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

<p>SOUTHERN UTAH WILDERNESS ALLIANCE, Plaintiff, v. ROGER L. BANKERT, in his official capacity as, Chief, Branch of Minerals, Utah State Office, Bureau of Land Management, and UNITED STATES DEPARTMENT OF THE INTERIOR, and UNITED STATES BUREAU OF LAND MANAGEMENT, and KENT HOFFMAN, in his official capacity as Deputy State Director, Lands and Minerals, Utah State Office, Bureau of Land Management, Defendants.</p>	<p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF Case No. _____</p>
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INTRODUCTION

1. This lawsuit challenges the United States Department of the Interior, Bureau of Land

Management's (BLM) decision to approve an exploratory oil and gas unit agreement consisting of approximately 80,380 acres of largely federal public lands in violation of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*

2. The "Blueberry" exploratory oil and gas unit (referred to herein as the Blueberry Unit or Unit) is located in southeastern Utah's Colorado Plateau along the entrance road to the Needles District of Canyonlands National Park – a region rich in cultural, recreational, and aesthetic values.

3. The Blueberry Unit overlaps portions of the Harts Point proposed wilderness area – an area identified by BLM in 1999 as possessing wilderness characteristics *i.e.*, naturalness, outstanding opportunities for solitude and primitive unconfined types of recreation, and supplemental values. The Harts Point area consists of a large canyon system, a high plateau with sheer cliffs on its west and north sides, and a prominent mesa. There is significant, high quality scenery throughout the entire area including expansive views of the La Sal Mountains, the Needles District of Canyonlands National Park, and 1,000-foot red rock cliffs.

4. The Harts Point area is proposed for Wilderness designation and inclusion in the National Wilderness Preservation System in America's Red Rock Wilderness Act. *See* H.R.2044 – America's Red Rock Wilderness Act (introduced April 6, 2017); S.948 - America's Red Rock Wilderness Act (introduced April 26, 2017).

5. The Blueberry Unit is home to a wide array of wildlife species including Gunnison's prairie dog (*Cynomys gunnisoni*), Rocky Mountain elk (*Cervus canadensis*), and pronghorn antelope (*Antilocapra Americana*). These species provide necessary ecosystem services and

functions. For example, Gunnison’s prairie dog has been described by the United States Fish and Wildlife Service as a “keystone species of the sagebrush ecosystem.”¹

6. The Blueberry Unit overlaps two distinct segments, consisting in total of approximately fifteen miles, of the Old Spanish National Historic Trail – a designated National Historic Trail running from New Mexico to California. The National Park Service in a brief history of this trail, has explained:

It took the vision and courage of Mexican trader Antonio Armijo to lead the first commercial caravan from Abiquiú, New Mexico, to Los Angeles late in 1829. Over the next 20 years, Mexican and American traders continued to ply variants of the route that Armijo pioneered, frequently trading with Indian tribes along the way. And it was from a combination of the indigenous footpaths, early trade and exploration routes, and horse and mule routes that a trail network known collectively as the Old Spanish Trail