS), the BA, the BE, the MIS Report and other record documents.

31. The 400-well Project is being developed on 25,900 acres, or 40.5 square miles of the Ashley National Forest, 11 miles south of Duchesne, Utah. The Forest Service has approved a development scenario that will continue for 55 years and entails the construction and operation of 400 oil and gas wells from approximately 162 well pads.

32. The project also includes 836 acres of new surface disturbance, including 57 miles of new roads and 20 miles of additional road construction, 493 stripped acres for well pads, four new four-acre compressor stations totaling 10,000 HP and 87 miles of new natural gas pipelines. As the crude oil within the project area is too viscous to be piped, it must be transported by truck. As a result, there will be constant truck traffic on roads within the project area, including drill rigs, heavy trucks, light trucks and hundreds of oil tanker trucks.

### A. Impacts to Roadless Areas

33. At the core of the Project Area are three inventoried roadless areas (Roadless Areas). While providing a critical function, Roadless Areas and other lands without roads are

becoming increasingly scarce in our Nation and even within our National Forests. By virtue of their roadless and undeveloped character, these pristine lands offer crucial habitat for wildlife, including rare plants and animals, sources of public drinking water, significant opportunities for dispersed recreation and large undisturbed landscapes that provide solitude and seclusion. In addition, these lands safeguard native biological diversity, present excellent opportunities for scientific study and protect against the spread of invasive species.

34. Nationally, Roadless Areas represent only two percent of the total land base of the United States and 28 percent of the 192 million acres of the National Forest System.

35. The Forest Service determined that the Roadless Areas of the Ashley National Forest are valuable because they contain high quality or undisturbed soil, water and air; sources of public drinking water; diversity of plant and animal communities; habitat for threatened, endangered, and sensitive species, and for species dependent on large, undisturbed areas of land; non-motorized and semi-primitive camping and recreation; natural scenic landscapes; and traditional cultural properties and sacred sites. According to the agency, these values are especially important and achieve their high quality specifically because roadless areas are largely undisturbed by motorized use, development and road construction.

36. According to the Forest Service, as a result of the 400 well project, 20,000 acres of inventoried roadless lands would permanently lose their pristine and wild character, while the natural setting of the Forest will be transformed into industrial landscape, with constructed features visually dominant over most of the area.

37. This permanent loss, according to the Forest Service, would be in addition to lands across the Ashley National Forest and the rest of the Nation that would likewise lose roadless characteristics due to oil and gas and other resource extraction development.

**B. Impacts to Soils and Water**

38. The 400-well Project will adversely impact soils and water quality and cause or contribute to a violation of Utah Water Quality Standards. The Project Area is located on the north-draining slope of the Tavaputs Plateau in the Green River Basin. Most of the streams within the Project Area are located in the Antelope Creek watershed and drain northeast to the Duchesne River. Only the southeastern-most corner of the Project Area drains to Gilsonite Draw, a tributary to Pariette Draw in the Upper Pariette Draw watershed. Approximately 98% of the Project Area is located in the Antelope Creek watershed, with the remaining 2% located in the Upper Pariette Draw watershed. Both watersheds drain to the Duchesne River, a tributary to the Green River, which ultimately flows into the Colorado River.

39. Surface occupation associated with the 400-well Project from the construction of access roads and infrastructure would amount to approximately 836 acres, with approximately 823 acres in the Antelope Creek watershed and approximately 13 acres the Upper Pariette Draw watershed. As part of the project, 3.4 miles of intermittent streams and 0.2 mile of perennial streams would be subject to industrial construction and activities.

40. The Utah Division of Water Quality (UDWQ) determined that Antelope Creek and its tributaries are not meeting Utah Water Quality Standards due to excess concentrations of total dissolved solids (TDS) and boron. Sowers Canyon Creek, the only perennial stream in the Project Area, is a main tributary to Antelope Creek. A segment of the Duchesne River

downstream of the Antelope Creek confluence is also impaired due to high concentrations of TDS.

41. TDS is made up by the inorganic salts, organic matter, and other dissolved materials in water and is often equated with salinity. The concentration of total dissolved solids affects the water balance in the cells of aquatic organisms and can adversely impact algae, invertebrates and fish. High TDS also impairs the use of water for agricultural purposes.

42. In response to the water quality impairments in the Antelope Creek and Duchesne watersheds, UDWQ determined the total maximum daily load, or TMDL, for the watershed. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. The TMDL requires a 15% reduction in the TDS loading for the part of the Duchesne River that drains the Project Area. The TMDL ranks oil and gas activity in the Antelope Creek and Sower Creek drainages as moderately to highly severe sources of TDS in the watershed.

43. Soils in the Project Area have a moderate to high potential for erosion, exhibit active landform processes and are difficult to reclaim because they are shallow or have limited topsoil. Of the 836 acres of soil disturbance associated with the 400-well Project, approximately 340 acres would take place in areas currently mapped as having steep slopes, highly erodible soils and/or soils with poor reclamation potential.

44. According to the U.S. Environmental Protection Agency (EPA), the 400-well Project is expected to increase TDS loading through increased sedimentation and runoff and therefore represents a significant new source of TDS in a primarily roadless area and will result in exacerbation of the impairment that the TMDL was written to address.

45. The Forest Service acknowledges that, as a result the land disturbing activities inherent to the 400-well Project, there will be an increase in the salinity of the surface waters that drain the Project Area and a decrease in the function of local wetland and riparian zones. The agency also concedes that existing oil and gas development activities in the relevant watershed adversely impact water quality and water resources.

46. Cumulative impacts to soil resources are expected to be greatest in watersheds that are already the site of oil and gas development, particularly tribal land within the Antelope Creek and Upper Pariette Draw watersheds, downstream of the Project Area.

47. According to the Forest Service, acceleration of erosion and gullying as a result of high runoff and streamflow events is of particular concern in the Project Area. These processes contribute to sedimentation in streams and decreased water quality.

48. As the Forest Service also acknowledges, the 400-well project will permanently damage soil resources by exposing and compacting soils, expanding wind and water erosion and increasing the amount of suspended and dissolved sediments being carried by surface waters.

**C. Impacts to Wildlife and Recreation**

49. Sage-grouse habitat in Utah connects to northern populations through the Uinta Basin where sage habitats are heavily fragmented. Sage-grouse populations are small and scattered along the western border of the Colorado Plateau ecoregion, and several small populations have been recently extirpated from former leks in southern Utah. Studies show a long-term decline in population numbers from levels during the late 1960s and early 1970s, when populations were approximately two to three times more numerous than current populations. The number of males per lek has decreased significantly and lek size has also

decreased since the late 1960s, although there was a gradual increase in number of males per lek between 1997 and 2005.

50. The species is sensitive and easily disturbed by land use activities that subdivide the landscape, disrupt site fidelity to traditional lekking and nesting areas, and ultimately isolate remnants of the population. Once disturbed, sagebrush habitats may need up to 100 years to return to sustainable conditions for the grouse.

51. Oil and gas drilling is the most pressing current and future threat to the sustainability of the sage-grouse on the Colorado Plateau. There is intense pressure to drill for oil and gas on public land in sagebrush habitats. The sage-grouse has already been marginalized to the edges of the Uinta Basin by oil and gas fields and other development. Several long-term studies of sage-grouse response to oil and gas development confirm that the birds are sensitive to road density, traffic volume, noise, distance to wells and well density.

52. The greater sage-grouse is a candidate species under the Endangered Species Act (ESA), which means that the U.S. Fish and Wildlife Service (FWS) has determined that the species warrants listing under the Act.

53. In March 2010, FWS published its decision on the petition to list the greater sage-grouse as "warranted but precluded." 75 Fed. Reg. 13910 (March 23, 2010). Over 50 percent of the greater sage-grouse habitat is located on BLM-managed lands. In its "warranted but precluded" listing decision, FWS concluded that existing regulatory mechanisms, defined as "specific direction regarding sage-grouse habitat, conservation, or management" in BLM Land Use Plans, were inadequate to protect the species.

54. Specifically with regard to the Forest Service and BLM, FWS stated: "Based on our review of the best scientific and commercial information available, we conclude that existing regulatory mechanisms are inadequate to protect the species. The absence of adequate regulatory mechanisms is a significant threat to the species, now and in the foreseeable future." 75 Fed. Reg. 13910, 13982; *see also id.* ("Our assessment of the implementation of regulations and associated stipulations guiding energy development indicates that current measures do not adequately ameliorate impacts to sage-grouse.").

55. As a condition of a court-approved settlement agreement, FWS has until 2015 to make a final determination whether to list the greater sage-grouse as a threatened or endangered species pursuant to the ESA.

56. According to the Forest Service, there are 2,102 acres of this sage-grouse habitat – habitat within four miles of leks – within the Project Area. This habitat is part of the Anthro Mountain habitat, which covers 20,460 acres. According to the Department of Interior, there are 1,300 acres of brooding habitat and over 4,700 acres of wintering habitat in the Project Area.

57. The Anthro Mountain population of sage grouse is ailing. Estimates show a steady increase in the number of birds in the Anthro Mountain population from 2002 to 2006, ranging from 45 to 54 grouse in 2002 to 132 to 186 grouse in 2006. Male attendance at leks on Anthro Mountain increased from 15 in 2002, to 44 and 41 in 2006 and 2007 respectively, and then decreased to 4 males in 2010. In 2011, the count increased slightly to 8 males. BE at E-16.

58. The Forest Service acknowledges that as a direct result of the 400-well Project, there will be a loss of greater sage-grouse habitat, as well as degradation and fragmentation of this habitat because of the construction and use of well pads and roads and the human activity

and noise associated with this industrial infrastructure. In addition, the oil and gas development activity will disturb the birds and may cause sage grouse to be flushed from leks, females to discontinue breeding activities, lek and nest abandonment, and avoidance of habitat, leading to habitat abandonment, reduced reproductive success and decreased survival. The construction of roads creates travel routes for humans and predators, resulting in more disturbance and increase predation.

59. Additional unavoidable consequences of the project include long-term destruction of habitat for elk, deer, pronghorn, birds, and other wildlife, as well as fragmentation of additional wildlife habitat by roads, so as to reduce further the size of crucial, intact habitats, free of roads. Wildlife will also be displaced and harassed by development activities, including road construction and use, truck traffic, well pads, pipelines, lights and other industrial facilities and undertakings.

60. The 400-well development scheme will cause the long-term loss and fragmentation of habitat that would facilitate the survival and recovery of special status plants, birds, and wildlife, as well as the long-term forfeiture of potential raptor breeding, nesting, and foraging habitats. Again, damage to and fragmentation of habitat will mean that there will be fewer, relatively large roadless areas that can harbor special status wildlife, birds, and plants.

61. The project also puts at risk cultural resources and will destroy the natural setting and peace and quiet valued by forest visitors and will eliminate primitive and unconfined recreational opportunities. Hunters and wildlife enthusiasts will be harmed as elk, deer, birds and other animals and their habitats are adversely impacted by development.

## D. Impacts to Air Quality

### i. Uinta Basin – Uintah and Duchesne Counties

62. Utah's crude oil production is concentrated in Duchesne and Uintah counties, which lie in the Uinta Basin, a natural depression. The south rim of the Uinta Basin, which is part of the Colorado Plateau, is formed by the Tavaputs Plateau, including the West Tavaputs Plateau, which is part of the Book Cliffs. The western rim of the Basin is formed by the Wasatch Mountains. The central portion of the Basin has an elevation of 5,000 to 5,500 feet. The Uinta Basin is fed by creeks and rivers flowing south from the Uinta Mountains and north from the Tavaputs Plateau. Many of Utah's principal rivers, the Strawberry River, Currant Creek, Rock Creek, Lake Fork River, and Uinta River, flow into the Duchesne River which feeds the Green River, a tributary of the Colorado River.

63. 75 percent of Utah's crude oil production occurs in Duchesne and Uintah counties. Duchesne County produces 11million barrels of crude oil each year and Uintah County, 7 million. The two counties are responsible for 72 percent of Utah's natural gas production. Uintah County produced 283 billion cubic feet of natural gas each year, while Duchesne County produces 33 billion cubic feet annually.

64. The result of all this oil and gas development activity in the Uinta Basin is severe air pollution that exceeds the federal health based standards – called the National Ambient Air Quality Standards (NAAQS) – and therefore, as a matter of law, is harmful to the health and well-being of people and environments exposed to this pollution. Over the past many years, air quality monitors have shown that concentrations of both fine particulate matter ($PM_{2.5}$) and ground-level ozone are significantly above the NAAQS for significant periods of time, indicating

that air pollution in the Basin is jeopardizing public health and damaging the environment. Ozone and $PM_{2.5}$ are among the most dangerous forms of air pollution.

65. Monitored winter 2011 ozone levels reached a high 8-hour average value of .139 parts per million (ppm) during inversion conditions – levels nearly twice as high as the federal health standard's limit on this pollutant. At times, the Uinta Basin experiences the worst ozone levels of any location in the country. The adverse health consequences of ground level ozone – or smog – range from decreased lung function to cardiovascular-related mortality and respiratory morbidity. Ozone pollution also damages plants and harms ecosystem health.

66. In 2013, air pollution in Vernal, the most populous city in Uintah County, exceeded the 8-hour ozone NAAQS on 34 days. The highest concentration of ozone during this time was .114 parts per million (ppm), which is almost twice as high as the relevant standard of .075 ppm. Similarly, in 2013, Duchesne County experienced ozone concentrations that exceeded the 8-hour standard on 40.8 days, the highest concentration being 0.110 ppm, again close to twice the standard. Ozone at these concentrations on these many days constitutes a public health crisis.

67. As the Utah Division of Air Quality (DAQ) admits, wintertime monitoring studies for 2007, 2008, and 2009 showed that during inversions, $PM_{2.5}$ concentrations were at or above the 24-hour standard ((which limits this pollutant to levels no higher than 35 micrograms per cubic meter or $\mu g/m^3$ averaged across a 24-hour period) and can be as high as those seen along the heavily populated Wasatch Front. $PM_{2.5}$ result in respiratory, cardiovascular, neurological, pregnancy, epigenetic and cancer related illnesses and death.

68. For example, in January 2007,[2] a DAQ monitor recorded 24-hour average $PM_{2.5}$ concentrations in Vernal on eight days spaced fairly evenly throughout the month. Of these eight recordings, four were above the NAAQS – sometimes by a considerable degree (45.1 $\mu g/m^3$, 35.5 $\mu g/m^3$, 55.7 $\mu g/m^3$ and 63.3 $\mu g/m^3$), while two additional readings were high (34.4 $\mu g/m^3$ and 22.9 $\mu g/m^3$). In February 2007, one reading of the only eight days of $PM_{2.5}$ data showed a 24-hour average of 51.8 $\mu g/m^3$. In December 2007, one of only five data points showed 24-hour concentrations of $PM_{2.5}$ reaching 43.3 $\mu g/m^3$.

69. In 2008, DAQ operated a monitor in Vernal, Utah only during February and March. In that short period, the Vernal monitor recorded once exceedance of the 24-hour $PM_{2.5}$ NAAQS. The monitor did not operate during January and December 2008, the months during which previous monitoring data showed some of the highest, most frequent readings of $PM_{2.5}$.

70. In 2009, monitors in the area also recorded repeated exceedances of 24-hour NAAQS for $PM_{2.5}$. From a period spanning just January 21 to March 5, 2009, a Vernal monitor operated by Utah and funded by the U.S Environmental Protection Agency (EPA) recorded four exceedances of the 24-hour $PM_{2.5}$ NAAQS limit. During that same period a monitor in Roosevelt, Duchesne County's most populous city, recorded three exceedances of the 24-hour maximum average value for $PM_{2.5}$. The high 24-hour average concentration observed in Vernal was 60.9 $\mu g/m^3$ and the high concentration recorded in Roosevelt was 42.4 $\mu g/m^3$, both well in excess of the 24-hour NAAQS limit, which is 35 $\mu g/m^3$.

71. As posted on the DAQ website, 2011 EPA monitoring data from the Ute Indian Tribe of Uintah & Ouray Reservation, located within Duchesne County, confirm that air quality

[2] Prior to 2007, there is no $PM_{2.5}$ monitoring data for the Uinta Basin.

in the Uinta Basin continues to exceed the 24-hour NAAQS for $PM_{2.5}$ on a regular basis. Although there are gaps in the data, hourly monitoring for January 2011 show exceedances of the NAAQS standard on a 24-hour block average[3] on at least eight calendar days: January 8, 28, 29 and 30 and February 13, 14, 15 and 16. Hourly maximums during each of these days were: 43.7 $\mu g/m^3$, 43.5 $\mu g/m^3$, 49.7 $\mu g/m^3$ and 56.2 $\mu g/m^3$ for the January dates respectively and, for the February dates, 46.6 $\mu g/m^3$, 52.1 $\mu g/m^3$, 54.8 $\mu g/m^3$ and 66.3 $\mu g/m^3$, respectively.

72. Also posted on the DAQ website, EPA's 2012 Maximum Value Report for Uintah County indicates that the four highest 24-hour block averages for $PM_{2.5}$ are: 78.6 $\mu g/m^3$, 40.6 $\mu g/m^3$, 35.8 $\mu g/m^3$ and 35.7 $\mu g/m^3$ – all over the limit set by the 24-hour NAAQS of 35 $\mu g/m^3$. The same report gives as the ten highest hourly concentrations of $PM_{2.5}$ in Uintah County: 340 $\mu g/m^3$, 220 $\mu g/m^3$, 204 $\mu g/m^3$, 181 $\mu g/m^3$, 139 $\mu g/m^3$, 124 $\mu g/m^3$, 105 $\mu g/m^3$, 104 $\mu g/m^3$, 90 $\mu g/m^3$ and 88 $\mu g/m^3$.

**ii. The Wasatch Front**

73. In 2010, 65 percent of the crude oil shipped to Utah refineries for processing came from Utah oil and gas fields. These refineries are located along the Wasatch Front, home to the vast majority of Utahns. In the winter, for weeks at a time, concentrations of fine particulate matter ($PM_{2.5}$) along the Wasatch Front repeatedly reaches levels that harm public health and the environment, resulting in a public health crisis.

74. In 2009, Salt Lake County and Davis County, the locations of the Wasatch Front refineries, together with other neighboring counties, were designated as a nonattainment area,

[3] A 24-hour block average is the average of the hourly readings in a calendar day. Compliance with the 24-hour NAAQS for $PM_{2.5}$ is determined by an average of the previous 24 hourly readings, regardless of the calendar.

meaning that the Salt Lake area airshed is in violation of the 24-hour $PM_{2.5}$ NAAQS. Air pollution levels in the Salt Lake City Nonattainment Area are severe and long lasting. In just January and February of 2013, air quality in Salt Lake County exceeded the 24-hour NAAQS for $PM_{2.5}$ on **22 days**, reaching a maximum 24-hour average of 69.2 $\mu g/m^3$.

75. In the last two years, Salt Lake County has exceeded the 8-hour ozone NAAQS 11 times, 7 times in 2012 and 4 times in 2013.

## IV. Forest Plans and the Relevant Ashley Forest Management Documents

76. The Forest Service manages the Ashley National Forest pursuant to land and resource management plans. The relevant Forest management documents fail to anticipate the density or scale of oil and gas development that the Forest Service approved in the South Unit FEIS and ROD.

### A. The 1986 Ashley National Forest Plan

77. The 1986 Ashley National Forest Land and Resource Management Plan ("1986 Forest Plan") was developed pursuant to the National Forest Management Act and divides the Ashley National Forest into unique Management Areas. FEIS at 8.[4] The Project Area includes four of these Management Areas with specific management prescriptions for "wildlife habitat emphasis," "high forage production and livestock utilization," private lands, and "range of resource uses and outputs." *Id.*

78. The Forest Service began a revision of its management plan in November 2005. Revision work conducted from 2005 through the spring of 2007 was guided by the 2005 Planning Rule. When that rule was invalidated, the Forest Service ceased its planning efforts.

[4] Unless otherwise indicated "FEIS" refers to Volume I of the FEIS. Volume II of the FEIS will be specified as "FEIS (Vol. II)."

The result is that management of the Ashley National Forest is still dictated by 1986 Forest Plan and that this plan was promulgated pursuant to the 1982 Planning Rule.[5]

79. The 1986 Forest Plan requires the Forest Service to maintain air quality related values, Plan at IV-37, and "to control and minimize air pollution impacts from land management activities." *Id.* at IV-42. To this end, the agency must: 1) "integrate air resource management objectives into all resource planning and management activities;" 2) "detect and monitor the effects of air pollution . . . on Forest resources" and "monitor air pollutants when Forest Service goals and objectives are at risk;" 3) "preserve and protect air quality related values (AQRV) within the Flaming Gorge NRA and High Uintas Wilderness;" and, 4) "determine the air quality or AQRV condition (base level) from which increments of limits of acceptable change will be measured." Plan at IV-42.

80. The 1986 Forest Plan acknowledges that, in the Ashley National Forest, the "necessary level of water quality can be met by compliance with Federal and State water quality standards." Plan at II-13. The Plan dictates that the Forest Service shall "improve and conserve the basic soil and water resources." Plan at IV-37. To this end, the agency must "protect all surface waters from chemical contamination." *Id*; *see also* 1986 Forest Plan ROD at 13 ("Maintaining . . . State water quality standards [is an] example[] of [a] standard[] and guideline[] which act[s] as [a] mitigation measure prescribed in Chapter IV of the Plan.")

81. Likewise, the Forest Service must, under the 1986 Plan, "maintain or improve riparian areas and riparian dependent resource values including wildlife, fish, vegetation,

[5] In May, 2012, the 1982 Planning Rule was replaced by the 2012 Planning Rule.

watershed and recreation in a stable or upward trend." Plan at IV-45. The Forest Service must manage for riparian species diversity. *Id.*

82. Under the 1986 Plan, "riparian area dependent resources will be given preferential consideration in cases of unresolvable conflicts." Plan at IV-45. Facilities and ground disturbing activities are not permitted in riparian areas "unless alternative routes have been review and rejected as being more environmentally damaging." *Id.*

83. The 1986 Forest Plan directs the Forest Service to "manage fish and wildlife habitat to maintain or improve diversity and productivity." Plan at IV-28. In addition, the Forest Service must "manage the habitat of all . . . sensitive plant and animal species to maintain or enhance their status." Plan at IV-30; *see also id.* ("management activities will be allowed if they will not adversely affect any . . . sensitive species").

84. The 1986 Forest Plan also establishes "tolerance limits" that indicate when the actual performance of the Plan has unacceptably varied from the "predicted performance" of the Plan. Plan at V-2. "When these limits are exceeded, further evaluation is required." *Id.*

85. For example, a "violation of State Air Quality Standards and adverse public reactions" are sufficient to "cause further evaluation and/or a change in management direction," Plan at V-13, as is a "violation of State Water Quality Standards or a 20% increase in predicted sediment yield," *id.* at V-11, a "violation of Forest Riparian Standards and Guidelines, *id.* at V-14, "or a 10% drop in the breeding population of sage grouse." *Id.* at V-7.

86. The 1986 Forest Plan itself states that the Forest Service "will assure that implementation [of the Plan] is in compliance with the . . . goals and objectives in 36 C.F.R. § 219.10(e), 36 C.F.R. § 219.11(d), and 36 C.F.R. § 219.27." 1986 Plan Record of Decision (1986

Forest Plan ROD). Therefore, based on the Forest Plan itself, the 1986 Forest Plan must be implemented according to, *inter alia*, 36 C.F.R. § 219.27(a)(12).

**B. The 1997 Western Uinta Basin Oil and Gas Leasing EIS and Record of Decision and Lease Issuance**

87. In 1987, one year after the completion of the 1986 Forest Plan, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act ("Reform Act"). The Reform Act and its implementing regulations require the Forest Service to analyze all lands that are available for oil and gas leasing. Thus, the Forest Service developed the 1997 Western Uinta Basin Oil and Gas Leasing EIS and Record of Decision ("1997 Leasing EIS and ROD") to meet its mandate under the Reform Act and to respond to outstanding requests for leases as well as to determine whether to re-offer expiring leases. 1997 Leasing EIS at 1-2 to 1-6.

88. The 1997 Leasing EIS and ROD opened much of the South Unit of the Ashley National Forest, including Project Area, to leasing based upon its analysis of the environmental impacts of only 35 new wells (5 exploration and 30 development wells) that it anticipated would be developed in the entire South Unit of the Ashley National Forest over a 10 to 15 year period. FEIS at 10.

89. In the Western Uinta Basin Oil and Gas EIS, the Forest Service acknowledges that portions of the Project Area are "of poor reclamation potential" and that the "[a]dverse effects on areas of poor reclamation potential would have to be addressed[.]" Table S-2 (Alternative 3).

90. The Forest Service and BLM issued the South Unit leases to the 400-well Project proponent – Berry Petroleum Company LLC (Berry Petroleum) – on July 1, 1998.[6] Apparently, there are 17 federal leases in the Project Area.

## V. South Unit FEIS and ROD

91. To assess the oil and gas development project proposed by Berry Petroleum, the Forest Service undertook analysis pursuant to the National Environmental Policy Act (NEPA). To this end, the Forest Service completed a Final Environmental Impact Statement (FEIS), which considered the environmental impacts associated with the proposed project (Alternative 2), the no action alternative (Alternative 1), and two other options – Alternative 3 and Alternative 4.

92. On February 21, 2012, the Forest Service issued a Record of Decision (ROD) based on the FEIS. In the ROD, the Forest Service selected a modified version of Alterative 4, thereby approving operating requirements for future surface development on South Unit leases currently held by Berry Petroleum Company on the Ashley National Forest. That selected alternative is referred to as the 400-well Project and is described above.

93. Berry Petroleum originally requested that it be authorized to drill up to 400 wells to achieve full field development. However, in 2009, prior to considering the potential environmental impacts of the entire proposed project, the Forest Service relied on a categorical

[6] In the winter of 2013, LinnCo and Berry Petroleum Company merged. Apparently, under the terms of the agreement, LinnCo has acquired all of Berry's outstanding shares. Pursuant to the terms of the contribution agreement between LINN Energy and LinnCo, LinnCo has contributed Berry to LINN Energy in exchange for the issuance of LINN Energy units. Berry will remain an indirect wholly-owned subsidiary of LINN Energy with the name Berry Petroleum Company, LLC.

exclusion to authorize Berry Petroleum to drill 44 of the 400 new wells in the Project Area. Most of those 44 approved wells have been drilled.

94. As a result, the Forest Service estimated that as of January 2012, 168 acres of the Project Area had already been subject to oil and gas development activities, including the construction of 22 well pads and 5.4 miles of roads, as well as 74 wells either in production or approved for drilling, but not yet drilled. There are approximately 39 miles of existing road within the Project Area, including those constructed or reconstructed for oil and gas development activities.

## VII. 400-Well Project APDs and SUPOs

95. As explained below, prior to any surface disturbance related to any drilling operations, the operator must submit to BLM an application for permit to drill (APD) for each well. 43 C.F.R. § 3162.3-1(c). BLM will then approve or disapprove or delay a decision on the APD. However, for APDs on Forest Service lands, "[t]he surface use plan of operations [SUPO]. . . shall be approved by [Forest Service] prior to approval of the Application for Permit to Drill by the authorized officer." *Id.* at 3-1(h).

96. Berry Petroleum has proposed to undertake, on its South Unit leases and in the Project Area, specific surface disturbing oil and gas development. These development proposals are typically connected to or associated with a particular oil and gas well and are processed based on that well. These wells are referred to as "South Unit oil and gas wells."

97. In some instances, Berry Petroleum has sought and secured further or specific authorization from the Forest Service and BLM to undertake surface disturbing oil and gas development activities on its South Unit leases.

98. In some instances, the Forest Service and BLM have authorized these South Unit oil and gas wells and development activities by approving APDs and SUPOs and otherwise permitting and allowing these activities to proceed. The Forest Service and BLM maintain that these South Unit oil and gas wells and development activities are anticipated and sanctioned by the FEIS, ROD and supporting documents.

99. Where the Forest Service and BLM have authorized these South Unit oil and gas wells and development activities, the agencies have relied on the FEIS, ROD and supporting documents and have not considered new relevant information, have not undertaken new or additional environmental review and have not imposed any mitigation measures beyond those measures specified in the ROD. Alternatively, the Forest Service and BLM have not adequately considered new relevant information, have not undertaken adequate new or additional environmental review and have not imposed mitigation measures adequate to comply with their legal obligations.

100. A chart that is attached to this Complaint and labeled Table 1 lists pending, approved and/or producing South Unit oil and gas wells located on or proposed for location on sage-grouse habitat as defined by the Utah Division of Wildlife Resources (UDWR). The information depicted in the chart was secured through public record requests and accessed on the Utah Division of Oil, Gas and Mining website.

101. A chart that is attached to this Complaint and labeled Table 2 lists pending, approved and/or producing South Unit oil and gas wells located on or proposed for location on Roadless Areas. The information depicted in the chart was secured through public record requests and accessed on the Utah Division of Oil, Gas and Mining website.

102. A chart that is attached to this Complaint and labeled Table 3 lists pending, approved and/or producing South Unit oil and gas wells located or proposed for location on outside of both UDWR sage-grouse habitat and Roadless Areas. The information depicted in the chart was secured through public record requests and accessed on the Utah Division of Oil, Gas and Mining website.

103. To the extent that Tables 1, 2 and 3 and incomplete and evidence indicates that there are additional pending, approved and/or producing South Unit oil and gas wells and/or development activities, those wells and activities are hereby incorporated by reference herein and added to Tables 1, 2 and 3 based on the location of the wells and activity.

## LEGAL BACKGROUND

### I. Administrative Procedure Act

104. This case is brought pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq*.

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

### II. National Environmental Policy Act

106. Congress enacted the National Environmental Policy Act, 42 U.S.C. §§ 4321-70, to "encourage productive and enjoyable harmony between [hu]man[s] and [their] environment"

and to promote government efforts "that will prevent or eliminate damage to the environment." 42 U.S.C. § 4321.

107. Prior to approving major actions which may significantly affect the environment, federal agencies must comply with NEPA. 42 U.S.C. § 4332; 40 C.F.R. § 1502.3.

108. To fulfill these goals, NEPA requires federal agencies to take a hard look at the environmental consequences of a proposed action and alternatives to that action. The alternatives analysis is the "heart" of NEPA review, 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. NEPA also requires the agencies to involve the public in the decision making process related to any proposed actions. 42 U.S.C § 4332.

109. In taking a hard look at the environmental consequences of a proposed action, federal agencies must analyze the direct, indirect, and cumulative impacts of the proposed action. 40 C.F.R. § 1508.25(c). Direct impacts are those caused by the action that are occurring at the same time and place as the action. *Id.* § 1508.8(a). Indirect impacts are likewise caused by the action, but are later in time or further removed in distance from it; however, these impacts are still reasonably foreseeable consequences of the action. *Id.* § 1508.8(b). Cumulative impacts are those resulting from the "incremental impact of the action when added to other past, present, and reasonably foreseeable future actions," no matter what agency or person undertakes such actions. *Id.* § 1508.7.

110. If the agency determines a proposed action may significantly affect the quality of the environment, it must prepare an environmental impact statement (EIS). 42 U.S.C § 4332(2)(C). The EIS must detail: (1) the environmental impacts of the proposed action; (2) any

adverse environmental effects which cannot be avoided should the proposal be implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term use of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be made should the proposed project be implemented. *Id.* 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.

111. To address significant new circumstances or information relevant to the proposed action and to address any substantial changes to the proposed action that are relevant to environmental concerns, the agency must prepare a supplement to an EIS. 40 C.F.R. § 1502.9.

112. As part of their NEPA obligations, both the Forest Service and BLM must explain how their actions will or will not comply with environmental laws and policies. 40 C.F.R. § 1508.27(b) (stating federal agencies must consider "[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment"); *see also id.* § 1502.2(d) ("Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of [NEPA] and other environmental laws and policies.").

113. The Forest Service must comply with NEPA in deciding whether to authorize oil and gas surface development on National Forest System lands. 36 C.F.R. § 228.107(a).

114. BLM must comply with NEPA prior to approving any APD and must determine the appropriate terms and conditions of any approval of the submitted plan based on this NEPA analysis. 43 C.F.R. § 3162.5-1(a).

115. BLM has recognized its legal obligation to secure and analyze the appropriate level of air quality information in its NEPA documents, use authorizations and permit, assigning to the State Director the responsibility of "[w]orking to ensure an appropriate level of climate, air quality, and climate change information and analysis is incorporated into applicable . . . NEPA documents, use authorizations, and BLM activities, programs, projects, and permits." BLM Manual at 7300.04(C)(3).

116. "In cooperation with the applicable regulatory entities," the State Director must also "evaluat[e] consumption and existing use of air quality increments, and determin[e] potential influence on existing and future BLM activities, programs, and projects, and BLM-authorized activities." BLM Manual at 7300.04(C)(6).

**III. Reform Act**

117. The Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.*, which provides authority for oil and gas leasing on, *inter alia*, National Forest System lands, assigned primary responsibility for regulating leasing to the Secretary of the Interior, acting through BLM. *Id.* § 226(a); 43 C.F.R. sub part 3100.

118. In 1987, Congress amended the Mineral Leasing Act with the Federal Onshore Oil and Gas Leasing Reform Act (Reform Act) to give the Secretary of Agriculture, acting through the Forest Service, certain obligations relative to leasing on forest lands. 30 U.S.C. §

226(g)-(h); 36 C.F.R. § 228 subpart E. As a result, the Forest Service and BLM share responsibility for the issuance of leases on the National Forest System. 30 U.S.C. § 226(h).

119. Ultimately, under the Mineral Leasing Act, the Forest Service and BLM must regulate actions undertaken on leased lands within the National Forest System in a manner that results in the conservation of surface resources. 30 U.S.C. § 226(g).

120. Under the Reform Act regulations, the leasing process for forest lands consists of several steps. First, the Forest Service is responsible for determining which lands within the National Forest System are administratively available for oil and gas leasing by BLM. In undertaking this "leasing analysis," the Forest Service must adhere to the National Environmental Policy Act (NEPA) and its implementing regulations. 36 C.F.R. § 228.102(a)-(d).

121. Second, if BLM proposes to lease specific tracts of available National Forest System lands, the Forest Service must decide whether to authorize the leasing based on the results of three determinations. 36 C.F.R. § 228.102(e).

122. Specifically, before authorizing BLM to offer any specific forest lands for leasing, the Forest Service must determine that: 1) leasing is consistent with the applicable forest plan and is adequately addressed in an appropriate NEPA document; 2) the conditions of surface occupancy have been included as stipulations in the leases; and, 3) oil and gas operations could be allowed somewhere on each proposed lease, unless stipulations prohibit all surface occupancy. *Id.*

123. As required by Council of Environmental Quality NEPA regulations, if significant new information or circumstances, as defined by 40 C.F.R. § 1502.9(c)(1)(ii) require

further environmental analysis, the Forest Service must undertake additional environment analysis before it makes a leasing decision for specific lands. *Id.*

124. If the leasing would result in an inconsistency with the applicable Forest land and resource management plan, the Forest Service may not authorize the leasing of specific lands unless the plan is amended or revised. 36 C.F.R. § 228.102(e).

125. The Forest Service must also consider whether additional environmental protection measures, in addition to those required by the management direction in the forest plan, are warranted and require BLM to include any necessary stipulations in the specific lease. *Id.*

126. The Reform Act does not allow specific lands to be leased until after an appropriate environmental review indicates that, where surface occupancy is allowed, development is possible somewhere on the lease. 36 C.F.R. § 228.102(e).

127. Further requirements apply to any proposals to undertake oil and gas exploration and development on the surface of National Forest System lands. Before the operator undertakes any surface disturbing activities, the Forest Service must analyze and approve a surface use plan of operations (SUPO). 36 C.F.R. § 288.106(a). The operator will typically include the proposed SUPO with its application for a permit to drill (APD) submitted to BLM. *Id.* The BLM will forward the SUPO to the Forest Service. *Id.*

128. In reviewing the proposed SUPO, the "Forest Service shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR parts 1500-1508, and the Forest Service implementing policies and procedures[.]" 36 C.F.R. § 228.107(a). Ultimately, the Forest Service shall guarantee that:

> (1) The surface use plan of operations is consistent with the lease, including the lease stipulations, and applicable Federal laws;

> (2) To the extent consistent with the rights conveyed by the lease, the surface use plan of operations is consistent with, or is modified to be consistent with, the applicable current approved forest land and resource management plan;
> (3) The surface use plan of operations meets or exceeds the surface use requirements of §228.108 of this subpart; and
> (4) The surface use plan of operations is acceptable, or is modified to be acceptable, to the authorized Forest officer based upon a review of the environmental consequences of the operations.

36 C.F.R. § 228.107(a)(1)-(a)(4).

129. In turn, under 36 C.F.R. § 228.108, the Forest Service must ensure that pursuant to the SUPO, the operator "shall conduct operations on a leasehold on National Forest System lands in a manner that minimizes effects on surface resources [and] prevents unnecessary or unreasonable surface resource disturbance[.]" 36 C.F.R. § 228.108(a).

130. Finally, the Forest Service is tasked with requiring an operator to comply with applicable "Federal and State air quality standards, including the requirements of the Clean Air Act[.]" 36 C.F.R. § 228.112(c)(1); 36 C.F.R. § 228.112(e) ("Forest Service officers shall periodically. . . determine and document whether operations are being conducted in compliance with the[se] regulations").

131. Likewise, under the 1986 Forest Plan, the Forest Service must "control mineral activities to protect other resources" and allow surface occupancy "only where impacts on surface resources will be acceptable." Plan at IV-43. Moreover, the Forest Service "will" assign "specific stipulations . . . on a case-by-case basis for all mineral activities . . . designed to protect other resources values." *Id.*

## IV. Specific BLM Leasing and Permitting Obligations

132. After determining if any additional stipulations should be attached to a National Forest parcel proposed for leasing, 43 C.F.R. § 3101.7-2(a)-(b), BLM conducts the sale of the

lease parcels and includes all stipulations in the sale notice, 43 C.F.R. § 3101.7-1, as well as any issued leases. 43 C.F.R. § 3101.7-2(a).

133. BLM regulations further specify that a lessee's right to use the surface is subject to "[s]tipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed." 43 C.F.R. § 3101.1-2.

134. BLM "is authorized and directed . . . to approve, inspect and regulate the operations that are subject to the regulations in this part; to require compliance with lease terms, with the regulations in this title and all other applicable regulations promulgated under the cited laws; and to require that all operations be conducted in a manner which protects other natural resources and the environmental quality[.]" 43 C.F.R. § 3161.2.

135. Prior to any surface disturbance related to any drilling operations, the operator must submit to BLM an application for permit to drill (APD) for each well. 43 C.F.R. § 3162.3-1(c). BLM will then approve or disapprove or delay a decision on the APD. *Id.* at 3-1(h). However, for APDs on Forest Service lands, "[t]he surface use plan of operations . . . shall be approved by [Forest Service] prior to approval of the Application for Permit to Drill by the authorized officer." *Id.* at 3-1(h).

136. Among its responsibilities, BLM must ensure that operator "shall comply with applicable laws and regulations; with the lease terms . . . and with other orders and instructions of the authorized officer. These include, but are not limited to, conducting all operations in a

manner . . . [and] which protects other natural resources and environmental quality[.]" 43 C.F.R. § 3162.1(a).

137. To achieve this goal:

> Before approving any [APD] . . . the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate. These environmental documents will be used in determining whether or not an environmental impact statement is required and in determining any appropriate terms and conditions of approval of the submitted plan.

43 C.F.R. § 3162.5-1(a).

138. Moreover, BLM must guarantee that the operator "shall conduct operations in a manner which protects . . . natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan." 43 C.F.R. § 3162.5-1(a).

## IV. National Forest Management Act

139. The National Forest Management Act (NFMA), 16 U.S.C. §§ 1600-14, is the primary statute governing administration of National Forests. To this end, NFMA requires the Forest Service to develop a land and resource management plan, otherwise known as a forest plan, for each unit of the National Forest system.

140. Under NFMA, any permits, contracts, and other instruments for the use and occupancy of National Forest System lands must be consistent with the relevant forest plan. 16 U.S.C. § 1604(i).

141. As indicated above, the management of the Ashley National Forest is dictated by 1986 Forest Plan. That plan was promulgated pursuant to the 1982 Planning Rule.[7]

142. The 1986 Forest Plan itself states that the Forest Service "will assure that implementation [of the Plan] is in compliance with the . . . goals and objectives in 36 C.F.R. § 219.10(e), 36 C.F.R. § 219.11(d), and 36 C.F.R. § 219.27." 1986 Plan Record of Decision (1986 Forest Plan ROD). Therefore, the 1986 Forest Plan must be implemented in keeping with, *inter alia*, 36 C.F.R. § 219.27(a)(12).

143. The relevant provision of 1982 Planning Rule, then numbered 30 C.F.R. § 219.27(a)(12), states that

> [t]he minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.
>
> (a) Resource protection. All management prescriptions shall –
>
> (12) Be consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations.

144. Alternatively or in addition, the Forest Service must apply "best available science" in implementing the 1986 Forest Plan. *See e.g.* 36 C.F.R. 219.35(a) (2000 Planning Rule, as amended), 74 Fed. Reg. 67073, 67073 (Dec. 18 2009).

[7] The 1982 Planning Rule has now been replaced by the 2012 Planning Rule on May 9, 2012.

## V. The Clean Air Act

### A. General Provisions

145. 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).

146. The Act directs the Environmental Protection Agency Administrator (EPA) 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. EPA has set such standards, or National Ambient Air Quality Standards (NAAQS), for the criteria pollutants lead, carbon monoxide, particulate matter smaller than 10 microns ($PM_{10}$), particulate matter smaller than 2.5 microns ($PM_{2.5}$), sulfur dioxide ($SO_2$), nitrogen dioxide ($NO_2$), and ground-level ozone (ozone).

147. Within three years of having set such standards, states are required to adopt and submit a state implementation plan (SIP) that will implement, maintain, and enforce the standards. 42 U.S. C. § 7410(a). Alternatively, EPA will issue a federal implementation plan (FIP) that will implement, maintain, and enforce the standards in Indian country. 42 U.S. C. § 7410(c). The SIP or FIP must implement a strategy that will meet the standards by reducing specific pollutants below the levels of the NAAQS.

148. Congress also wanted to prevent degradation of air quality in areas that enjoy cleaner air and also to preserve, protect and enhance the air quality in national parks, wilderness areas and other special areas. 42 U.S.C. § 7470. To do this, Congress established the Prevention of Significant Deterioration program ("PSD"). 42 U.S.C. § 7470 *et seq*. Among other

provisions, the PSD program established increments and ceilings to protect cleaner airsheds. 42 U.S.C. § 7473.

149. PSD increments prevent the air quality in clean areas from deteriorating to the levels set by the NAAQS. 42 U.S.C. § 7473(b)(4). The NAAQS represent the maximum allowable concentration "ceiling" for the criteria pollutants. *Id.* A PSD increment is the maximum allowable increase in concentration that is allowed to occur above a baseline concentration for a particular air pollutant. 42 U.S.C. § 7473(b). These increments are very small. *Id.* Congress gave parks and wilderness areas, known as Class I areas, heightened protection. 42 U.S.C. § 7473(b)(1); § 7470(2). For Class II areas, including the Ashley National Forest and the Uinta Basin, the increments are larger, but the principle is the same – air quality in Class II areas must not be allowed to deteriorate. 42 U.S.C. § 7473(b)(2).

150. Ultimately, the PSD program prohibits air quality in PSD areas from exceeding the NAAQS: "The maximum allowable concentration of any air pollutant in any area to which this part applies shall not exceed a concentration for such pollutant for each period of exposure equal to" the NAAQS "for such pollutant for such period of exposure." 42 U.S.C. § 7473(b)(4).

**B. Forest Service and BLM Obligations**

151. The 1986 Forest Plan states that the Forest Service "will assure that implementation [of the Plan] is in compliance with the . . . goals and objectives in 36 C.F.R. § 219.10(e), 36 C.F.R. § 219.11(d), and 36 C.F.R. § 219.27." 1986 Plan Record of Decision (1986 Forest Plan ROD). Therefore, the 1986 Forest Plan must be implemented in keeping with, *inter alia*, 36 C.F.R. § 219.27(a)(12).

152. The 1982 Planning Rule, then numbered 30 C.F.R. § 219.27(a)(12), states that

> [t]he minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.
>
> (a) Resource protection. All management prescriptions shall –
>
> (12) Be consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations.

153. Pursuant to the Clean Air Act, the Forest Service and BLM are required to comply with all applicable air quality laws, regulations, standards and implementation plans:

> Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government
>
> (1) having jurisdiction over any property or facility, or
>
> (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity.

42 U.S.C. § 7418(a). Importantly, the requirements of 42 U.S.C. § 7418(a)(1) and (a)(2) apply "to the exercise of any Federal, State, or local administrative authority[.]"42 U.S.C. § 7418(a)(2)(C).

154. The National Forest Management Act directs the Forest Service to protect and, where appropriate, improve the quality of soil, water, and air resources. 16 U.S.C. § 1602(5)(C).

155. In turn, the 1986 Forest Plan requires the Forest Service to maintain air quality related values, Plan at IV-37, and "to control and minimize air pollution impacts from land management activities." Plan at IV-42. To this end, the agency must: 1) "integrate air resource management objectives into all resource planning and management activities;" 2) "detect and

monitor the effects of air pollution . . . on Forest resources" and "monitor air pollutants when Forest Service goals and objectives are at risk;" 3) "preserve and protect air quality related values (AQRV) within the Flaming Gorge NRA and High Uintas Wilderness;" and, 4) "determine the air quality or AQRV condition (base level) from which increments of limits of acceptable change will be measured." Plan at IV-42.

156. The Forest Service must ensure that any SUPO is consistent with "applicable Federal law." 36 C.F.R. § 228.107(a)(1). In addition, under 36 C.F.R. § 228.108, the Forest Service must require an operator to "minimize" the effects of oil and gas operations on "surface resources," including air quality. The Forest Service is also tasked with requiring an operator to comply with applicable "Federal and State air quality standards, including the requirements of the Clean Air Act[.]" 36 C.F.R. § 228.112(c)(1).

157. BLM has further acknowledged its obligations under the Clean Air Act. For example, the State Director must assure "appropriate stipulations and conditions of approval are included in BLM use authorizations to ensure air pollution emission control, protection methods, and ambient air quality levels are addressed." BLM Manual at 7300.04(C)(4).

**C. EPA Jurisdiction**

158. According to EPA, the Project Area is located largely or entirely on National Forest lands within the Uintah Valley part of the Uintah and Ouray Indian (U&O) Reservation, and therefore is located largely or entirely in "Indian country." Therefore, EPA is the appropriate governmental authority to issue federal environmental permits, conduct inspections, take enforcement actions, and take any other actions pursuant to federal statutes and regulations, including the Clean Air Act.

159. EPA has not authorized the State of Utah or the Ute Indian Tribe to implement federal environmental programs in Indian country.

## VI. The Clean Water Act and Utah Water Quality Standards

160. Congress passed the Clean Water Act, 33 U.S.C. §§ 1257-1387, to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To this end, the Clean Water Act authorizes each state to develop water quality standards for the state's waters. 33 U.S.C. §§ 1311(b)(1)(C), 1313. Water quality standards include designated uses, criteria, and an anti-degradation rule. 40 C.F.R. §§ 131.10 - 131.12.

161. Under the Clean Water Act, the Forest Service must establish that its actions are consistent with Utah water quality standards. *E.g.* 33 U.S.C. § 1323(a). 33 U.S.C. § 1323(a)(2) states that the Forest Service is "subject to" and shall "comply with all" Utah water quality standards. This requirement applies to any federal activity, including the exercise of federal administrative authority "resulting, or which may result, in the discharge or runoff" of pollutants. 33 U.S.C. 1323(a)(2) & (a)(2)(B). The Forest Service must also abide by its substantive duty under NFMA to protect water resources. *E.g.* 36 C.F.R § 219.1 (citing the Clean Water Act as a principal authority "governing the development and the management of the National Forest System.").

162. Utah has classified all waters within the Ashley National Forest as High Quality Waters, Category 1. Utah Admin Code R317-2-12.1(a) (designating "all surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands" as High Quality Waters, Category 1, with exceptions not relevant here).

163. In Utah,

> [w]aters of high quality which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as High Quality Waters - Category 1.

Utah Admin. Code R317-2-3.2.

164. These critically important waters are, in turn, protected under Utah's antidegradation rule as follows:

> New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. . . . Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.
>
> Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Utah Admin. Code R317-2-3.2.[8]

165. Utah Admin. Code R317-2-3.5.b.4 in turn provides:

> As general guidance . . . activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

[8] At the time the Forest Service approved the ROD, Utah Admin. Code R317-2-3.2 stated:

> New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs. Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

(a) Length of time during which water quality will be lowered
(b) Percent change in ambient concentrations of pollutants of concern
(c) Pollutants affected
(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)
(e) Potential for any residual long-term influences on existing uses
(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

166. Storm water containing sediment from either oil and gas construction or industrial activities constitutes a discharge. *Natural Resources Defense Council v. United States Environmental Protection Agency*, 526 F.3d 591 (9th Cir. 2008). Therefore, no sediment-laden discharges will be permitted in the Ashley National Forest unless it can be established that pollution from those discharges will be temporary. Utah Admin. Code R317-2-3.2.

167. Utah Water Quality Standards also include the Colorado River Salinity Standards. Utah Admin. Code R317-2-4.

168. Under the Clean Water Act and the Utah Pollutant Discharge Elimination System, a discharge permit is required for construction and industrial activities associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities. Utah Admin. Code R307-8-3.9(2)(a); Utah Admin. Code R307-8-3.9(6)(d)(3); Utah Admin. Code R307-8-3.9(6)(e)(1); *Natural Resources Defense Council v. United States Environmental Protection Agency*, 526 F.3d 591 (9th Cir. 2008); 40 C.F.R. §§ 122.26(a)(2); 122.26(e)(8); 122.26(c)(1)(iii).

169. Under the Clean Water Act and the Utah Pollutant Discharge Elimination System, a discharge permit is required for oil and gas construction and industrial activities where the affected water is not meeting Utah Water Quality Standards or where the discharge will contribute to a violation of those standards. Utah Admin. Code R307-8-3.9(2)(a); Utah Admin.

Code R307-8-3.9(6)(d)(3); Utah Admin. Code R307-8-3.9(6)(e)(1); *Natural Resources Defense Council v. United States Environmental Protection Agency*, 526 F.3d 591 (9th Cir. 2008); 40 C.F.R. §§ 122.26(a)(2); 122.26(e)(8); 122.26(c)(1)(iii). Storm water containing sediment from either oil and gas construction or industrial activities constitutes a discharge. *Natural Resources Defense Council v. United States Environmental Protection Agency*, 526 F.3d 591 (9th Cir. 2008).

170. In addition, the beneficial uses of the waters in the Ashley National Forest are protected by Utah's water quality standards and the narrative standard. The narrative standard reads:

> It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.

Utah Admin. Code R317-2-7.2.

171. The Clean Water Act requires, *inter alia*, states to identify problematic waters within its boundaries where implementation of effluent limitations alone will not accomplish the goals of the Act. For these waters, the state must establish a "total maximum daily load" ("TMDL") limitation for pollution from all cumulative point and non-point sources. Under the Act's "anti-degradation" provision, where the applicable water quality standard is not met, a TMDL may only be revised if the "designated use which is not being attained is removed" or if the change will assure the attainment of the water quality standard. *See id.* at § 1313(d).

172. NFMA directs the Forest Service to protect and, where appropriate, improve the quality of soil, water, and air resources. 16 U.S.C. § 1602(5)(C).

173. The 1986 Forest Plan acknowledges that, in the Ashley National Forest, the "necessary level of water quality can be met by compliance with Federal and State water quality standards." Plan at II-13. The Plan dictates that the Forest Service shall "improve and conserve the basic soil and water resources." Plan at IV-37. To this end, the agency must "protect all surface waters from chemical contamination." *Id.*

174. Likewise, the Forest Service must, under the 1986 Plan, "maintain or improve riparian areas and riparian dependent resource values including wildlife, fish, vegetation, watershed and recreation in a stable or upward trend." Plan at IV-45. The Forest Service must manage for riparian species diversity. *Id.*

175. Under the 1986 Plan, "riparian area dependent resources will be given preferential consideration in cases of unresolvable conflicts." Plan at IV-45. Facilities and ground disturbing activities are not permitted in riparian areas "unless alternative routes have been reviewed and rejected as being more environmentally damaging." *Id.*

**VII. Roadless Area Conservation Rule**

176. On January 5, 2001, the Secretary of Agriculture promulgated the Roadless Area Conservation regulations (Roadless Rule) to govern inventoried roadless areas (Roadless Areas) comprising about a third (58.5 million acres) of the National Forest System. *See* Roadless Area

Conservation Rule, 66 Fed. Reg. 3244, 3247-48 (Jan. 12, 2001) (to be codified at 36 C.F.R. § 294).[9]

177. The rule was the direct result of a tremendous outpouring of public support. More than 600 public hearings were held around the Nation, and the public provided over 1.6 million comments on the rule, more than on any other rule in United States history.

178. The rule defines Roadless Areas as those lands identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, which are held at the National headquarters office of the Forest Service, or identified on any subsequent update or revision of those maps.

179. Although subject to multiple legal challenges, the Roadless Rule has been upheld and is the law of the land.

180. To protect valuable natural resources that are becoming increasingly scarce on public lands, the Roadless Rule generally forbids road construction and logging in Roadless Areas.

181. The Roadless Rule defines "road construction" as an "activity that results in the addition of forest classified or temporary road miles." The rule defines "temporary road" as a road authorized by contract, permit, lease . . . not intended to be part of the forest transportation system and not necessary for long-term resource management." 36 C.F.R. § 294.11.

[9] The Roadless Rule does not appear in the current edition of the Code of Federal Regulations. The rule's validity was for a time in question owing to a district court decision that was reversed in 2011. *See Wyoming v. USDA*, 661 F.3d 1209 (10th Cir. 2011).

182. Specifically, the Roadless Rule prohibits new mineral leases that would allow road construction, including construction of temporary roads, 36 C.F.R. § 294.12(a), but does allow limited road building as necessary on lands under mineral lease as of January 2001. 36 C.F.R. § 294.12(b)(7).

183. Where road construction is "needed" in conjunction with a mineral lease issued prior to January 12, 2001:

> Such road construction or reconstruction must be conducted in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface disturbance, and complies with all applicable lease requirements, land and resource management plan direction, regulations, and laws. Roads constructed or reconstructed pursuant to this paragraph must be obliterated when no longer needed for the purposes of the lease or upon termination or expiration of the lease, whichever is sooner.

36 C.F.R. § 294.12(b)(7).

## CAUSES OF ACTION

### I. Air Quality

#### FIRST CLAIM FOR RELIEF
#### (NEPA Violation - Failure to Accurately Depict Background $PM_{2.5}$ Concentrations)

184. All of the paragraphs of this Complaint are incorporated by reference herein.

185. The Forest Service and BLM violated NEPA by failing to take a hard look at background 24-hour concentrations of $PM_{2.5}$, by failing to rely on an accurate and defensible background 24-hour concentration for $PM_{2.5}$ and by failing to provide a basis in the record to support the background level the agencies adopted to undertake cumulative air quality impact analysis. In so doing, the Forest Service and BLM did not adequately assess the reasonably foreseeable impacts of the 400-well Project and its alternatives on air quality and the

environment and have not sufficiently examined the air quality consequences of the SUPOs and APDs the agencies have approved.

186. Background pollution levels are the levels of existing pollutants in an area. Understanding the background level is critical for an air quality analysis because it indicates what the final pollution levels will be in an area after the new pollution from a project is added to the background concentrations.

187. A defensible background concentration must be determined based on EPA guidance and must be justified in the record. In the FEIS, the Forest Service and BLM rely on a 24-hour average background level for $PM_{2.5}$ of 27.6 $\mu g/m^3$ purportedly provided by DAQ.

188. Yet, the record does not explain or support the decision by the Forest Service and BLM to assume that the 27.6 $\mu g/m^3$ concentration represents relevant 24-hour $PM_{2.5}$ concentrations in the Project Area. Repeated high values of fine particulates that have been measured in the area of the 400-well Project indicate that the 27.6 $\mu g/m^3$ concentration is not representative of and underestimates background 24-hour concentrations of $PM_{2.5}$.

189. Moreover, because the record does not provide the basis for the 24-hour $PM_{2.5}$ background concentration, there is no way to assess the accuracy and validity of the 27.6 $\mu g/m^3$ concentration. For example, relative to the 27.6 $\mu g/m^3$ value, the record is silent as to: 1) the location of the monitor or monitors on which the concentration is based; 2) the time period over which the concentration is based; 3) the frequency of the monitoring and number of data points on which the concentration is based; 4) the basis of the concentration calculation; and 5) whether the concentration included any stationary source and/or permitted source emissions – such as other oil and gas facilities – near the Project Area.

190. Similarly, it is impossible to determine, based on the paucity of the record, what assumptions DAQ made in arriving at that particular concentration and whether those assumptions correspond to or are in keeping with the assumptions made by the Forest Service and BLM or attributed to DAQ by the federal agencies. Moreover, the record does not explain why, given that monitoring data reveals that 24-hour average concentrations of $PM_{2.5}$ in the area were and are, on a routine basis, considerably higher than background value used, the agencies relied on the 27.6 $\mu g/m^3$ value. This is particularly true because the relevant monitors may produce only periodic, rather than daily data and because the high concentrations of $PM_{2.5}$ monitored are seasonal. These facts argue for adopting the highest or a higher recorded 24-hour average $PM_{2.5}$ concentration.

191. Had the Forest Service and BLM used the proper concentration to represent background levels, the agencies would have concluded that, regardless of the construction or production scenario modeled, the 400-well Project would exceed the 24-hour $PM_{2.5}$ NAAQS and would consume even more increment than previously predicted.

192. In any case, without an accurate background concentration for $PM_{2.5}$ on which to base its analysis, the Forest Service and BLM cannot evaluate the possible environmental effects of the proposed project and its alternatives, cannot present these potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, establishing proper background pollutant concentrations is critical to proper evaluation of a project and to complying with NEPA and the failure to establish an adequate background concentration violates the Act.

193. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service and BLM have relied on the air quality analysis in the FEIS and ROD and on the background 24-hour value for $PM_{2.5}$ on which that analysis is based to issue SUPOs and APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA. Moreover, there is new monitoring data showing similarly high 24-hour concentrations of $PM_{2.5}$ along with hourly values as high 340 $\mu g/m^3$ in the summer months. Therefore, the Forest Service and BLM must undertake new or supplemental NEPA analysis to address the impacts of the SUPOs and APDs – directly, indirectly and cumulatively – on air quality in the Uinta Basin and particularly on 24-hour average concentrations of $PM_{2.5}$. The failure of the agencies to undertake this analysis is a violation of NEPA.

194. As a result of these errors and failures, the FEIS, ROD, SUPOs and APDs are unlawful and the actions by the Forest Service and BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**SECOND CLAIM FOR RELIEF**
**(NEPA Violation - Failure to Analyze Secondary Formation of $PM_{2.5}$)**

195. All of the paragraphs of this Complaint are incorporated by reference herein.

196. Sources of $PM_{2.5}$ include all types of combustion activities, such as the operation of motor vehicles, and certain industrial processes, as well as fugitive dust from road use and wind erosion of well pad and other surface disturbances. $PM_{2.5}$ can be emitted directly from a source or activity or can be formed in the air as the result of the chemical change of gases emitted from a source. These gases react with sunlight and water vapor to form $PM_{2.5}$.

197. The secondary formation of $PM_{2.5}$ – or the formation of $PM_{2.5}$ from the reaction of $PM_{2.5}$ precursors in atmosphere as opposed to its direct formation and emission from a tailpipe or smokestack – is a significant source of $PM_{2.5}$ air pollution.

198. The pollutants $SO_2$, $NO_X$, VOC and ammonia ($NH_3$) are $PM_{2.5}$ precursors, meaning that these gases contribute to the formation of $PM_{2.5}$ in the atmosphere. Precursors contribute a substantial percentage to total $PM_{2.5}$ concentrations in the airshed.

199. As the Forest Service and BLM admit, the industrial and transportation activities associated with the 400-well Project will result in significant emissions of $PM_{2.5}$ as well as $PM_{2.5}$ precursors. For example, the almost constant trucking events and associated diesel and gasoline fuel emissions will emit $NO_X$, VOCs and $PM_{2.5}$, while drilling activities will emit $NO_X$, $SO_2$, VOCs and $PM_{2.5}$. During production, the use of compressor stations, heaters, engines and tanks, as well as flashing will emit $NO_X$, VOCs and $PM_{2.5}$. Therefore, the emissions of $PM_{2.5}$ precursors from the 400-well Project will contribute significantly to the overall $PM_{2.5}$ emissions that will result from the construction and operation of the project components.

200. Although it is established that the emissions of $NO_X$, $SO_2$ and VOCs from the 400-well Project will contribute significantly to overall project $PM_{2.5}$ emissions and concentrations, the Forest Service and BLM did not determine or otherwise analyze these project-related sources of secondary $PM_{2.5}$ formation and therefore failed to take a hard look at this environmental issue.

201. Without analysis of the contribution of the emissions of precursors to overall project $PM_{2.5}$ emissions and concentrations, the Forest Service and BLM cannot evaluate the possible environmental effects of the proposed project and its alternatives, cannot present these

potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, the failure to make these determinations and undertake this analysis violates NEPA.

202. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service and BLM have relied on the FEIS and ROD evaluation of the $PM_{2.5}$ impacts to issue SUPOs and APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA. Moreover, there is new monitoring data that shows that background $PM_{2.5}$ concentrations in the Project Area airshed are higher than previously determined. Therefore, the Forest Service and BLM must undertake new or supplemental NEPA analysis to address the impacts of the SUPOs and APDs – directly, indirectly and cumulatively – on air quality in the Uinta Basin and particularly on 24-hour average concentrations of $PM_{2.5}$. The failure of the agencies to undertake this analysis is a violation of NEPA.

203. As a result of these errors and failures, the FEIS, ROD, SUPOs and APDs are unlawful and the actions by the Forest Service and BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**THIRD CLAIM FOR RELIEF**
**(NEPA Violation - Failure to Analyze Ozone Impacts)**

204. All of the paragraphs of this Complaint are incorporated by reference herein.

205. The Forest Service and BLM violated NEPA because the agencies did not undertake quantitative ozone modeling for the 400-well Project and did not adequately assess direct impacts to ozone concentrations.

206. The Forest Service and BLM also violated NEPA by failing to analyze adequately the cumulative impacts of ozone pollution resulting from the 400-well Project, together with past, present and reasonably foreseeable future projects contributing to ozone concentrations in the Uinta Basin airshed.

207. Satisfying NEPA's hard-look requirement requires the Forest Service and BLM to consider the direct and cumulative impacts of the 400-well Project and its alternatives on ozone concentrations in the Uinta Basin airshed. *See* 40 C.F.R. § 1508.25(c). With regard to the 400-well Project, high-quality quantitative and cumulative-impact analyses and modeling to determine environmental consequences related to ozone pollution are especially critical given the declining air quality trends in the Uinta Basin.

208. The Forest Service and BLM, however, conducted no such analyses and modeling, claiming that monitoring and emission reductions would meet the need to undertake quantitative ozone modeling. FEIS at 70. The agencies also contended that they could not "reasonably complete" an ozone modeling analysis "for a cost that would not be considered exorbitant." FEIS at 72.

209. NEPA takes into account that, in certain situations, various types of analyses are not cost-effective. Where "information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant," the environmental impact statement must include: "(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to

evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community." 40 C.F.R. § 1502.22.

210. The Forest Service and BLM sought to satisfy 40 C.F.R. § 1502.22 by undertaking "an assessment of existing scientifically credible evidence" that, it claimed "would be able to bound the potential regional impacts associated with ozone concentrations." FEIS at 72. That assessment relied exclusively on the Uinta Basin Air Quality Study (Petroleum Association Study), which was funded by the Independent Petroleum Association of the Mountain States, and "sought to assess the cumulative change in air quality from the regional expansion of oil and gas resources." FEIS at 72.

211. In addition to being funded by the oil and gas industry, the Petroleum Association Study is not relevant to evaluating the reasonably foreseeable significant adverse effects of the 400-well Project on ozone concentrations in the Uinta Basin because, for example the study only examines pollution output for the years 2006 and 2012. Work on the 400-well Project, on the other hand, will begin in 2012 and continue for 50 years. The Forest Service and BLM identified further significant drawbacks associated with the study and that render it inadequate to meet NEPA requirements. *E.g.* FEIS at 79.

212. Moreover, EPA has stated in writing that the Petroleum Association Study should not be used for the purposes of complying with NEPA.

213. Therefore, in relying on the Petroleum Association Study and by failing to analyze otherwise the direct and cumulative impacts of the 400-well Project on ozone concentrations in the Uinta Basin airshed, the Forest Service and BLM have failed to take a hard

look at the direct and cumulative impacts of the 400-well Project and its alternatives on ozone concentrations in the Uinta Basin airshed and failed their NEPA obligations.

214. Without sufficient analysis of the direct and cumulative impacts of the 400-well Project, the Forest Service and BLM cannot evaluate the possible environmental effects of the porposed project and its alternatives, cannot present these potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, the failure to undertake this analysis with adequate rigor violates NEPA.

215. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service and BLM relied on the FEIS and ROD evaluation of the $PM_{2.5}$ impacts to issue SUPOs and APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA. Moreover, as the agencies maintain, there are new data and modeling that can provide information to assess winter ozone concentrations in the future. Therefore, the Forest Service and BLM must undertake new or supplemental NEPA analysis to address the impacts of the SUPOs and APDs – directly, indirectly and cumulatively – on air quality in the Uinta Basin and particularly the present and future concentrations of ozone in the airshed. The failure of the agencies to undertake this analysis is a violation of NEPA.

216. As a result of these errors and failures, the FEIS, ROD, SUPOs and APDs are unlawful and the actions by the Forest Service and BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**FOURTH CLAIM FOR RELIEF**
**(NEPA Violation - Failure to Analyze Impacts of Traffic Beyond Project Area)**[10]

217. All of the paragraphs of this Complaint are incorporated by reference herein.

218. The Forest Service and BLM violated NEPA by failing to take a hard look at air quality, wildlife, traffic-safety and other environmental consequences of truck traffic outside the Project Area.

219. For example, the FEIS estimates that once every eight days throughout production – some 20 or more years for each well – an oil tanker truck will visit each well to haul away crude oil to offsite refineries and every day a light truck will visit each well. FEIS at C-122 (Vol. II, Appendix C). The Forest Service and BLM admit that these truck trips will have significant adverse environmental impacts to values such as air quality, recreation wildlife, visual resources and safety. However, the Forest Service and BLM have arbitrarily determined that these truck will travel only 20 miles round trip per trip and have otherwise confined evaluation of the environmental impacts of these truck trips and other truck trips to travel inside the Project Area.

220. For several reasons, this approach violates NEPA and its hard look requirement. There is no basis in the record on which to claim that environmental impacts of the 400-well Project will cease as soon as these fleets of truck leave the Project Area – even if the scope of NEPA review were artificially restricted to the Project Area. Truck trips and the associated environmental consequences such as emissions of air pollutants, noise, wildlife disturbance, kills and habitat fragmentation and wind and soil erosion will continue to affect the Project Area

[10] Although this cause of action is listed under the subsection "Air Quality," it actually implicates all forest natural resources.

resource values as these trucks travel just outside and further outside the boundary of the Project Area. This is particularly true of the creation of fugitive dust and direct emissions of air pollutants, which combine with other sources to create widespread effects on air quality.

221. Moreover, to restrict the scope of NEPA analysis to environmental consequences on resources values in the Project Area, particularly without basis in the record, is arbitrary and capricious. NEPA requires the Forest Service and BLM to take a hard look at the direct, indirect and cumulative impacts of the proposed project and its alternatives. 40 C.F.R. § 1508.25(c). At a minimum, the geographic boundaries of an adequate NEPA analysis must be broad enough to encompass all potentially significant environmental impacts to the resources at issue, such as air quality, water quality, wildlife, recreation and public safety.

222. The appropriate spatial scope of a cumulative impact analysis must identify the geographical area that includes resources potentially affected by the proposed project and must extend that area to include the same and other resources affected by the combined impacts of the project and other actions. Boundaries must be set based on the resource of concern and the characteristics of the specific area at issue.

223. Thus, as part of an adequate NEPA analysis, the Forest Service and BLM must determine and assess the potential significant direct, indirect and cumulative impacts of all the truck traffic associated with the 400-well Project, whether those trucks are operating inside or outside the Project Area This includes the reasonably foreseeable truck traffic associated with hauling crude oil to Wasatch Front refineries or alternative refining facilities.

224. Without analysis of the direct, indirect and cumulative impacts, including impacts outside the Project Area, of all truck travel associated with the 400-well Project, including travel

and operation outside the Project Area, the Forest Service and BLM cannot evaluate the possible environmental effects of the proposed project and its alternatives, cannot present these potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, the failure to undertake this analysis with adequate rigor violates NEPA.

225. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service and BLM have relied on the FEIS and ROD analysis of the environmental consequences of truck traffic to issue SUPOs and APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA. Therefore, the Forest Service and BLM must undertake new or supplemental NEPA analysis to address the direct, indirect and cumulative impacts, including impacts that occur outside the Project Area, of the SUPOs and APDs and the associated use of trucks, whether inside or outside the Project Area, on air quality in the Uinta Basin, on air quality along the Wasatch Front, on wildlife, habitat, safety and visual resources and on other affected resource values. The failure of the agencies to undertake this analysis is a violation of NEPA.

226. As a result of these errors and failures, the FEIS, ROD, SUPOs and APDs are unlawful and the actions by the Forest Service and BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**FIFTH CLAIM FOR RELIEF**
**(Violation of NEPA - Failure to Analyze Impacts of Work Overs and Recompletions)** [11]

227. All of the paragraphs of this Complaint are incorporated by reference herein.

228. The Forest Service and BLM violated NEPA by failing to account for and take a hard look at the reasonably foreseeable direct, indirect and cumulative environmental impacts of truck traffic related to periodic work overs and recompletions of approved wells.

229. NEPA's "hard look" requirement directs that an EIS address environmental consequences that are "reasonably foreseeable" from the proposed action and its alternatives. 40 C.F.R. § 1508.25. An effect is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *City of Dallas v. Hall*, 562 F.3d 712, 719 (5th Cir. 2009).

230. The Forest Service and BLM admit that the environmental impacts of truck traffic related to periodic work overs and recompletions of approved wells are reasonably foreseeable. For example, the FEIS states:

> On average, one workover per well per year is required after 5 years of production. Workovers typically take 7 days to complete. In the case of a recompletion, where casings are worked on or valves and fittings would be replaced to stimulate production, a temporary reserve pit may have to be constructed on the well pad.

FEIS at 4 (Vol. II).

231. Under NEPA, the Forest Service and BLM are required to address the environmental consequences of seven days of truck traffic per well per year for the 15-year period spanning years six through the end of the production period of the well. This analysis must address impacts to resources values inside and outside the Project Area from this traffic as

[11] Although this cause of action is listed under the subsection "Air Quality," it actually implicates all forest natural resources.

it occurs both inside and outside of the Project Area. Moreover, as this environmental impact is cumulative, these impacts must be added to impacts from work overs and recompletions associated with existing wells in the Project Area.

232. The direct, indirect and cumulative consequences of this work over and recompletion truck traffic and the noise, disruption, dust and emissions it will engender include adverse impacts to air quality, sage grouse, other wildlife, water quality, roadless and wilderness values and recreation. Moreover, because the Forest Service failed to address these impacts in the BA, BE, MIS Report, and other record analyses, these documents fail to serve as an adequate basis for the ROD and FEIS.

233. Without analysis of the environmental impacts of all truck traffic and operation associated with the 400-well Project, including truck use necessitated by work over and recompletion, the Forest Service and BLM cannot evaluate the possible environmental effects of the proposed project and its alternatives, cannot present these potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, the failure to undertake this analysis with adequate rigor violates NEPA.

234. As indicated in Tables 1, 2, and 3 and as otherwise may be established, the Forest Service and BLM relied on the FEIS and ROD to issue SUPOs and APDs for South Unit oil and gas wells and development activity. For all the reasons explained above, this reliance is improper and violates NEPA. Therefore, the Forest Service and BLM must undertake new or supplemental NEPA analysis to address the direct, indirect and cumulative impacts of all truck traffic and use associated with the SUPOs and APDs, including truck operation compelled by

work overs and recompletion. The failure of the agencies to undertake this analysis is a violation of NEPA.

235. As a result of these errors and failures, the FEIS, ROD, SUPOs and APDs are unlawful and the actions by the Forest Service and BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**SIXTH CLAIM FOR RELIEF**
**(Violation of NEPA, NFMA, Reform Act and Clean Air Act –**
**Regarding Ozone Emissions and Concentrations)**

236. All of the paragraphs of this Complaint are incorporated herein by reference.

237. The Forest Service violate NFMA, the Reform Act, the Clean Air Act and the relevant implementing regulations by approving the 400-well Project even though the FEIS shows that the project will cause or contribute to a violation of the 8-hour NAAQS for ozone and will otherwise adversely and unacceptably impact air quality. The agency also failed to take a hard look at the impact of the Project and its alternatives on the 8-hour NAAQS. *E.g.* 40 C.F.R. § 1508.27(b); 40 C.F.R. § 1502.2(d).

238. Under NFMA, the Reform Act, the Clean Air Act, and the pertinent implementing regulations, the Forest Service must, relative to the 400-well Project, *inter alia*: 1) minimize air pollution impacts, *e.g.*1986 Forest Plan; 16 U.S.C. § 1604(i); 36 C.F.R. § 228.102(e); 36 C.F.R. § 228.107(a)(2); 2) maintain air quality at a level that protects Forest resources, meets or is below the NAAQS and safeguards PSD increments, *e.g.* 1986 Forest Plan; 30 C.F.R. § 219.27(a)(12); 16 U.S.C. § 1604(i); 36 C.F.R. § 228.102(e); 36 C.F.R. § 228.107(a)(2); 3) minimizes effects on surface resources – including air quality, 36 C.F.R. § 228.108(a); 4) comply

with applicable NAAQS and PSD requirements, 36 C.F.R. § 228.112(c)(1); 36 C.F.R. § 228.112(e); and, 5) prevent the concentrations of air pollutants in the Uinta Basin from exceeding the relevant NAAQS. *E.g.* 42 U.S.C. § 7473(b)(4); 42 U.S.C. § 7418(a).

239. Under the 1986 Forest Plan, the Forest Service "will assure that implementation [of the Plan] is in compliance with the . . . goals and objectives in 36 C.F.R. § 219.10(e), 36 C.F.R. § 219.11(d), and 36 C.F.R. § 219.27." 1986 Plan Record of Decision (1986 Forest Plan ROD). Therefore, the 1986 Forest Plan must be implemented in keeping with, *inter alia*, 36 C.F.R. § 219.27(a)(12).

240. 30 C.F.R. § 219.27(a)(12) states that

> [t]he minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.
>
> (a) Resource protection. All management prescriptions shall –
>
> (12) Be consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations.

241. As indicated above, the Forest Service has failed to model quantitative, direct and cumulative project-related ozone concentrations and, therefore, failed to demonstrate that in analyzing and approving the 400-well Project, the agency will meet the requirements spelled out in the preceding paragraph and failed its NEPA obligation to take a hard look the project in relation to federal air quality standards.

242. The Forest Service attributes its failure to the "complexity" of the task of modeling ozone concentrations and the "economic limitations of the EIS project." FEIS at 70; *see also* FEIS at 72 ("Given that a novel photochemical modeling analysis could not be

reasonably completed for a cost that would not be considered exorbitant, the Forest Service acknowledges that the assessments of ozone impacts on both a direct and cumulative level are potentially incomplete.").

243. Yet, even in the absence of the required modeling, the analysis undertaken by the Forest Service indicates that the 400-well Project will result in ozone concentrations in the Uinta Basin that will reach or exceed the 8-hour NAAQS. Therefore, the Forest Service has failed to demonstrate that in analyzing and authoring the 400-well Project, the agency will meet the legal requirements spelled out above.

244. Ozone results from a photochemical process that largely depends on emissions and concentrations of VOCs and $NO_X$. FEIS at 53. As the Forest Service acknowledges, the 400-well Project will increase the amount of VOCs and $NO_X$ emitted into the Uinta Basin airshed. During the peak emissions year, the Project will create 189 tons per year (tpy) of $NO_X$ and 2,862 tpy of VOCs. FEIS at 71. Moreover, as explained elsewhere in this Complaint, the Forest Service failed to analyze and include all relevant project-related VOC and $NO_X$ emissions in its calculations. Although increases in VOCs and $NO_X$ may not correlate to equal increases in ozone levels, the 40 or more years of constant emissions from the 400-well Project will exacerbate ozone concentrations that are already exceeding or close to exceeding the 8-hour NAAQS for ozone.

245. The ROD requires implementation of certain mitigation measures to reduce the emissions of VOCs and $NO_X$ from some aspects of the 400-well Project. However reducing ozone precursor emissions, especially in the absence of any quantitative, direct and cumulative modeling to determine resulting ozone concentrations, does not ensure that the 400-well Project

will not cause or contribute to exceedances of the ozone NAAQS and will otherwise comply with the legal obligations set forth above. In the absence of this showing, the ROD is invalid.

246. In addition, to the extent that the Forest Service claims any environmental benefit from emission reductions or otherwise bases its NEPA analysis or modeling on the emission reductions, the agency must establish that the reductions are founded on federally enforceable permit limit emission rates assuming design capacity or federally enforceable capacity limitations to compute hourly emissions for dispersion modeling. However, the record fails to address these basic requirements.

247. As indicated in Tables 1, 2 and 3, and as may otherwise be determined, the Forest Service relied on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA, NFMA, the Reform Act, the Clean Air Act, and the relevant implementing regulations. In any case, before the project may proceed, the Forest Service must take a hard look at the Project's impacts on and in relation to the 8-hour ozone NAAQS and must demonstrate, based on new or supplemental analysis and modeling, that the agency has required the measures necessary to establish that the 400-well Project will not cause or contribute to exceedances of the 8-hour ozone NAAQS and will otherwise comply with the Forest Service obligations set forth above.

248. As a result of these errors and failures and unless and until the Forest Service makes the required showings, the FEIS, ROD, and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**SEVENTH CLAIM FOR RELIEF**
**(BLM Violation of NEPA, Mineral Leasing Act Regulations and Clean Air Act – Regarding Ozone Emissions and Concentrations)**

249. All of the paragraphs of this Complaint are incorporated herein by reference.

250. BLM violated NEPA, the agency's own regulations[12] and the Clean Air Act by approving the 400-well Project even though the FEIS shows that the project will cause or contribute to a violation of the 8-hour NAAQS for ozone and will otherwise adversely and unacceptably impact air quality. BLM also failed to take a hard look at the impacts of the Project and its alternatives on and in relation to the 8-hour NAAQS for ozone. *E.g.* 40 C.F.R. § 1508.27(b); 40 C.F.R. § 1502.2(d).

251. Under BLM regulations and the Clean Air Act, BLM must, relative to the 400-well Project, *inter alia*: 1) ensure that the relevant leases include stipulations that reflect additional reasonable measures and restrictions required to comply with the law and minimize adverse impacts to resource values, land uses or users, 43 C.F.R. § 3101.1-2; 43 C.F.R. § 3101.1-3; 43 C.F.R. § 3101.7-2; 43 C.F.R. § 3161.2; 2) undertake appropriate environmental analysis in order to determine adequate terms and conditions of any APDs, 43 C.F.R. § 3162.5-1(a); 43 C.F.R. § 3161.2; 3) guarantee that operations will be conducted in a manner that protects natural resources and environmental quality, 43 C.F.R. § 3162.5-1(a); 43 C.F.R. § 3161.2; 4) require that operations be carried out according to applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan," 43 C.F.R. § 3162.5-1(a); 43 C.F.R. § 3161.2; and, 5) prevent the maximum allowable concentration of air pollutants in the

[12] The regulations cited as applying to BLM actions relative to the 400-well Project were promulgated pursuant to the Mineral Leasing Act, as well as other statutory authorities as listed in 43 C.F.R. §§ 3160.0-3 and 3100.0-3.

Uinta Basin from exceeding the relevant NAAQS. *E.g.* 42 U.S.C. § 7473(b)(4); 42 U.S.C. § 7418(a).

252. As indicated above, BLM has failed to take a hard look at and to model quantitative, direct and cumulative project-related ozone concentrations and, therefore, failed to demonstrate that in analyzing and approving the 400-well Project, the agency will meet the requirements spelled out in the preceding paragraph.

253. Even in the absence of the required modeling, the analysis undertaken by BLM indicates that the 400-well Project will result in ozone concentrations in the Uinta Basin that will reach or exceed the 8-hour NAAQS. Therefore, BLM has failed to demonstrate that in analyzing and authoring the 400-well Project, the agency will meet the requirements spelled out in the paragraph above.

254. As part of the ROD, BLM requires implementation of certain mitigation measures to reduce the emissions of VOCs and $NO_X$ from some aspects of the 400-well Project. However reducing ozone precursor emissions, especially in the absence of any quantitative, direct and cumulative modeling to determine resulting ozone concentrations, does not ensure that the 400-well Project will not cause or contribute to exceedances of the ozone NAAQS and will otherwise comply with the legal obligations set forth above. The record also fails to establish that the claimed emission reductions are federally enforceable. In the absence of these showings, the ROD is invalid.

255. As indicated in Tables 1, 2 and 3 and as may be otherwise determined, BLM relied on the FEIS and ROD to authorize APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and

violates NEPA, BLM oil and gas regulations and the Clean Air Act. To address this illegality and before the project may proceed, BLM must demonstrate, based on new or supplemental analysis and modeling, that the agency has required the measures necessary to establish that the 400-well Project will not cause or contribute to exceedances of the 8-hour ozone NAAQS and will otherwise comply with the BLM's obligations set forth above. BLM must also take a hard look at the Project's impact on ozone concentrations and on and in relation to the 8-hour ozone NAAQS limit.

256. As a result of these errors and failures and unless and until BLM makes the required showings, the FEIS, ROD, and APDs are unlawful and the actions by BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**EIGHTH CLAIM FOR RELIEF**
**(Forest Service Violation NEPA, NFMA, Reform Act and Clean Air Act NFMA – Regarding $PM_{2.5}$ Emissions and Concentrations)**

257. All of the paragraphs of this Complaint are incorporated herein by reference.

258. Under NFMA, the Reform Act, the Clean Air Act, and the pertinent implementing regulations, the Forest Service must, relative to the 400-well Project, *inter alia*: 1) minimize air pollution impacts, *e.g.*1986 Forest Plan; 16 U.S.C. § 1604(i); 36 C.F.R. § 228.102(e); 36 C.F.R. § 228.107(a)(2); 2) maintain air quality at a level that protects Forest resources, meets or is below the NAAQS and safeguards PSD increments, *e.g.* 1986 Forest Plan; 30 C.F.R. § 219.27(a)(12); 16 U.S.C. § 1604(i); 36 C.F.R. § 228.102(e); 36 C.F.R. § 228.107(a)(2); 3) minimizes effects on surface resources – including air quality, 36 C.F.R. § 228.108(a); 4) comply with applicable NAAQS and PSD requirements, 36 C.F.R. § 228.112(c)(1); 36 C.F.R. §

228.112(e); and, 5) prevent the concentrations of air pollutants in the Uinta Basin from exceeding the relevant NAAQS. *E.g.* 42 U.S.C. § 7473(b)(4); 42 U.S.C. § 7418(a).

259. Under the 1986 Forest Plan, the Forest Service "will assure that implementation [of the Plan] is in compliance with the . . . goals and objectives in 36 C.F.R. § 219.10(e), 36 C.F.R. § 219.11(d), and 36 C.F.R. § 219.27." 1986 Plan Record of Decision (1986 Forest Plan ROD). Therefore, the 1986 Forest Plan must be implemented in keeping with, *inter alia*, 36 C.F.R. § 219.27(a)(12).

260. 30 C.F.R. § 219.27(a)(12) states that

> [t]he minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.
>
> (a) Resource protection. All management prescriptions shall –
>
> (12) Be consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations.

261. The Forest Service violated NEPA, NFMA, the Reform Act, the Clean Air Act and the relevant implementing regulations by failing to take a hard look at the Project's impact on the 24-hour NAAQS for $PM_{2.5,}$ *e.g.* 40 C.F.R. § 1508.27(b); 40 C.F.R. § 1502.2(d), and by authorizing the 400-well Project even though the FEIS demonstrates the project will cause or contribute to a violation of the 24-hour NAAQS for $PM_{2.5}$ and will otherwise adversely and unacceptably impact air quality.

262. As explained elsewhere in this Complaint, the FEIS and ROD underestimate the 24-hour background concentration of $PM_{2.5}$ and do not consider and examine all project-related $PM_{2.5}$ emissions, including emissions from the secondary formation of $PM_{2.5}$. Even without

consideration of these additional emissions, the Forest Service admits that under one scenario examined by the agency, the construction phase of the 400-well Project fails to comply with the 24-hour $PM_{2.5}$ NAAQS and therefore will exceed the maximum 24-hour concentration set by the PSD program. *See* FEIS at 65. While the Forest Service considers this scenario unlikely, there is nothing in the record to rule out the reasonable possibility that emissions from the 400-well Project will be greater than emissions estimated under the second scenario examined in the record, but perhaps less than those estimated under the first scenario. Under many, if not most of the scenarios represented by this range of reasonable possibilities, emissions from the 400-well Project will fail to comply with the 24-hour $PM_{2.5}$ NAAQS and will otherwise adversely and unacceptably impact air quality.

263. Thus, the Forest Service does not show that the 400-well Project will not cause or contribute to exceedances of the 24-hour $PM_{2.5}$ NAAQS and will otherwise comply with the legal obligations set forth above and fails to take a hard look at the effects of the Project on and in relation to 24-hour $PM_{2.5}$ NAAQS. In the absence of this showing and this analysis, the ROD and FEIS are invalid.

264. As indicated in Tables 1, 2 and 3 above, and as may otherwise be determined, the Forest Service relied on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA, NFMA, the Reform Act, the Clean Air Act, and the relevant implementing regulations. Before the project may proceed, the Forest Service must undertake adequate environmental analysis to examine the effects of the Project on and in relation to the 24-hour $PM_{2.5}$ NAAQS and must demonstrate, based on new or supplemental analysis and modeling, that

the agency has required the measures necessary to establish that the 400-well Project will not cause or contribute to a violation of the 24-hour $PM_{2.5}$ NAAQS and will otherwise comply with the Forest Service obligations set forth above.

265. As a result of these errors and failures and until the Forest Service makes the proper showing, the FEIS, ROD, and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**NINTH CLAIM FOR RELIEF**
**(BLM Violation of NEPA, Mineral Leasing Act Regulations and Clean Air Act – Regarding $PM_{2.5}$ Emissions and Concentrations)**

266. All of the paragraphs of this Complaint are incorporated herein by reference.

267. The BLM violated its regulations and the Clean Air Act by approving the 400-well Project even though the FEIS demonstrates the project will cause or contribute to a violation of the 24-hour NAAQS for $PM_{2.5}$ and will otherwise adversely and unacceptably impact air quality. The agency also failed to take a hard look at the impact of the 400-well Project and its alternatives on and in relation to the 24-hour NAAQS for $PM_{2.5}$. *E.g.* 40 C.F.R. § 1508.27(b); 40 C.F.R. § 1502.2(d).

268. As explained elsewhere in this Complaint, the FEIS and ROD underestimate the 24-hour background concentration of $PM_{2.5}$ and do not consider and examine all project-related $PM_{2.5}$ emissions, including emissions produced by the secondary formation of $PM_{2.5}$. Even without consideration of these additional emissions, the record shows that project-related emissions will not comply with the 24-hour $PM_{2.5}$ NAAQS and therefore will exceed the maximum 24-hour concentration set by the PSD program. *See* FEIS at 65.

269. Thus, BLM failed to take a hard look at the impact of the Project on the 24-hour $PM_{2.5}$ NAAQS and is unable to show that the 400-well Project will not cause or contribute to exceedences of the 24-hour $PM_{2.5}$ NAAQS and will otherwise comply with the legal obligations set forth above. In the absence of this showing and analysis, the ROD and FEIS are invalid.

270. As indicated in Tables 1, 2 and 3, and as otherwise may be determined, BLM relied on the FEIS and ROD to issue APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA, BLM oil and gas regulations and the Clean Air Act. In any case, before any element of the 400-well Project may proceed, BLM must undertake adequate environmental review and demonstrate, based on new or supplemental analysis and modeling, that the agency has addressed the 24-hour $PM_{2.5}$ NAAQS and required the measures necessary to establish that the 400-well Project will not cause or contribute to a violation of the 24-hour $PM_{2.5}$ NAAQS and will otherwise comply with the BLM's obligations set forth above.

271. As a result of these errors and failures and until BLM makes the proper showing, the FEIS, ROD, and APDs are unlawful and the actions by BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**TENTH CLAIM FOR RELIEF**
**(Forest Service Violation of NEPA, NFMA, Reform Act, Clean Air Act – Regarding $PM_{2.5}$ and $PM_{10}$ PSD Increments)**

272. All of the paragraphs of this Complaint are incorporated herein by reference.

273. Under NFMA, the Reform Act, the Clean Air Act, and the pertinent implementing regulations, the Forest Service must, relative to the 400-well Project, *inter alia*: 1) minimize air

pollution impacts, *e.g.*1986 Forest Plan; 16 U.S.C. § 1604(i); 36 C.F.R. § 228.102(e); 36 C.F.R. § 228.107(a)(2); 2) maintain air quality at a level that protects Forest resources, meets or is below the NAAQS and safeguards PSD increments, *e.g.* 1986 Forest Plan; 30 C.F.R. § 219.27(a)(12); 16 U.S.C. § 1604(i); 36 C.F.R. § 228.102(e); 36 C.F.R. § 228.107(a)(2); 3) minimizes effects on surface resources – including air quality, 36 C.F.R. § 228.108(a); 4) comply with applicable NAAQS and PSD requirements, 36 C.F.R. § 228.112(c)(1); 36 C.F.R. § 228.112(e); and, 5) prevent the concentrations of air pollutants in the Uinta Basin from exceeding the relevant NAAQS. *E.g.* 42 U.S.C. § 7473(b)(4); 42 U.S.C. § 7418(a).

274. Under the 1986 Forest Plan, the Forest Service "will assure that implementation [of the Plan] is in compliance with the . . . goals and objectives in 36 C.F.R. § 219.10(e), 36 C.F.R. § 219.11(d), and 36 C.F.R. § 219.27." 1986 Plan Record of Decision (1986 Forest Plan ROD). Therefore, the 1986 Forest Plan must be implemented in keeping with, *inter alia*, 36 C.F.R. § 219.27(a)(12).

275. 30 C.F.R. § 219.27(a)(12) states that

> [t]he minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.
>
> (a) Resource protection. All management prescriptions shall –
>
> (12) Be consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations.

276. By authorizing the 400-well Project even though the FEIS demonstrates the project will exceed PSD increment limits for $PM_{2.5}$ and $PM_{10}$, the Forest Service has failed these legal obligations. Similarly, the Forest Service failed to take a hard look at the impacts of the

400-well Project and its alternatives on NAAQS and $PM_{2.5}$ and $PM_{10}$ PSD increments. *E.g.* 40 C.F.R. § 1508.27(b); 40 C.F.R. § 1502.2(d).

277. Under the PSD program, the Ashley National Forest has been designated a Class II. For a Class II area, the $PM_{2.5}$ increment for the 24-hour averaging period is 9 $\mu g/m^3$. 75 Fed. Reg. 64864 (Oct. 20, 2010). The Forest Service predicts that construction activities for the 400-well Project will lead to an 11.82 $\mu g/m^3$ increase in the 24-hour maximum value of $PM_{2.5}$. FEIS at 65. Moreover, under many, if not most of the scenarios represented by the range of reasonable possibilities lying between the two scenarios modeled in the FEIS, emissions from the 400-well Project will consume all or more than all of the relevant 24-hour $PM_{2.5}$ increment.

278. In addition, as explained elsewhere in this Complaint, the FEIS and ROD underestimate the 24-hour background concentration of $PM_{2.5}$ and do not consider and examine all project-related $PM_{2.5}$ emissions, including emissions produced by the secondary formation of $PM_{2.5}$.

279. The record also demonstrates that the Project will violate the PSD increment for $PM_{10}$. For a Class II area, the $PM_{10}$ increment for the 24-hour averaging period is 30 $\mu g/m^3$. 40 C.F.R. § 51.166(c)(1). The FEIS predicts the construction of the 400-well Project will result in 24-hour average concentrations of $PM_{10}$ of 35.06 $\mu g/m^3$ in the Project Area. FEIS at 65. The increased concentration of $PM_{10}$ exceeds the allowable increment concentrations.

280. Moreover, just as the Forest Service underestimated $PM_{2.5}$ emissions from the project, the agency underestimated and failed to take a hard look at $PM_{10}$ emissions from the 400-well Project relating to truck traffic inside and outside the Project Area.

281. For these reasons, the 400-well Project will result in adverse and unacceptable impacts to air quality and other Forest resources and is inconsistent with maintaining air quality at a level that meets or preserves concentrations below federal standards and regulations.

282. As indicated in Tables 1, 2 and 3, and as may otherwise be determined, the Forest Service relied on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA, NFMA, the Reform Act, the Clean Air Act, and the relevant implementing regulations. Therefore, the Forest Service must undertake adequate environmental analysis and must demonstrate, based on new or supplemental analysis and modeling, that the agency has examined and required the measures necessary to establish that the 400-well Project will not consume all or significant portions of the 24-hour $PM_{2.5}$ and $PM_{10}$ increments and will otherwise comply with the Forest Service obligations set forth above.

283. As a result of these errors and failures and until the Forest Service undertake adequate environmental assessment and makes the proper showing, the FEIS, ROD, and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**ELEVENTH CLAIM FOR RELIEF**
**(BLM Violation of NEPA, Mineral Leasing Act Regulations and Clean Air Act – Regarding $PM_{2.5}$ and $PM_{10}$ PSD Increments)**

284. All of the paragraphs of this Complaint are incorporated herein by reference.

285. As explained above, BLM has legal duties under its regulations and the Clean Air Act, *inter alia*, protect and minimize impacts to air quality and other surface resources, require

compliance with the Clean Air Act and prevent concentrations of air pollutants in the Uinta Basin from exceeding the NAAQS. By authorizing the 400-well Project even though the FEIS demonstrates the project will exceed PSD increment limits for $PM_{2.5}$ and $PM_{10}$, BLM has failed these legal obligations. Similarly, BLM failed to take a hard look at the impacts of the 400-well Project and its alternatives on NAAQS and $PM_{2.5}$ and $PM_{10}$ PSD increments. *E.g.* 40 C.F.R. § 1508.27(b); 40 C.F.R. § 1502.2(d).

286. The FEIS predicts that construction activities for the 400-well Project will consume all or more than all of the relevant 24-hour $PM_{2.5}$ increment. Moreover, the FEIS and ROD underestimate the 24-hour background concentration of $PM_{2.5}$ and do not consider and examine all project-related $PM_{2.5}$ emissions, including emissions produced by the secondary formation of $PM_{2.5}$.

287. The record also demonstrates that the Project will violate the PSD increment for $PM_{10}$. Just as the FEIS underestimated $PM_{2.5}$ emissions from the project, the analysis also underestimated $PM_{10}$ emissions from the 400-well Project relating to truck traffic inside and outside the Project Area.

288. For these reasons, the 400-well Project will result in adverse and unacceptable impacts to air quality and other surface resources and will violate increments intended to prevent 24-hour concentrations of $PM_{2.5}$ and $PM_{10}$ from exceeding the relevant NAAQS.

289. As indicated in Tables 1, 2 and 3, and as may otherwise be determined, BLM relied on the FEIS and ROD to issue APDs for South Unit oil and gas wells and development activities. For all the reasons explained above, this reliance is improper and violates NEPA, BLM oil and gas regulations and the Clean Air Act. Therefore, BLM must undertake adequate

analysis of the Project's impacts on PSD increments and must demonstrate, based on new or supplemental analysis and modeling, that the agency has examined increments and has required the measures necessary to establish that the 400-well Project will not consume all or significant portions of the 24-hour $PM_{2.5}$ and $PM_{10}$ increments and will otherwise comply with the BLM obligations set forth above.

290. As a result of these errors and failures and until BLM makes the proper showing, the FEIS, ROD, and APDs are unlawful and the actions by BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

## II. Roadless Area Issues

### TWELFTH CLAIM FOR RELIEF
### (Violation of NEPA and Roadless Rule – Failure to Consider and Implement Alternative to Protect Roadless Areas)

291. All of the paragraphs of this Complaint are incorporated herein by reference.

292. NEPA requires federal agencies, including the Forest Service, to include within an environmental impact statement such as the FEIS "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 the Forest Service to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14.

293. In addition to the legal obligations to protect Forest resources and values discussed elsewhere, the Forest Service is required to safeguard Roadless Areas from road construction associated with mineral leases issued prior to January 12, 2001. 36 C.F.R. § 294.12(b)(7). Specifically, in Roadless Areas, road construction or reconstruction is permissible

only as "needed" and "must be conducted in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface disturbance, and complies with all applicable lease requirements, land and resource management plan direction, regulations, and laws." *Id.*

294. Relevant to compliance with this requirement to minimize impacts to Roadless Area and to prevent unnecessary surface disturbance is that fact that in authorizing the leasing of any Forest lands for oil and gas development, the Forest Service need only determine that "operations could be allowed somewhere on each proposed lease, unless stipulations prohibit all surface occupancy." 36 C.F.R. § 228.102(e). Therefore, unless a no-surface occupancy stipulation applies to the entire lease, the rights of the lessee are limited to the authorization to develop oil and gas operations "somewhere on each" lease parcel. *Id.*

295. The Forest Service stated when it promulgated its Reform Act regulations:

> This Department has determined that leases that are issued for National Forest System lands should vest the lessee with the right to conduct oil and gas operations somewhere on the lease. Accordingly, when a decision is made on authorizing the Bureau of Land Management to offer National Forest System lands for leasing, it is necessary to ensure that each lease would have development potential. (However, while at the time a lease is issued it might appear that operations could be approved on the lease, by the time such operations are proposed, they might be precluded by the operation of a nondiscretionary statute such as the Endangered Species Act.)

55 Fed. Reg. 10423-01, 10430 (March 21, 1990) ("The third determination that the rule requires the Forest Service to make is that oil and gas operations for the benefit of the lease could be allowed somewhere on the lease unless stipulations prohibiting all surface occupancy are to be used.").

296. Despite the obligation to safeguard Roadless Areas by, *inter alia*, minimizing the adverse consequences of any road building on surface resources and preventing unnecessary or

unreasonable surface disturbance and despite retaining the authority to restrict development on any given lease overlapping a Roadless Area up to the point of permitting development only somewhere on that lease, the Forest Service refused to propose and analyze a NEPA alternative that would limit oil and gas operations or well pads on leases that encompass Roadless Areas to one location on that lease. Alternately, the Forest Service violated its legal obligations by refusing to derive and analyze a NEPA alternative that would further limit oil and gas operations in Roadless Areas to fewer than 4 or 6 well pads per section.

297. Furthermore, in failing to adopt a decision that would restrict oil and gas operations in Roadless areas to one location per lease – or to fewer than 4 or 6 well pads per section – the Forest Service has violated the Roadless Rule. Similarly, by failing to analyze and to adopt an alternative that would minimize impacts to Roadless Area values and would prevent unnecessary surface disturbance by limiting the miles of constructed roads in the Roadless Areas, the Forest Service has violated the Roadless Rule.

298. As indicated in Tables 1, 2 and 3, and as may otherwise be determined, the Forest Service relied on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activities inside Roadless Areas. For all the reasons explained above, this reliance is improper and violates NEPA and the Roadless Rule.

299. Therefore, the Forest Service must acknowledge that it need only allow development on one location in each South Unit lease and, in this context, must undertake new or supplemental NEPA analysis to consider alternatives that would limit road construction and surface disturbance in Roadless Areas and must adopt the alternative that minimizes the adverse impacts of roads and prevents unnecessary surface disturbance in these areas. An appropriate

range of alternatives includes reducing the number of well pads to fewer than 4 or 6 per section, reducing the well pads to one location per lease and limiting and reducing the miles of constructed roads in Roadless Areas to the greatest extent possible. The failure of the agency to undertake this analysis and to adopt the properly protective option is a violation of NEPA and the Roadless Rule.

300. As a result of these errors and failures, and until the Forest Service undertakes supplemental NEPA analysis and adopts the decision necessary to comply with the Roadless Rule, the FEIS, ROD and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

## III. Water Quality Issues

### THIRTEENTH CLAIM FOR RELIEF
### (Forest Service and BLM Violation of NEPA – Utah Water Quality Standards)

301. All of the paragraphs of this Complaint are incorporated herein by reference.

302. The Forest Service and BLM violated NEPA by failing to address whether and how the 400-well Project will directly, indirectly and cumulatively meet Utah Water Quality Standards.

303. As part of their NEPA obligations, both the Forest Service and BLM must explain how their actions will or will not comply with environmental laws and policies. 40 C.F.R. § 1508.27(b) (stating federal agencies must consider "[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment"); *see also id.* § 1502.2(d) ("Environmental impact statements shall state how alternatives considered in

it and decisions based on it will or will not achieve the requirements of [NEPA] and other environmental laws and policies.").

304. The surface waters adversely affected by and containing the Project Area are not meeting Utah Water Quality Standards for, *inter alia*, TDS. Indeed, the TMDL requires a 15% reduction in TDS from the section of the Duchesne River immediately downstream from the Antelope Creek and Sowers Canyon Creek. Moreover, all the waters in the Ashley National Forest, including Antelope Creek, Sowers Creek Canyon, Gilsonite Draw, Pariette Draw and their tributaries, are classified by Utah law as Category 1 waters. Utah Admin Code R317-2-12.1(a). The Utah Antidegradation Rule prevents new discharges into Category 1 waters except those that are temporary and limited. Utah Admin. Code R317-2-3.2.

305. As a necessary result of the construction and operation of the 400-well Project, storm water from oil and gas exploration, production, processing, or treatment operations or transmission facilities will contribute pollutants in a violation of a water quality standard or otherwise discharge a reportable quantity release. These discharges and contributions will be more than temporary and more than limited.

306. Also as a necessary result of the 400-well Project, storm water discharges from the construction and operation of oil and gas exploration, production, processing, or treatment operations, or transmission facilities that are contaminated by contact with or that have come into contact with overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations will occur. These discharges will be more than temporary and limited.

307. Therefore, the 400-well Project will violate and contribute to violations of Utah's Water Quality Standards, including the narrative standard. The project will result in discharges that will cause or contribute to violations of the TDS standard in Antelope Creek and its tributaries, as well as the Duchesne River, will be contrary to the Duchesne River Watershed TMDL and will impede attainment of and otherwise violate Utah Water Quality Standards.

308. The 400-well Project will also result in non-temporary or non-limited discharges into Category 1 waters in violation of Utah's Antidegradation Rule and the Utah Narrative Standard.

309. Even assuming that the violations of and contributions to violations of the Water Quality Standards described above are not certain, but only potential occurrences, the Forest Service and BLM are required by NEPA to explain and analyze how the 400-well Project and its alternatives – directly, indirectly and cumulatively – will or will not comply with Utah Water Quality Standards and the Clean Water Act and to address whether and to what degree the project and its alternatives – directly, indirectly and cumulatively – threaten a violation of or have the potential to contribute to a violation of the Utah Water Quality Standards and the Clean Water Act.

310. Without an accurate and thorough assessment of whether and the degree to which the 400-well Project and its alternatives, directly, indirectly and cumulatively will violate or cause or contribute to a violation of or will prevent the attainment of the Utah Water Quality Standards and other requirements of the Clean Water Act, the Forest Service and BLM cannot evaluate the possible environmental effects of the proposed project and its alternatives, cannot present these potential effects to the public, cannot undertake well-informed decision making,

and cannot derive reasonable mitigation measures. Thus, addressing the potential direct, indirect and cumulative impacts of the 400-well Project on Utah Water Quality Standards and the achievement or violation of other Clean Water Act standards is critical to proper evaluation of a project and to complying with NEPA and the failure to analyze these issues violates the Act.

311. As indicated in Tables 1, 2 and 3, and as may otherwise be determined, the Forest Service and BLM relied on the FEIS and ROD to issue SUPOs and APDs for South Unit oil and gas wells and development activities inside Roadless Areas. For all the reasons explained above, this reliance is improper and violates NEPA.

312. Therefore, the Forest Service and BLM must undertake new or supplemental NEPA analysis to address the impacts of the SUPOs and APDs – directly, indirectly and cumulatively – on whether and the degree to which the 400-well Project and its alternatives will violate or cause or contribute to a violation of or will prevent the attainment of the Utah Water Quality Standards and other requirements of the Clean Water Act. The failure of the agencies to undertake this analysis is a violation of NEPA.

313. To the extent that the Forest Service and BLM rely or relied on the FEIS and ROD to issue APDs SUPOs for South Unit oil and gas wells and development activity, including road construction, this reliance is improper and violates NFMA, the Reform Act, the Clean Water Act, and the relevant implementing regulations. In any case, before the project may proceed, the Forest Service and BLM must consider and adopt all additional alternatives, measures and stipulations, including additional NSO stipulations, that would avoid adverse impacts to water quality, would be more in keeping with Utah Water Quality Standards and the

Duchesne River Watershed TMDL, would potentially secure attainment of relevant water quality standards and would otherwise meet the Forest Service's legal obligations set forth above.

314. As a result of these errors and failures, the FEIS, ROD, SUPOs and APDs are unlawful and the actions by the Forest Service and BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**FOURTEENTH CLAIM FOR RELIEF**
**(Forest Service Violation of NFMA, Reform Act, Clean Water Act – Utah Water Quality Standards)**

315. All of the paragraphs of this Complaint are incorporated herein by reference.

316. The Forest Service violated NFMA, the Reform Act and the Clean Water Act by approving the ROD even though the FEIS clearly establishes that the Project will contribute to violations and exceedances of Utah's Water Quality Standards, is contrary to attaining those standards and does not comply with Utah's Antidegradation Rule and Narrative Standard.

317. Under the Clean Water Act, the Forest Service must establish that its actions are consistent with Utah water quality standards. *E.g.* 33 U.S.C. § 1323(a). 33 U.S.C. § 1323(a)(2) states that the Forest Service is "subject to" and shall "comply with all" Utah water quality standards. This requirement applies to any federal activity, including the exercise of federal administrative authority "resulting, or which may result, in the discharge or runoff" of pollutants. 33 U.S.C. 1323(a)(2) & (a)(2)(B). The Forest Service must also abide by its substantive duty under NFMA to protect and improve water quality. *E.g.* 16 U.S.C. § 1602(5)(C).

318. The 1986 Forest Plan directs the Forest Service to protect all surface waters from chemical contamination and to maintain or improve and give preference to the protection of watershed values.

319. The 1982 Planning Rule, on which the 1986 Forest Plan is based, states that

> Forest Planning shall provide for . . . [c]ompliance with requirements of the Clean Water Act, the Safe Drinking Water Act, and all substantive and procedural requirements of Federal, State, and local governmental bodies with respect to the provision of public water systems and the disposal of waste water[.]

30 C.F.R. § 219.23(d).

320. The 1982 Planning Rule also states that

> [t]he minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.
>
> (e) Riparian areas. Special attention shall be given to land and vegetation for approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water. This area shall correspond to at least the recognizable area dominated by the riparian vegetation. No management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment shall be permitted within these areas which seriously and adversely affect water conditions or fish habitat.

30 C.F.R. § 219.27(e): *see also* 30 C.F.R. § 219.27(a)(1) ("All management prescriptions shall . . .[c]onserve soil and water resources"); 30 C.F.R. § 219.27(a)(4) ("All management prescriptions shall . . [p]rotect streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under paragraphs (d) and (e) of this section"); 1986 Forest Plan ROD at 14 (requiring that the Forest Plan be implemented "in compliance with" 30 C.F.R. § 219.27).

321. Under 36 C.F.R. § 228.108, the Forest Service must ensure that pursuant to the SUPO, the operator "shall conduct operations on a leasehold on National Forest System lands in

a manner that minimizes effects on surface resources [and] prevents unnecessary or unreasonable surface resource disturbance[.]" 36 C.F.R. § 228.108(a); *see also* 36 C.F.R. § 228.108(f) (operations must be conducted "in such a manner as to maintain and protect fisheries, wildlife, and plant habitat").

322. In addition, the Forest Service is tasked with requiring an operator to comply with applicable "Federal and State water quality standards, including the requirements of the Federal Water Pollution Control Act[.]" 36 C.F.R. § 228.112(c)(2); 36 C.F.R. § 228.112(e) ("Forest Service officers shall periodically. . . determine and document whether operations are being conducted in compliance with the[se] regulations").

323. The Forest Service claims, without valid justification, that the ROD and EIS comply with the Clean Water Act. ROD at 15.

324. Individually and cumulatively, storm water discharges from the oil and gas exploration, production, processing, or treatment operations, or transmission facilities associated with the 400-well Project will contribute pollutants in violation of a water quality standard or otherwise discharge a reportable quantity release. These discharges and contributions will be more than temporary and more than limited.

325. Storm water discharges from the construction and operation of oil and gas exploration, production, processing, or treatment operations, or transmission facilities associated with the 400-well Project will contain, *inter alia*, sediment and will be contaminated by contact with or will come into contact with, overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations. Individually and cumulatively, these discharges will be more than temporary and limited.

326. Discharges and runoff from the 400-well Project also threaten the intermittent and ephemeral streams and downstream water quality in the Project Area. For example, the Forest Service describes gullying and erosion in the intermittent and ephemeral stream in the Project Area as including continuous and discontinuous gully systems as deep as 25 feet with active head cuts and active cutting. FEIS at 112.

327. The Forest Service maintains that, "for priority watersheds, classified as impaired by the Utah Division of Water Quality," – and all the watersheds in the Project Area are impaired – "siting of facilities within 100 feet of intermittent/ephemeral channels will be avoided where feasible; and where it occurs, would be subject to more rigorous monitoring and implementation of erosion control measures." FEIS at 129. However, according to the Forest Service, road and pipeline stream crossings associated with the 400-well Project will occupy, disturb and destroy 3.4 miles along intermittent streams. FEIS at 123.

328. Because the FEIS and ROD do not adequately safeguard perennial, ephemeral and intermittent waters, development activities it these watersheds will have particular adverse impact on water quality in intermittent and ephemeral streams and downstream waters.

329. Therefore, the 400-well Project will violate and contribute to violations of Utah's Water Quality Standards, including the Narrative Standard. The project will result in discharges that will cause or contribute to violations of the TDS standard in Antelope Creek and its tributaries, as well as the Duchesne River, will be contrary to the Duchesne River Watershed TMDL and will impede attainment of and otherwise violate Utah Water Quality Standards.

330. The 400-well Project will also result in non-temporary and non-limited discharges into Category 1 waters in violation of Utah's Antidegradation Rule and the Utah Narrative Standard.

331. As indicated in Tables 1, 2 and 3, and as otherwise may be determined, the Forest Service relied on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity. For all the reasons explained above, this reliance is improper and violates NFMA, the Reform Act, the Clean Water Act, and the relevant implementing regulations. In any case, before the project may proceed, the Forest Service must demonstrate, based on new or supplemental analysis, that the agency has required the measures necessary to establish that the 400-well Project will not cause or contribute to a violation or exceedance of Utah Water Quality Standards, will comply with Utah's Antidegradation Rule and Narrative Standard, will not impede attainment of these standards and will otherwise comply with the Forest Service obligations set forth above.

332. As a result of these errors and failures and unless and until the Forest Service makes the required showings, the FEIS, ROD, and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**FIFTEENTH CLAIM FOR RELIEF**
**(BLM Violation of Mineral Leasing Act Regulations, Clean Water Act – Utah Water Quality Standards)**

333. All of the paragraphs of this Complaint are incorporated herein by reference.

334. BLM violated its regulations[13] and the Clean Water Act by approving the 400-well Project even though the FEIS shows that the 400-well Project will contribute to violations and exceedances of Utah's Water Quality Standards, is contrary to attaining those standards and does not comply with Utah's Antidegradation Rule and Narrative Standard.

335. Under the Clean Water Act, BLM must establish that its actions are consistent with Utah water quality standards. *E.g*. 33 U.S.C. § 1323(a). 33 U.S.C. § 1323(a)(2) states that BLM is "subject to" and shall "comply with all" Utah water quality standards. This requirement applies to any federal activity, including the exercise of federal administrative authority "resulting, or which may result, in the discharge or runoff" of pollutants. 33 U.S.C. 1323(a)(2) & (a)(2)(B).

336. BLM must also 1) ensure that leases include stipulations that reflect additional reasonable measures and restrictions required to comply with the law and minimize adverse impacts to resource values, land uses or users, 43 C.F.R. § 3101.1-2; 43 C.F.R. § 3101.1-3; 43 C.F.R. § 3101.7-2; 43 C.F.R. § 3161.2; 2) undertake appropriate environmental analysis in order to determine adequate terms and conditions of any APDs, 43 C.F.R. § 3162.5-1(a); 43 C.F.R. § 3161.2; 3) guarantee that oil and gas operations will be conducted in a manner that protects natural resources and environmental quality, 43 C.F.R. § 3162.5-1(a); 43 C.F.R. § 3161.2; and,

[13] The regulations cited as applying to BLM actions relative to the 400-well Project were promulgated pursuant to the Mineral Leasing Act, as well as other statutory authorities as listed in 43 C.F.R. §§ 3160.0-3 and 3100.0-3.

4) require oil and gas operations be carried out according to applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan," 43 C.F.R. § 3162.5-1(a); 43 C.F.R. § 3161.2.

337. Individually and cumulatively, storm water discharges from the oil and gas exploration, production, processing, or treatment operations, or transmission facilities associated with the 400-well Project will contribute pollutants in violation of a water quality standard or otherwise discharge a reportable quantity release. These discharges and contributions will be more than temporary and more than limited.

338. Storm water discharges from the construction and operation of oil and gas exploration, production, processing, or treatment operations, or transmission facilities associated with the 400-well Project will contain, *inter alia*, sediment and will be contaminated by contact with or will come into contact with, overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations. Individually and cumulatively, these discharges will be more than temporary and limited.

339. Discharges and runoff from the 400-well Project also threaten the intermittent and ephemeral streams and downstream water quality in the Project Area.

340. Because the FEIS and ROD do not adequately safeguard perennial, ephemeral and intermittent waters, development activities it these watersheds will have particular adverse impact on water quality in intermittent and ephemeral streams and downstream waters.

341. Therefore, the 400-well Project will violate and contribute to violations of Utah's Water Quality Standards, including the narrative standard. The project will result in discharges that will cause or contribute to violations of the TDS standard in Antelope Creek and its

tributaries, as well as the Duchesne River, will be contrary to the Duchesne River Watershed TMDL and will impede attainment of and otherwise violate Utah Water Quality Standards.

342. The 400-well Project will also result in non-temporary and non-limited discharges into Category 1 waters in violation of Utah's Antidegradation Rule and the Utah Narrative Standard.

343. As indicated in Tables 1, 2 and 3, and as otherwise may be determined, BLM relied on the FEIS and ROD to issue APDs for South Unit oil and gas wells and development activity. For all the reasons explained above, this reliance is improper and violates BLM regulations and the Clean Water Act. In any case, before the project may proceed, the BLM must demonstrate, based on new or supplemental analysis, that the agency has required the measures necessary to establish that the 400-well Project will not cause or contribute to a violation or exceedance of Utah Water Quality Standards, will comply with Utah's Antidegradation Rule and Narrative Standard, will not impede attainment of these standards and will otherwise comply with BLM's legal obligations set forth above.

344. As a result of these errors and failures and unless and until BLM makes the required showings, the FEIS, ROD, and APDs are unlawful and the actions by the BLM in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**SIXTEENTH CLAIM FOR RELIEF**
**(Forest Service Violation of NEPA, NFMA and Clean Water Act –**
**Utah Water Quality Standards)**

345. All of the paragraphs of this Complaint are incorporated herein by reference.

346. To address the unavoidable increase in salinity loading to surface and ground water that will occur as a result of the 400-well Project and noting that disruption of riparian zones will increase the net loading of sediment, the State of Utah asked that the Forest Service adopt a no surface occupancy (NSO) requirement within a 100-foot buffer around Sowers Canyon Creek and Mine Hollow Creek. FEIS, Vol. 2 at E-87-88.

347. The Forest Service rejected this requirement, stating that an NSO stipulation for these creeks "is not possible as the leases have already been awarded and the lease stipulations already established at the time." FEIS, Vol. 2 at E-87.

348. As demonstrated above, in authorizing the leasing of any Forest lands for oil and gas development, the Forest Service need only determine that "operations could be allowed somewhere on each proposed lease, unless stipulations prohibit all surface occupancy." 36 C.F.R. § 228.102(e). Therefore, except where a no-surface occupancy stipulation applies to the entire lease, the rights of the lessee are limited to the authorization to develop oil and gas operations "somewhere on each" lease parcel. *Id.*

349. The Forest Service stated when it promulgated its Reform Act regulations:

> This Department has determined that leases that are issued for National Forest System lands should vest the lessee with the right to conduct oil and gas operations somewhere on the lease. Accordingly, when a decision is made on authorizing the Bureau of Land Management to offer National Forest System lands for leasing, it is necessary to ensure that each lease would have development potential. (However, while at the time a lease is issued it might appear that operations could be approved on the lease, by the time such operations are proposed, they might be precluded by the operation of a nondiscretionary statute such as the Endangered Species Act.)

55 Fed. Reg. 10423-01, 10430 (March 21, 1990) ("The third determination that the rule requires the Forest Service to make is that oil and gas operations for the benefit of the lease could be allowed somewhere on the lease unless stipulations prohibiting all surface occupancy are to be used.").

350. Thus, the Forest Service was wrong to suggest that despite the adverse impacts to water quality from the 400-well Project, the agency was prohibited from placing a no surface occupancy (NSO) stipulation on Sowers Canyon Creek and Mine Hollow Creek.

351. Rather, the agency is only required to allow development somewhere on the leased parcel and such an approach would accommodate the proposed NSO. Therefore, at least, the Forest Service is compelled to consider a reasonable range of alternatives to the propose project and is compelled to evaluate stipulations that protect and enhance water quality. Moreover, the agency is obligated to use its environmental analysis to make a well informed decision, including a decision on whether to establish more extensive buffers and whether allow surface occupancy in and around riparian areas and intermittent and ephemeral streams.

352. Where the protection of Forest resources, the avoidance of riparian areas, wetlands and zones of unstable soils and compliance with the Clean Water Act so require, the Forest Service must consider alternatives to the proposed action that limit development with additional stipulations. Moreover, where such additional stipulations are necessary to avoid causing or contributing to a violation of Utah Water Quality Standards, the Forest Service must adopt them.

353. The agency's failure to consider and adopt alternative stipulations to protect water quality is based on a false premise and therefore is arbitrary and capricious. In refusing to

consider alternatives, measures and stipulations that would do more to avoid adverse impacts to water quality, would be more in keeping with Utah Water Quality Standards and the Duchesne River Watershed TMDL and would potentially help achieve attainment of the water quality standards, the Forest Service has violated NFMA, the Reform Act, the Clean Water Act, and the relevant implementing regulations.

354. To the extent that the Forest Service relies or relied on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity, including road construction, in and around Sowers Canyon Creek and Mine Hollow Creek, this reliance is improper and violates NFMA, the Reform Act, the Clean Water Act, and the relevant implementing regulations. In any case, before the project may proceed, the Forest Service must consider and adopt all additional alternatives, measures and stipulations, including additional NSO stipulations, that would avoid adverse impacts to water quality, would be more in keeping with Utah Water Quality Standards and the Duchesne River Watershed TMDL, would potentially secure attainment of relevant water quality standards and would otherwise meet the Forest Service's legal obligations set forth above.

355. As a result of these errors and failures and unless and until the Forest Service undertakes the required analysis, makes the required showings and adequately protects water quality, the FEIS, ROD, and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**SEVENTEENTH CLAIM FOR RELIEF**
**(Forest Service Violation NFMA, Reform Act and NEPA – Protecting Water Quality and Riparian Areas)**

356. All of the paragraphs of this Complaint are incorporated herein by reference.

357. As established above, under NFMA, any permits, contracts, and other instruments for the use and occupancy of National Forest System lands must be consistent with the relevant Forest Plan. *E.g.* 16 U.S.C. § 1604(i). The Reform Act too requires the Forest Service to ensure that oil and gas leasing and activities are consistent with the relevant Forest Plan. *E.g.* FEIS at 4, ROD at 13; 36 C.F.R. § 228.102(e).

358. The management of the Ashley National Forest is dictated by 1986 Forest Plan and the 400-well Project must be consistent with this plan. In addition, and the 400-well Project must be consistent with the 1997 Leasing EIS and ROD. Indeed, the Forest Service claims that the ROD is consistent with the 1986 Forest Plan and the 1997 Leasing EIS and ROD. *E.g.* ROD at 13-14.

359. However, the Forest Service's decision on the 400-well Project is not consistent with the 1986 Forest Plan and the 1997 Leasing EIS and ROD. As a result, in issuing the FEIS and the ROD, the Forest Service has violated NFMA and the Reform Act and has based the ROD and FEIS on an incorrect assessment of consistency with the 1986 Forest Plan and the 1997 Leasing EIS and ROD. At the same time, the Forest Service has violated its NEPA obligations.

360. The Forest Service admits that, "lease stipulations for riparian areas include an NSO stipulation in wetlands and riparian areas greater than 40 acres in size (Forest Service 1996a)." FEIS at 129 (citing the 1997 Leasing EIS and ROD). Similarly, the 1986 Forest Plan

"restricts facilities and surface-disturbing activities to areas outside riparian areas (Forest Service 1986)." FEIS at 129 (citing 1986 Forest Plan).

361. The 1986 Forest Plan requires the Forest Service to "[r]estrict facilities and ground disturbing activities to areas outside riparian areas unless alternative routes have been review and rejected as being more environmentally damaging." 1986 Forest Plan at IV-45. The 1986 Forest Plan also states that "[r]iparian area dependent resources will be given preferential consideration in cases of unresolvable conflicts." *Id.*

362. As stated above, the 1997 Leasing EIS and ROD places an NSO stipulation on riparian areas greater than 40 acres. 1997 Leasing ROD at 3; *see also* FEIS at 359 (defining NSO stipulation as "a stipulation in a lease that disallows any surface disturbance in the lease area at any time"). The document further states that "[p]rotection of riparian areas is important to help maintain water quality[.]" *Id.* at 6. The 1997 Leasing EIS and ROD contends that wetland areas of less than 40 acres will be protected to the same extent as the larger wetland areas protected by an NSO stipulation. *Id.* at 7. The 1997 Leasing EIS defines "riparian" very broadly to include terrestrial and aquatic ecosystems "in a position to directly influence water quality and water resources, whether or not free water is available. This would include all lands in the active flood channel and lands immediately upslope of stream banks" and areas associated with "intermittent or permanent streams[.]" 1997 Leasing EIS at 8-8 to 8-9.

363. According to the Forest Service, Sower Canyon Creek or Sower Creek is the only perennial stream in the project area and the only stream that contains wetland characteristics and riparian habitat. FEIS at 129. The riparian habitat in Sower Creek is 121 acres in size. FEIS at 128. The Forest Service has determined that Sower Canyon, where Sower Creek runs, exhibits

"highly erosive conditions." FEIS at 161; *see also* FEIS at 113 (describing gullying and erosion in Sower Creek as "[c]ontinuous gully system (7-16 feet deep) that is moderately active with some sloughing and cutting.").

364. The Forest Service acknowledges that the "construction and development activities" associated with the 400-well Project "could result in increased sedimentation and runoff which in turn could increase sediment loading during runoff-producing storm events." FEIS at 119-120. The Forest Service also admits that the 400-well Project will have result in cumulative adverse impacts on water quality and water resources:

> Existing and future oil and gas development, however, contributes to cumulative adverse impacts on water resources. These ongoing and future activities could alter existing stream flows by temporarily removing/altering vegetation composition and increasing potential for erosion and sediment loading to adjacent streams. The Proposed Action and other oil and gas drilling currently proposed for the region would cumulatively add to these impacts by disturbing additional soil surfaces, introducing the potential for spills of petroleum products, and using and degrading fresh water supplies in the region.

FEIS at 123.

365. The FEIS and ROD appear to authorize the construction of roads and pipelines within the 150 foot buffer around Sower Creek and within the riparian area and wetlands of Sower Creek. *See e.g.* FEIS at 129 ("An estimated 0.2 mile[s] of habitat along Sower Creek could be affected by . . . road/pipeline crossings."); *id.* ("New road and pipeline construction within these buffer zones would be minimized and generally limited to perpendicular or near perpendicular crossings of channels."); FEIS at 184 ("To protect water sources for spotted bats, a 100 foot no surface disturbance buffer would be placed around all springs, and a 150 foot buffer would be placed along each side of Sowers Creek for well pads and roads, with the exception of

stream crossings."); *id*. at 198 ("Under all action alternatives some access roads would cross Sowers Creek to reach well pads.").

366. Indeed, the Forest Service anticipated that seven (7) acres of Sowers Creek's riparian area will be destroyed by the 400-well Project. FEIS at 199 (Alternative 4). The agency further states that the proposed action "and [its] alternatives would include several road crossings and well sites in close proximity to Sowers Creek and its tributaries (primarily Mine Hollow)." FEIS at 201.

367. However, in the ROD and FEIS, the Forest Service does not prohibit road and pipeline construction in riparian areas, as the1997 Leasing EIS and ROD requires. Nor does the Forest Service prohibit, as the 1986 Forest Plan requires, at a minimum to protect riparian areas and water quality, the construction of road and pipeline stream crossings in riparian areas unless and until a showing has been made that alternative routes have been reviewed and rejected as being more environmentally damaging.

368. Rather, in the ROD and FEIS, the Forest Service predicts and authorizes multiple road and pipeline stream crossings, including in riparian areas.

369. Thus, the Forest Service has violated NFMA and the Reform Act by failing to ensure that the 400-well Project is consistent with the 1986 Forest Plan and the 1997 Leasing EIS and ROD. The Forest Service has also made an arbitrary and capricious decision on the 400-well Project that is not supported by the record, because the ROD is based on inaccurate statements that it is consistent with the 1986 Forest Plan and the 1997 Leasing EIS and ROD. *E.g.* ROD at 14 (finding the ROD on the 400-well Project is consistent with the 1986 Forest Plan); FEIS at 8 ("All alternatives are consistent with management standards defined in the

LRMP."); FEIS at 128 ("Wetlands and riparian areas would be avoided in compliance with Section 404 of the CWA, EOs 11988 or 11990, the LRMP (Forest Service 1986), and the Western Uinta Basin Oil and Gas Leasing ROD (Forest Service 1997b).").

370. The Forest Service has further violated NEPA by failing to acknowledge the potential direct, indirect and cumulative impacts to riparian areas from the 400-well Project. For example, although the agency admits that, over the long-term, 0.2 miles, FEIS at 129, and seven (7) acres of the riparian habitat in Sowers Creek will be destroyed and disturbed by stream crossings, FEIS at 199, the Forest Service states, without basis in the record, that there is no potential for significant direct, indirect and cumulative impacts to riparian habitat as a result of the 400-well Project. *See e.g.* FEIS at 128-130.

371. To the extent that the Forest Service relied or relies on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity, including road construction, in and around Sowers Canyon Creek and Mine Hollow Creek, this reliance is improper and violates NFMA, the Reform Act, the Clean Water Act, and the relevant implementing regulations. In any case, before the project may proceed, the Forest Service must consider and adopt all additional alternatives, measures and stipulations, including additional NSO stipulations, that would avoid adverse impacts to water quality, would be more in keeping with Utah Water Quality Standards and the Duchesne River Watershed TMDL, would potentially secure attainment of relevant water quality standards and would otherwise meet the Forest Service's legal obligations set forth above.

372. As a result of these errors and failures and unless and until the Forest Service undertakes the required analysis, makes the required showings and adequately protects water

quality, the FEIS, ROD, and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

## IV. Sage Grouse Issues

### EIGTHTEENTH CLAIM FOR RELIEF
### (Violation of NEPA and NFMA – Sage Grouse and Selected Alternative)

373. All of the paragraphs of this Complaint are incorporated herein by reference.

374. The Forest Service has violated NEPA and NFMA by failing to analyze the direct, indirect and cumulative environmental impacts of the Selected Alternative, which is a variation on Alternative 4 as addressed in the FEIS.

375. In the ROD and for purposes of the 400-well Project, the Forest Service chooses to authorize the so-call Selected Alternative, a modified version of Alternative 4. ROD at 4. The Selected Alternative and Alternative 4 sanction the same number of wells (400, 356 of which are "new") and the same number of well pads (162), as well as the same number of miles of road (57 new and 20 reconstructed), the same number of acres of long and short-term disturbance (836 short-term and 411 long-term), and the same number of miles of pipelines (87). *Compare*, ROD at 4 (Selected Alternative); FEIS at 35.

376. Just like Alternative 4, the Selected Alternative would "would limit surface development to a maximum of 162 well pads (averaging four well pads per section), but up to six well pads per individual section where topography does not allow optimal center-of-quarter section pad placement." FEIS at 28 (Alternative 4); ROD at 4 (Selected Alternative). A section is a square mile.

377. However, the ROD imposes additional restrictions on the 400-well Project that attempt to address the serious impacts that project will have on sage-grouse:

> Within 4 miles of a lek, sage grouse habitat will be buffered by 0.6 mile. Within this buffer well pad construction will not exceed an average of one well pad/square mile (640 acres). This mitigation will be applied to the Project Area. Additionally, no more than 5% of sage grouse habitat is allowed to be disturbed within the Project Area. This will reduce the amount of disturbance to sage grouse and maintain the one disturbance/square mile threshold.

ROD at 31.

378. According to the Forest Service, there are 2,102 acres of sage-grouse habitat in the Project Area, which translates to 3.28 square miles of habitat. FEIS at 168.[14] Moreover, according to the ROD, the mitigation measure adopted by the Selected Alternative restricting well pads to an average of one per square mile applies to sage-grouse and a 0.6 mile buffer around that habitat, ROD at 31, and therefore will extend 0.6 miles beyond the 2,102 acres of sage grouse habitat in the Project Area. The Project Area contains approximately 8 square miles to which these restrictions apply. *E.g.* FEIS at 174 (map).

379. This means that under the Selected Alternative, up to 24 to 40 well pads and up to 60 to 98 or more wells, along with the attendant roads, pipelines, truck traffic and stream crossings and impacts to air quality, riparian areas, roadless areas, viewsheds, recreation, wildlife, habitat, soils and water quality will be moved from sage grouse habitat to other portions of the Project Area.

[14] As indicated below, the Conservation Groups dispute the Forest Service's determination of suitable sage grouse habitat.

380. Yet, the Forest Service does not indicate in any way where these relocated well pads, wells, roads and pipelines will be located or what the impacts on Forest resources will be as a result of this relocation.

381. Without this information, the Forest Service cannot determine, for example, the impact of the Selected Alternative on Roadless Areas or potential wilderness. This is because this analysis is necessarily based on the project-related surface disturbance in each of the roadless or potential wilderness areas. FEIS at 255 (potential wilderness); *id.* at 261 (Roadless Areas). Moreover, because his decision regarding development in Roadless Areas failed to consider the potential for additional impacts that would stem from the Selected Alternative, Secretary Vilsak's approval of this aspect of the 400-well Project is necessarily invalid. *See* ROD at 5.

382. Without this information, the Forest Service cannot assess, for example, impacts to soils and water resources from the Selected Alternative because, again, the agency's analysis of these environmental consequences is based on factors such as miles of riparian habitat or ephemeral or intermittent stream impacted. *E.g.* FEIS at 122-23. The Forest Service made no determination of the extent to which the Selected Alternative would impact riparian habitat or ephemeral or intermittent streams and there is nothing in the ROD that would prevent development under the Selected Alternative from resulting in impacts to, for example, riparian habitats and ephemeral or intermittent streams that are more extensive than those addressed in the FEIS and ROD.

383. The failure of the Forest Service to analyze the direct, indirect and cumulative impacts of the Selected Alternative is particularly problematic because the agency's

determination that the 400-well Project, as authorized, will not have adverse and unacceptable direct, indirect and cumulative impacts on suitable habitat for Threatened and Endangered, sensitive and management indicator species and on wildlife is based primarily on the fact that Alternative 4 will result in less surface disturbance in those habitats. *E.g.* FEIS at 178-79 (Townsend's big-eared bat); *id.* at 187-188 (mule deer); *id.* at 192-92 (elk); *id.* at 207 (migratory birds); *see also* FEIS at 198-90 (more surface disturbance in mule deer habitat will "render the Project Area unfavorable to deer, may decrease deer numbers on the Forest Service Analysis Area, and possibly decrease deer numbers on the Anthro Herd Unit"); *id* at 193-93 (same for elk).

384. Therefore, without articulation and analysis of the direct, indirect and cumulative impacts of the Selected Alternative on all relevant resources, the Forest Service cannot evaluate the possible environmental effects of the proposed project and its alternatives, cannot present these potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, addressing the environmental impacts of the Selected Alternative is critical to proper evaluation of a project and to complying with NEPA and the failure to address this issue violates the Act.

385. For the same reasons, without a thorough assessment of the Selected Alternative, the Forest Service cannot determine if the approved project is consistent with the 1986 Forest Plan and the 1997 Leasing EIS and ROD.

386. To the extent that the Forest Service relies on the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity, including road construction, this reliance is improper and violates NFMA and NEPA and the relevant implementing regulations.

In any case, before the project may proceed, the Forest Service must thoroughly consider the environmental impacts of the Selected Alternative, including possible impacts on Roadless Areas, potential wilderness, wildlife, water quality, riparian areas and recreation and must consider whether the Selected Alternative is in keeping with the 1986 Forest Plan and the 1997 Leasing EIS and ROD. The agency must also consider and adopt all additional alternatives, measures and stipulations, including additional NSO stipulations, that would meet the Forest Service's legal obligations set forth above.

387. As a result of these errors and failures and unless and until the Forest Service undertakes the required analysis, makes a well-informed decision and implements the necessarily mitigation measures based on that analysis, the FEIS and ROD are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**NINETEENTH CLAIM FOR RELIEF**
**(Violation of NEPA and NFMA – Sage-Grouse Conservation Measures and Occupied Habitat)**

388. All of the paragraphs of this Complaint are incorporated herein by reference.

389. The Forest Service also violated NEPA and NFMA by failing, in its FEIS, ROD and BE,[15] to mention, analyze and apply the more current sage grouse conservation measures developed by the Sage-Grouse National Technical Team in December 2011 contained in the following publication: "A Report on National Greater Sage-Grouse Conservation Measures" (NTT Report).

[15] As the ROD and FEIS are based on the BE, any deficiency attributable to the ROD and FEIS are attributable to the BE and any allegation made about the ROD and FEIS relative to the wildlife species addressed in the BE is an allegation made about the BE as well.

390. For the purposes of the 400-well Project, the greater sage-grouse is a Forest Service Sensitive species.[16] FEIS at 164.

391. According to the 1986 Forest Plan, the Forest Service must "manage fish and wildlife habitat to maintain or improve diversity and productivity." IV-28. More specifically with regard to sensitive species such as the sage-grouse, the agency must "manage the habitat of all . . . sensitive plant and animal species to maintain or enhance their status." 1986 Forest Plan at IV-30. "Resource management activities will be allowed if they will not adversely affect any . . . sensitive species." 1986 Forest Plan at IV-30.

392. Ultimately, the goal of Forest Service Sensitive Species Policy is to "avoid or minimize impacts to species whose viability has been identified as a concern." FS Manual 2670.32(3).

393. In turn, this policy requires the Forest Service to "[d]evelop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions" and to "[m]aintain viable populations of all native . . . wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands." FS Manual 2670.22(1) & (2).

394. In August 2011, BLM convened the Sage-Grouse National Technical Team, which brought together resource specialists and scientists from BLM, state fish and wildlife

[16] Sensitive species is defined as:
Those plant and animal species identified by a regional forester for which population viability is a concern, as evidenced by:
a. Significant current or predicted downward trends in population numbers or density.
b. Significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution.
Forest Service Manual 2670.5.

agencies, and other Federal agencies. Specifically, the Sage-Grouse National Technical Team members include representatives from BLM, including the National Office and the State Offices of Utah, Nevada, Colorado, Wyoming, Idaho, Oregon and Montana, as well as U.S. Fish and Wildlife Service, Utah Division of Wildlife Resources, Idaho Fish and Game, Oregon Fish and Wildlife, Colorado Fish, Wildlife and Parks, Nevada Department of Wildlife, Natural Resource Conservation Service and U.S. Geological Survey. This National Technical Team developed and articulated a series of science-based conservation measures to be considered and analyzed as part of land management decision making and released these measures in the NTT Report.

395. According to the National Technical Team, the NTT Report "provides the latest science and best biological judgment to assist in making management decisions." NTT Report at 5. The NTT Report established as its goal: "Maintain and/or increase sage-grouse abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in cooperation with other conservation partners." NTT Report at 6. More specifically the "overall objective" of the measures in the NTT Report "is to protect priority sage-grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage-grouse." *Id.* at 7.

396. According to the NTT Report:

> To reach this objective, it will be necessary to achieve the following sub-objectives for priority habitat:
>
> Manage priority sage-grouse habitats so that discrete anthropogenic disturbances cover less than 3% of the total sage-grouse habitat regardless of ownership. Anthropogenic features include but are not limited to paved highways, graded gravel roads, transmission lines, substations, wind turbines, oil and gas wells, geothermal wells and associated facilities, pipelines, landfills, homes, and mines.

*Id.* at 7-8. Importantly "[t]wo spatial extents for measuring anthropogenic disturbance will be used: 1) the area contained within individual priority areas and 2) each one-mile section within the priority area." *Id.* at 8.

397. In addition, the NTT Report found that, according to the latest science, the conservation measures that BLM had been applying in sage-grouse habitat were not working. NTT Report at 21 ("We do not include timing restrictions on construction and drilling during the breeding season because they do not prevent impacts of infrastructure (e.g., avoidance, mortality) at other times of the year, during the production phase, or in other seasonal habitats that are crucial for population persistence (e.g., winter; Walker et al. 2007)"); *id* at 20 ("Past BLM conservation measures have focused on 0.25 mile No Surface Occupancy (NSO) buffers around leks, and timing stipulations applied to 0.6 mile buffers around leks to protect both breeding and nesting activities. Given impacts of large scale disturbances described above that occur across seasons and impact all demographic rates, applying NSO or other buffers around leks at any distance is unlikely to be effective."); *id.* at 20-21 ("Even if this approach were to be continued, it should be noted that protecting even 75 to >80% of nesting hens would require a 4-mile radius buffer (Table 1). Even a 4-mile NSO buffer would not be large enough to offset all the impacts reviewed above.").

398. The NTT Report concluded:

> For these reasons, we believe the conservation strategy most likely to meet the objective of maintaining or increasing sage-grouse distribution and abundance is to exclude energy development and other large scale disturbances from priority habitats, and where valid existing rights exist, minimize those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less.

NTT Report at 21.

399. The NTT Report defines priority habitat as

> areas that have the highest conservation value to maintaining or increasing sage-grouse populations. These areas would include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors. These areas have been, or will be identified by state fish and wildlife agencies in coordination with respective BLM offices.

NTT Report at 7.

400. More specifically, the NTT Report states that agencies should not permit "new surface occupancy on federal leases within priority habitats, this includes winter concentration areas . . . during any time of the year." NTT Report at 23.

401. The report continues: "If the lease is entirely within priority habitats, apply a 4-mile NSO around the lek, and limit permitted disturbances to 1 per section with no more than 3% surface disturbance in that section." *Id.* In the case of the 400-well Project, there is no evidence in the record to suggest that any given lease is entirely within priority habitats or entirely within 4 miles of a lek. *See id.* ("If the entire lease is within the 4-mile lek perimeter, limit permitted disturbance to 1 per section with no more than 3% surface disturbance in that section. Require any development to be placed at the most distal part of the lased from the lek, or . . . in an areas that is less demonstrably harmful to sage-grouse.").[17]

402. As confirmed above, in 2010, FWS stated specifically with regard to Forest Service and BLM: "Based on our review of the best scientific and commercial information available, we conclude that existing regulatory mechanisms are inadequate to protect the species. The absence of adequate regulatory mechanisms is a significant threat to the species, now and in

[17] On December 27, 2011, BLM released IM 2012-044. In accordance with this IM, BLM must consider all conservation measures developed by the NTT in at least one alternative in the land use planning process.

the foreseeable future." 75 Fed. Reg. 13910, 13982; *see also id.* ("Our assessment of the implementation of regulations and associated stipulations guiding energy development indicates that current measures do not adequately ameliorate impacts to sage-grouse.").

403. FWS also concluded that conservation measures reflected the most recent research and analysis, these measures would be inadequate to avoid the listing of the sage-grouse: "Unless protective measures consistent with new research findings are widely implemented via a regulatory process, those measures cannot be considered an adequate regulatory mechanism in the context of our review." 75 Fed. Reg. 13910, 13982.

404. Although finalized and released in February 2012, the FEIS and ROD make no mention of the December 2011 NTT Report. WildEarth Guardians attached the NTT Report to their appeal of the FEIS and ROD.

405. However, the Forest Service refused to revise or reconsider the FEIS and ROD in light of the NTT Report and instead maintained that the "Forest Service is not required to meet the protections listed in the NTT [R]eport unless and until they become part of the Forest Plan." Appeal Decision at unnumbered 18.

406. In its BE, the Forest Service states that, without mitigation measures that will reduce potential threats to the Anthro Mountain sage-grouse population, the 400-well Project would undermine the long-term viability of that population. BE at E-33 ("Mitigation measures proposed under Alternative 4 aim to reduce the potential threats that the proposed project may have on the Anthro Mountain sage-grouse population, thus contributing to maintaining the long-term viability of the population.").

407. For example, in its FEIS and BE, the Forest Service used a density and disturbance calculation tool (DDCT) "to determine existing and allowable levels of disturbance within sage-grouse habitat within the project analysis area (total disturbed acres should stay under 5% of the DDCT area)." FEIS at 152; ROD at 31 ("[N]o more than 5% of sage grouse habitat is allowed to be disturbed within the Project Area."). This 5% threshold is inconsistent with the 3% limit on human disturbance recommended in the National Technical Team Report and is inadequate to protect sage grouse and sage grouse habitat.

408. In addition, using DDCT, "[a] determination of the existing and allowable number of anthropogenic disturbances (i.e., well pads and roads) that occur within the DDCT area was made." FEIS at 152; *id* ("An average density of one anthropogenic disturbance per square mile within the DDCT area would be allowed. Existing disturbance density was calculated as the number of disturbances (well pads) in suitable sage-grouse habitat or in unsuitable habitat that is less than 0.6 mile from suitable habitat."); ROD at 31 ("Within 4 miles of a lek, sage grouse habitat will be buffered by 0.6 mile. Within this buffer well pad construction will not exceed an average of one well pad/square mile (640 acres). This mitigation will be applied to the Project Area.").

409. In other words, the Forest Service used the DDCT to determine the existing **levels** of disturbance and the **number** of disturbances and the allowable **levels** of disturbance and the **number** of disturbances that the agency concluded could occur within and around sage-grouse habitat in the Project Area without resulting in adverse impacts to sage-grouse from the 400-well Project.

410. The Forest Service also adopted mitigation measures the agency asserted would maintain the long-term viability of the Anthro Mountain population of sage-grouse, including requirements that: 1) "no well pads or permanent structures will be allowed within 0.6 mile of an occupied lek;"[18] 2) timing restrictions during the breeding season (March 1–May 31) that prohibit vehicle use within sage-grouse habitat and within 0.6 mile of sage-grouse habitat during, before and after daylight hours; 3) timing restrictions (March 1 through June 30) that prohibit surface-disturbing activities (including construction, drilling, and well flaring) related to wells located within sage-grouse habitat; 4) timing restrictions (November 15 to March 1) prohibiting well-pad construction, road construction, drilling, or work-over rigs on ridge tops within 4 miles of a lek. ROD at 31.

411. As indicated above, the Forest Service also specified that:

> Within 4 miles of a lek, sage grouse habitat will be buffered by 0.6 mile. Within this buffer[,] well pad construction will not exceed an average of one well pad/square mile (640 acres). This mitigation will be applied to the Project Area. Additionally, no more than 5% of sage grouse habitat is allowed to be disturbed within the Project Area.

ROD at 31.

412. However, the NTT Report determines that these mitigation measures are ineffective and instead finds that, to maintain or increase sage-grouse distribution and abundance, it is necessary to exclude energy development and other large scale disturbances from priority habitats, and where valid existing rights exist and where the entire lease is within a priority habitat, minimize those impacts by applying an NSO stipulation to areas within 4 miles

[18] This distance is derived from the loafing area used by male sage grouse during the breeding season and does not limit impacts to sage grouse to the threshold below significance.

of a lek and by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less.

413. Moreover, the NTT Report establishes a broad definition of "priority" habitat that encompasses more forest lands than does the "suitable" habitat to which the Forest Service applied its DDCT, *e.g.* FEIS at 152, and its mitigation measures. ROD at 31-32. The NTT Report specifically includes in priority habitat "areas have been, or will be identified by state fish and wildlife agencies in coordination with respective BLM offices." NTT Report at 7; *see also id.* ("Priority habitat designations must reflect the vision, goals and objectives of this overall plan if the conservation measures are to be effective.").

414. In November 2011 and March 2012, the Utah Division of Wildlife Resources (UDWR) released maps that reflected that agency's determination of "occupied" sage-grouse habitat, including habitat in and around the Project Area. That designated occupied habitat constitutes priority habitat as defined by the NTT Report. Alternatively, this habitat constitutes general habitat as defined by the NTT Report and therefore should be protected in the manner the report dictates. NTT Report at 9-10.

415. As such, the UDWR designated occupied habitat represents new information of sufficient and significant import to require the Forest Service to reexamine the impact of the proposed project and its alternatives on sage-grouse.

416. Yet, the Forest Service failed to consider extending mitigation measures – either those envisioned in the ROD or those set forth in the NTT Report – to priority habitats as defined by the NTT report or as designated by the UDWR in November 2011 and March 2012.

417. The Forest Service likewise failed, in light of the UDWR designation of occupied habitat or the NTT Report definition of priority, to reexamine its determination that 400-well Project "may impact, but is not likely to cause a trend to federal listing or loss of viability" of sage-grouse.

418. By failing to consider and analyze the NTT Report and the UDWR designation of occupied habitat as part of its decision on the 400-well Project, the Forest Service has violated its NEPA obligation to "take a hard look" at the environmental impacts of the 400-well Project. Similarly, by failing, at a minimum, to articulate and examine an alternative to the proposed project that would adopt the NTT Report conservation measures and apply them to the definition of priority habitat or the UDWR designated occupied habitat, the Forest Service has violated its duty under NEPA to explore rigorously and evaluate objectively all reasonable alternatives to the proposed project.

419. Without an analysis of the 400-well Project in light of the NTT Report and the UDWR habitat designation and without the articulation and examination of an alternative based on the conservation measures in that report and the extent of occupied sage-grouse habitat, the Forest Service cannot evaluate the possible environmental effects of the proposed project and its alternatives on sage-grouse, cannot present these potential effects to the public, cannot undertake well-informed decision making, and cannot derive reasonable mitigation measures. Thus, applying the NTT Report and UDWR findings and analysis to the 400-well Project is critical to proper evaluation of a project and to complying with NEPA and the failure to address this issue violates the Act.

420. For the same reasons, by failing to reevaluate the ROD and FEIS based on the NTT Report and the UDWR designated occupied habitat and by failing to adopt the NTT Report conservation measures to exclude energy development and other large scale disturbances from priority habitats, and where valid existing rights necessitate, to minimize those impacts by keeping disturbances to 1 per section with direct surface disturbance impacts held to 3% of the area or less, NTT Report at 21, and by placing an NSO around any lek, NTT Report at 23, the Forest Service has violated NFMA.

421. This is because the NTT Report and the UDWR designation of occupied habitat contain and other studies and analysis that support the report and designation, reference and represent the best, most relevant, up-to-date and credible scientific information available to and necessary for the Forest Service to make a decision on the 400-well Project that complies with the 1986 Forest Plan, the agency's Sensitive Species Policy and NFMA.

422. In addition, the NTT Report, along with the references it cites and other germane information, establish that the mitigation measures the Forest Service adopts in the ROD and FEIS are ineffective and inadequate and will not produce the outcomes the Forest Service attributes to them. In other words, adoption of the ROD sage-grouse mitigation measures and application of them to the Forest Service's determination of sage-grouse habitat will not meet the requirements of the 1986 Forest Plan, the agency's Sensitive Species Policy or NFMA.

423. By the same token, based on the NTT Report and the UDWR designated occupied habitat and supporting materials, the ROD, FEIS and BE are invalid because they fail to ensure the 400-well Project will **not** adversely impact individual sage-grouse, will not adversely impact the Anthro Mountain population of sage grouse, will **not** avoid or minimize impacts to sage-

grouse and the Anthro Mountain population of sage grouse, will **not** maintain the status of sage-grouse, will **not** have any detrimental consequences on the viability of the Anthro Mountain population of sage grouse, and will **not** contribute to a trend toward federal listing.

424. Finally, the NTT Report conservation measures applied to the UDWR defined occupied habitat **do** represent the minimum measures necessary to achieve the requirements of the 1986 Forest Plan, the agency's Sensitive Species Policy and NFMA relative to the sage-grouse and therefore the Forest Service is duty bound to adopt them.

425. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service has relied on the analysis in the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity in UDWR designated sage grouse habitat. For all the reasons explained above, this reliance is improper and violates NEPA and NFMA. Moreover, there is new data and analysis – including the NTT Report and the UDWR designated occupied habitat – that the Forest Service is and was obligated to consider before authorizing any SUPOs impacting sage grouse or sage grouse habitat. The issuance of any SUPOs impacting sage grouse or sage grouse habitat and the failure of the Forest Service to consider relevant information and analysis prior to issuing these SUPOs is a violation of NEPA and NFMA.

426. As a result of the errors and failures identified above and unless and until the Forest Service undertakes the required analysis, makes a well-informed decision and implements the required mitigation measures based on that analysis, the FEIS, ROD and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**TWENTIETH CLAIM FOR RELIEF**
**(Violation of NEPA – Alternative Protective of Sage-Grouse)**

427. All of the paragraphs of this Complaint are incorporated herein by reference.

428. The Forest Service violated NEPA by failing to articulate and consider an alternative that would protect sage-grouse and sage-grouse habitat consistently with the NTT Report and its conservation measures and in keeping with the UDWR occupied habitat designation.

429. As established above, the ROD sage-grouse mitigation measures are considerably less protective than the NTT Report measures, are inadequate and ineffective and fail to avoid adverse impact individual sage-grouse, fail to avoid adverse impact on the Anthro Mountain population of sage grouse, fail to avoid or minimize impacts to sage-grouse and the Anthro Mountain population of sage grouse, fail to maintain the status of sage-grouse, fail to prevent any detrimental consequences on the viability of the Anthro Mountain population of sage grouse, and fail to avert a trend toward federal listing of the sage-grouse.

430. As also established above, the UDWR designated occupied habitat represents priority habitat as defined by the NTT Report and otherwise represents the habitat to which mitigation measures must be applied in order to ensure that the 400-well Project does not have the potential to have adverse effects on the sage-grouse.

431. However, the Forest Service failed to examine an alternative to the proposed project that would implement the NTT Report conservation measures, protect UDWR designated occupied habitat and that would comply with the mandates of the 1986 Forest Plan, the Forest Service Sensitive Species Policy and NFMA.

432. Moreover, an alternative or alternatives based on the NTT Report and UDWR designated occupied habitat are reasonable alternatives that represent critical components in an adequate articulation and analysis of a reasonable range of alternatives to the proposed project.

433. By failing to develop and analyze the reasonable alternative to the proposed project that would adopt the NTT conservation measures and address occupied habitat in order to protect sage-grouse adequately and otherwise to meet the objective of maintaining or increasing sage-grouse distribution and abundance, including of the Anthro Mountain population and generally within the planning area, the Forest Service has violated NEPA and NFMA.

434. Therefore, the Forest Service must undertake new or supplemental NEPA analysis to consider an alternative that would adopt the NTT conservation measures and consider protection of occupied habitat. An appropriate range of alternatives includes a proposal to adopt the NTT conservation measures and apply these measures to occupied habitat. The failure of the agency to undertake this analysis and to adopt the properly protective option is a violation of NEPA and the agency's additional legal obligations relative to the sage-grouse.

435. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service has relied on the analysis in the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity in UDWR designated sage grouse habitat. For all the reasons explained above, this reliance is improper and violates NEPA. The issuance of any SUPOs impacting sage grouse or sage grouse habitat and the failure of the Forest Service to consider relevant information and analysis prior to issuing these SUPOs is a violation of NEPA.

436. As a result of these errors and failures, and until the Forest Service undertakes supplemental NEPA analysis and adopts the decision necessary to comply with the 1986 Forest

Plan, the Forest Service Sensitive Species Policy and NFMA, the FEIS and ROD are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**TWENTY-FIRST CLAIM FOR RELIEF**
**(Violation of NFMA – May Affect Determination)**

437. All of the paragraphs of this Complaint are incorporated herein by reference.

438. The Forest Service violated NFMA by authorizing the 400-well Project despite the fact that the ROD, FEIS and BE do not meet the requirements of the 1986 Forest Plan, the Forest Service Sensitive Species Policy and NFMA. This is because the Forest Service finding that the 400-well Project may impact individual birds, but is not likely to cause a trend toward federal listing or loss of viability to the Anthro Mountain sage-grouse population is not supported by the record. In addition, the ROD, FEIS and BE are contrary to the Intermountain Region (Region 4) Sensitive Species Policy.

439. Initially, as established above, the NTT Report and the further research it cites, as well as the UDWR designation of occupied habitat establish that the mitigation measures on which the Forest Service relies to reach its "may affect" finding are inadequate and ineffective.

440. As the Forest Service admits, without adequate mitigation measures, Alternative 4 would "lead to adverse impacts [on] the Anthro sage-grouse population." FEIS at 170 ("Alternative 4 has the least impacts to sage grouse. However, as described above, without adequate mitigations, this alternative would still lead to adverse impacts [on] the Anthro sage grouse population."); *id.* ("Therefore mitigation measures will be required for Alternative 4 to protect sage grouse and sage grouse habitat. Mitigation measures proposed under Alternative 4

aim to reduce the potential threats that the project may have on the Anthro Mountain sage-grouse population, thus contributing to maintaining the long-term viability of the population.').

441. Yet, as the NTT Report makes clear, the ROD mitigation measures, which purport to be "based on results of ongoing research studies that are investigating the interactions between energy development activities and sage-grouse population dynamics across a landscape," FEIS at 170, are out-of-date, do not represent the latest research and are specifically discredited by the NTT Report.

442. Therefore, as the NTT Report is part of the record, the ROD, FEIS and BE and the conclusions they reach about the viability and trends of and adverse impacts to sage grouse are not supported by and conflict with the record.

443. Included in the NTT Report is a broad definition of "priority" habitat that encompasses more forest lands than does the "suitable" habitat to which the Forest Service applied its DDCT and mitigation measures.

444. UDWR has released maps that reflect the agency's determination of occupied sage-grouse habitat, including habitat in and around the Project Area. That designated occupied habitat constitutes priority habitat as defined by the NTT Report. Yet, the ROD does not extend mitigation measures – either the ROD measures or the NTT Report measures – to the UDWR designated occupied habitat.

445. Therefore, the basis for the ROD, FEIS and BE is legally inadequate as these documents fail to include the latest and best analysis and recommendations and are instead based on out-of-date, discredited and otherwise deficient information.

446. Even on their own terms, the ROD, FEIS and BE do not support the decision of the Forest Service to approve the 400-well Project. As indicated above, in the ROD, FEIS and BE, the Forest Service determined that the 400-well Project **may** impact individual birds but is not likely to cause a trend to federal listing or loss of viability to the Anthro Mountain sage-grouse population. *E.g.* FEIS at 175 ("[I]t is determined that the implementation of the proposed project with the mitigations under Alternative 4 may impact individuals but is not likely to cause a trend to federal listing or loss of viability to the Anthro Mountain sage-grouse population.").

447. In its FEIS and BE, the Forest Service relies on DDCT to determine the **levels** of disturbance of sage-grouse habitat that would be allowed in the Project Area based on a determination that "total disturbed acres should stay under 5% of the DDCT area." FEIS at 152; ROD at 31 ("Additionally, no more than 5% of sage grouse habitat is allowed to be disturbed within the Project Area.").

448. The Forest Service also uses DDCT to determine the maximum **number** of disturbances in sage-grouse habitat that would be allowed in the Project Area. ROD at 31 ("Within 4 miles of a lek, sage grouse habitat will be buffered by 0.6 mile. Within this buffer, well pad construction will not exceed an average of one well pad/square mile (640 acres). This mitigation will be applied to the Project Area.").

449. The Forest Service specifies that allowable disturbance density will apply to the buffered sage-grouse habitat, (the area encompassed by a 0.6 mile buffer around sage-grouse, FEIS at 174), within the Project Area: "Within this buffer[,] well pad construction will not exceed an average of one well pad/square mile (640 acres). This mitigation will be applied to the Project Area." ROD at 31; *see also* BE at E-22 ("Therefore, well pad and new road densities

would not exceed an average of one disturbance per square mile of sage-grouse habitat (0.6-mile buffer of sage-grouse habitat) within the project area"); FEIS at 153 ("Each alternative was analyzed to determine if the proposed additional disturbance . . . would stay under the allowable one per square mile average."); FEIS at 172 (stating that under Alternative 4, "[d]isturbance density would equate to 1.78, which is 1.73, fewer disturbances per square mile than the Proposed Action, but greater than the one disturbance/square mile threshold."); FEIS at 169 (rejecting all action alternatives as having adverse effects on the local sage grouse population because "the disturbance density within the DDCT is beyond the tolerance level of sage grouse (above the one well pad/square mile threshold).")

450. In other words, the Forest Service has determined that to avoid adverse impacts on the sage-grouse, any development associated with the 400-well Project that is in the buffered sage-grouse habitat must be limited to one disturbance per square mile section, or at a minimum, an average of one disturbance per square mile as calculated for the Project Area. *E.g.* ROD at 31; BE at E-22; FEIS at 153, 169 & 172.

451. According to the Forest Service:

> As of 2011, there are 8 existing anthropogenic disturbance activities within the DDCT area. Existing disturbance density averages 0.25 disturbance/square mile for the 32-square-mile area of the DDCT. New allowable disturbance density within the DDCT could be up to 0.75 disturbance/square mile (based on the 1 anthropogenic disturbance/square mile threshold for the 32-square-mile area). In other words, 24 new disturbance activities would be allowed within the DDCT area.

FEIS at 153.

452. Thus, the agency determined that the maximum number of disturbances in that could be authorized in the DDCT, which encompasses a portion of the Project Area, would be 0.75 disturbances per square mile. FEIS at 153; BE at E-15 (based on 12 existing disturbances in

the DDCT, finding that "[n]ew allowable disturbance density within the DDCT could be up to 0.62 disturbances/square mile"); *see also* FEIS at 152 ("[T]he DDCT was used for the project to determine existing and allowable levels of disturbance within sage-grouse habitat within the project analysis area (total disturbed acres should stay under 5% of the DDCT area).").

453. However, the ROD provides that within the buffered sage-grouse habitat encompassed by the Project Area, "well pad construction will not exceed an average of one well pad/square mile." ROD at 31. This conflicts with the Forest Service determination that the "new allowable disturbance density within the DDCT" shall not exceed 0.75 disturbance per square mile and 0.63 disturbance per square mile. FEIS at 153; BE at E-15. As a result, the ROD and FEIS conflict with the Forest Service's own conclusions regarding disturbance densities necessary to avoid adverse effects to local sage-grouse.

454. The Forest Service also acknowledged that "[t]here are 16 acres of existing disturbance to sage-grouse habitat within the Project Area." FEIS at 168.

455. However, the agency did not determine the **number** of existing disturbances in sage-grouse habitat in the Project Area, as proper application of the one disturbance per square mile mitigation measure requires. Similarly, the Forest Service did not determine the **number** of disturbances within the buffered sage-grouse habitat, as proper application of the one disturbance per square mile mitigation measure requires.

456. Therefore, the record does not disclose whether the Forest Service mandate that "well pad construction will not exceed an average of one well pad/square mile," in the Project Area, ROD at 31, is consistent with maintaining the one disturbance per square mile or average

of one disturbance per square mile within the buffered sage-grouse habitat encompassed by the Project Area.

457. Indeed, because there is at least one – if not more – disturbances as represented by the 16 acres of disturbance in the relevant portion of the Project Area, FEIS at 168, the ROD's one well pad per square mile will necessarily exceed the one disturbance per square mile threshold for the relevant portion of the Project Area.

458. Finally, according to a document recently prepared on behalf of the Forest Service:

> Forest Service Intermountain Region direction on greater sage-grouse states that if there is any impact to sage-grouse due to a proposed action, then the determination of '**may adversely** impact individuals of the species and is likely to result in a loss of viability in the planning area, and/or cause a trend toward Federal listing' is required.

Biological Evaluation for the Proposed Greens Hollow Coal Lease Tract Program Fishlake and Manti-La Sal National Forests (2010) at 33.

459. Based on this policy, any impact on any individual sage-grouse constitutes a significant threat to the viability of the Anthro Mountain population. Because the Forest Service determined that the 400-well Project may impact individual birds, according to this policy, the agency's conclusion must be that the project is likely to result in a loss of sage-grouse viability in the planning area and is likely to cause a trend toward Federal listing.

460. Moreover, whether this is the Intermountain Region policy or not, given that the most recent data indicate that there are only 8 male sage-grouse in the Anthro Mountain population, BE at E-16, and given that both the regional and the Anthro Mountain population are exhibiting a steady decline bird numbers, BE at E-16-17 ("The Northeast regional population trends show a decrease over the past five years (2007–2011), with the Anthro population

generally experiencing that same trend"), any impact on any individual sage-grouse constitutes a significant threat to the viability of the Anthro Mountain population. *Compare* FEIS at 175 ("[I]t is determined that the implementation of the proposed project with the mitigations under Alternative 4 may impact individuals but is not likely to cause a trend to federal listing or loss of viability to the Anthro Mountain sage-grouse population.").

461. For the reasons above, the ROD, FEIS and BE are invalid because they fail to ensure the 400-well Project will **not** adversely impact individual sage-grouse, will not adversely impact the Anthro Mountain population of sage grouse, will **not** avoid or minimize impacts to sage-grouse and the Anthro Mountain population of sage grouse, will **not** maintain the status of sage-grouse, will **not** have any detrimental consequences on the viability of the Anthro Mountain population of sage grouse, and will **not** contribute to a trend toward federal listing.

462. The Forest Service must undertake new or supplemental analysis and must consider and adopt conservation measures adequate to ensure that the 400-well Project will not adversely impact the sage-grouse, particularly the Anthro Mountain population and must otherwise comply with NFMA, the Sensitive Species Policy, the 1986 Forest Plan and all relevant law.

463. As indicated in Tables 1, 2 and 3 and as otherwise may be established, the Forest Service has relied on the analysis in the FEIS and ROD to issue SUPOs for South Unit oil and gas wells and development activity in UDWR designated sage grouse habitat. Moreover, the Forest Service has relied and may rely on these documents to issue SUPOs for South Unit oil and gas wells and development activity in what the agency has designated as sage grouse habitat or

as lands subject to sage grouse mitigation measures. For all the reasons explained above, this reliance is improper and violates NFMA.

464. As a result of the errors and failures identified above, and until the Forest Service undertakes supplemental or additional analysis and adopts the decision necessary to comply with the 1986 Forest Plan, the Forest Service Sensitive Species Policy and NFMA, the FEIS, ROD and SUPOs are unlawful and the actions by the Forest Service in approving, issuing and authorizing these documents, decisions and the 400-well Project are arbitrary and capricious and otherwise unlawful. *See* 5 U.S.C. § 706(2).

**REQUEST FOR RELIEF**

WHEREFORE, WildEarth Guardians respectfully request that this Court:

A Declare that, in issuing the ROD and SUPOs for South Unit oil and gas wells and development activity, and relying on the FEIS and BE and otherwise authorizing the 400-well Project or any component thereof, the Forest Service has violated NEPA as set forth above;

B. Declare that, in issuing SUPOs for South Unit oil and gas wells and development activity, and relying on the ROD, FEIS and the relevant supporting documents and otherwise authorizing the 400-well Project or any component thereof, the Forest Service has violated the Clean Air Act, Clean Water Act, Utah Water Quality Standards and the relevant regulations that apply to the agency as set forth above;

C. Declare that, in issuing the ROD and SUPOs for South Unit oil and gas wells and development activity, and relying on the FEIS and BE and otherwise authorizing the 400-well Project or any component thereof, the Forest Service has violated NFMA, the Sensitive Species

Policy, the Reform Act and the Roadless Rule and has authorized activities that are not consistent with the 1986 Forest Plan and the 1997 Leasing EIS and ROD as set forth above;

D. Declare that, in authorizing and issuing APDs for South Unit oil and gas wells and development activity, and relying on the ROD, FEIS and the relevant supporting documents and otherwise authorizing the 400-well Project or any component thereof, BLM has violated NEPA as set forth above;

E. Declare that, in issuing APDs for South Unit oil and gas wells and development activity, and relying on the ROD, FEIS and the relevant supporting documents and otherwise authorizing the 400-well Project or any component thereof, BLM has violated the Clean Air Act, Clean Water Act, Utah Water Quality Standards and the relevant regulations that apply to the agency as set forth above;

F. Issue an order and injunction setting aside the ROD, FEIS and BE and any authorization or issuance of SUPOs and APDs for South Unit oil and gas wells and development activity;

H. Issue an order enjoining any ground-disturbing activity associated in any way with the 400-well Project until such time as the Forest Service and BLM have complied with the law as set forth above;

I. Grant such restraining orders and/or preliminary and permanent declaratory and injunctive relief as WildEarth Guardians may request;

J. Award WildEarth Guardians its reasonable fees, expenses, costs, and disbursements, including attorneys' fees associated with this litigation, under the Equal Access to Justice Act, 28 U.S.C. § 2412; and,

K. Grant WildEarth Guardians such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 7th day of May, 2014.

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JORO WALKER
ROB DUBUC
Attorneys for WildEarth Guardians

**Attachments to Complaint**

Table 1 – Pending, Approved and/or Producing South Unit Oil and Gas Wells Located on or Proposed for Location on Sage Grouse Habitat as Defined by the Utah Division of Wildlife Resources (UDWR)

Table 2 – Pending, Approved and/or Producing South Unit Oil and Gas Wells Located on or Proposed for Location on Roadless Areas

Table 3 – Pending, Approved and/or Producing South Unit Oil and Gas Wells Located Outside of or Proposed for Location Outside of UDWR Sage Grouse Habitat and Roadless Areas

**Petitioner/Plaintiff Addresses**

Petitioner/plaintiff WildEarth Guardians Addresses:

WildEarth Guardians
516 Alto Street
Santa Fe, New Mexico 87501

WildEarth Guardians
1817 S. Main Street, Ste. 10
Salt Lake City, Utah 84115

**TABLE 1**

**Pending, Producing and/or Approved South Unit Wells in UDWR Sage Grouse Habitat**

| | | | | |
|---|---|---|---|---|
| 16-6D-65<br>43-013-52590 | APD approved confidential | | | Not yet spudded |
| 1-11-65<br>43-013-51231 | APD approved 2/29/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 8/15/12– No additional NEPA | Confidential |
| 2-11D-65<br>43-013-51233 | APD approved 2/29/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 8/15/12– No additional NEPA | Producing |
| 8-11D-65<br>43-013-51232 | APD approved 2/29/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 8/15/12– No additional NEPA | Producing |
| 9-11D-65<br>43-013-52048 | APD received 2/20/13 | no approval in file | no approval in file | Producing |
| 10-11D-65<br>43-013-52047 | APD received approx. 2/20/13 | no approval in file | no approval in file | Producing |
| 15-11D-65<br>43-013-52046 | APD received approx. 2/20/13 | no approval in file | no approval in file | Producing |
| 16-11D-65<br>43-013-52045 | APD received approx. 2/20/13 | no approval in file | no approval in file | Producing |
| 3-12D-65<br>43-013-51093 | APD approved 11/30/11 | Tiered to FEIS – No additional NEPA | Forest Service approval 9/5/12– No additional NEPA | Producing |
| 4-12D-65<br>43-013-51094 | APD approved 11/30/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 9/5/12– No additional NEPA | Producing |
| 5-12D-65<br>43-013-51095 | APD approved 11/30/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 9/5/12– No additional NEPA | Producing |

| | | | | |
|---|---|---|---|---|
| 6-12D-65<br>43-013-51096 | APD approved 11/30/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 9/5/12– No additional NEPA | Producing |
| 11-12D-65<br>43-013-52049 | ADP received 2/20/13 | no approval in file | no approval in file | Producing |
| 12-12D-65<br>43-013-52050 | ADP received 2/21/13 | no approval in file | no approval in file | Producing |
| 13-12D-65<br>43-013-52052 | ADP received 2/21/13 | no approval in file | no approval in file | Producing |
| 14-12D-65<br>43-013-52053 | No information in file | | | Producing |
| 16-6-64<br>43-013-51217 | APD approved 10/12/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 9/24/12– No additional NEPA | Producing |
| 9-6D-64<br>43-013-51218 | APD approved 10/17/12 | Tiered to FEIS – No additional NEPA | Forest Service approval 10/16 /12– No additional NEPA | Confidential |
| 1-7D-64<br>43-013-51920 | APD received 12/28/12 | no approval in file | no approval in file | Producing |
| 2-7-64<br>43-013-51919 | APD received 12/13/12 | no approval in file | no approval in file | Producing |
| 3-7D-64<br>43-013-51916 | APD received 12/28/12 | no approval in file | no approval in file | Producing |
| 4-7D-64<br>43-013-51917 | APD received 12/28/12 | no approval in file | no approval in file | Producing |
| 5-7D-64<br>43-013-51918 | APD received 12/28/12 | no approval in file | no approval in file | Producing |
| 6-7-64<br>43-013-51915 | APD received 12/28/12 | no approval in file | no approval in file | Producing |
| 7-7D-64 | APD received | no approval in | no approval in | Producing |

| | | | | |
|---|---|---|---|---|
| 43-013-51933 | 1/18/13 | file | file | |
| 8-7D-64<br>43-013-51934 | APD received<br>1/18/13 | no approval in file | no approval in file | Producing |
| 9-7D-64<br>43-013-51935 | APD received<br>1/18/13 | no approval in file | no approval in file | Producing |
| 10-7D-64<br>43-013-51936 | APD received<br>1/18/13 | no approval in file | no approval in file | Producing |
| 11-7D-64<br>43-013-51925 | APD received<br>12/31/12 | no approval in file | no approval in file | Producing |
| 12-7D-64<br>43-013-51924 | APD received<br>12/31/12 | no approval in file | no approval in file | Producing |
| 13-7D-64<br>43-013-51926 | APD received<br>12/231/12 | no approval in file | no approval in file | Producing |
| 14-7D-64<br>43-013-51927 | APD received<br>1/7/13 | no approval in file | no approval in file | Producing |
| 4-2-65<br>43-013-52885 | APD received<br>3/18/14 | no approval in file | no approval in file | Producing |
| 2-6-65<br>43-013-52017 | APD approved<br>3/4/13 | | | Confidential |
| 4-6-65<br>43-013-52005 | APD approved<br>3/12/13 | | | Confidential |
| 12-6-65<br>43-013-52006 | APD approved<br>3/12/13 | | | Confidential |
| 4-7-65<br>43-013-52541 | APD approved<br>11/18/13 | | | Confidential |
| 6-7-65<br>43-013-52682 | APD approved<br>12/10/13 | | | Confidential |
| 9-11-65<br>43-013-52048 | APD approved<br>4/1/13 | | | Confidential |

| | | | | |
|---|---|---|---|---|
| 4-12-65<br>43-013-52094 | APD approved<br>2/27/13 | | | Confidential |
| 13-12-65<br>43-013-52885 | APD approved<br>4/1/13 | | | Confidential |
| 5-13-65<br>43-013-52827 | APD approved<br>2/27/13 | | | Confidential |
| 1-14-65<br>43-013-52770 | APD approved<br>1/23/14 | | | Confidential |
| 7-14-65<br>43-013-52768 | APD approved<br>1/23/14 | | | Confidential |
| 15-6-64<br>43-013-51219 | APD approved<br>2/13/12 | | | Confidential |
| 2-7-64<br>43-013-51919 | APD approved<br>12/18/12 | | | Confidential |
| 5-7-64<br>43-013-51918 | APD approved<br>12/13/12 | | | Confidential |
| 7-7-64<br>43-013-51933 | APD approved<br>12/27/12 | | | Confidential |
| 13-7-64<br>43-013-51926 | APD approved<br>12/27/12 | | | Confidential |

APD – Application for Permit to Drill

**Additional Proposed Wells in UDWR Sage Grouse Habitat**

| | | | | |
|---|---|---|---|---|
| 14-2-65 | | | | |
| 8-6-65 | | | | |
| 13-7-65 | | | | |
| 9-9-65 | | | | |

| | | | | |
|---|---|---|---|---|
| 9-10-65 | | | | |
| 9-11-65 | | | | |
| 4-11-65 | | | | |
| 11-11-65 | | | | |
| 13-11-65 | | | | |
| 15-12-65 | | | | |
| 13-13-65 | | | | |
| 16-13-65 | | | | |
| 3-14-65 | | | | |
| 1-15-65 | | | | |
| 3-15-65 | | | | |
| 9-15-65 | | | | |
| 15-15-65 | | | | |
| 2-16-65 | | | | |
| 10-16-65 | | | | |
| 12-16-65 | | | | |
| 14-16-65 | | | | |
| 6-17-65 | | | | |
| 8-17-65 | | | | |
| 11-17-65 | | | | |
| 16-17-65 | | | | |
| 5-21-65 | | | | |

| | | | | |
|---|---|---|---|---|
| 10-21-65 | | | | |
| 2-22-65 | | | | |
| 11-22-65 | | | | |
| 13-22-65 | | | | |
| 16-22-65 | | | | |
| 1-24-65 | | | | |
| 13-24-65 | | | | |
| 15-24-65 | | | | |
| 16-24-65 | | | | |
| 4-25-65 | | | | |
| 7-25-65 | | | | |
| 14-25-65 | | | | |
| 15-7-64 | | | | |
| 4-8-64 | | | | |
| 13-21-64 | | | | |

**TABLE 3**

**Pending, Producing and/or Approved South Unit Wells <u>Outside</u> UDWR Sage Grouse Habitat and Roadless Areas**

| | | | | |
|---|---|---|---|---|
| 1-1D-65<br>43-014-51055 | APD approved<br>12/29/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 15-1D-65 | APD approved | Tiered to FEIS – | Forest Service | Producing |

| | | | | |
|---|---|---|---|---|
| 43-013-55175 | 1/19/2012 | No additional NEPA | approval – No additional NEPA | |
| 16-1D-65<br>43-013-55176 | APD approved 1/19/2012 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 3-12D-65<br>43-013-51093 | APD approved 11/30/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 4-12D-65<br>43-013-51094 | APD approved 11/30/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 5-12D-65<br>43-013-51095 | APD approved 11/30/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 6-12D-65<br>43-013-51096 | APD approved 11/30/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 1-12D-65<br>43-013-33966 | APD approved 11/22/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 2-12D-65<br>43-013-51057 | APD approved 11/21/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 8-12D-65<br>43-013-51056 | APD approved 11/22/2011 | Tiered to FEIS – No additional NEPA | Forest Service approval – No additional NEPA | Producing |
| 1-9D-64<br>43-013-52020 | APD approved Confidential | | | Not yet spudded |
| 2-9D-64<br>43-013-52042 | APD approved confidential | | | Not yet spudded |
| 7-9D-64<br>43-013-51990 | APD approved confidential | | | Not yet spudded |

| | | | | |
|---|---|---|---|---|
| 8-9D-64<br>43-013-52023 | APD approved<br>confidential | | | Not yet<br>spudded |
| 3-9D-64<br>43-013-52015 | APD approved<br>confidential | | | Not yet<br>spudded |
| 5-9D-64<br>43-013-52035 | APD approved<br>confidential | | | Not yet<br>spudded |
| 9-9D-64<br>43-013-52036 | APD approved<br>confidential | | | Not yet<br>spudded |
| 11-9D-64<br>43-013-52037 | APD approved<br>confidential | | | Not yet<br>spudded |
| 12-9D-64<br>43-013-52038 | APD approved<br>confidential | | | Not yet<br>spudded |
| 13-9D-64<br>43-013-52039 | APD approved<br>confidential | | | Not yet<br>spudded |
| 14-9D-64<br>43-013-52040 | APD approved<br>confidential | | | Not yet<br>spudded |

APD – Application for Permit to Drill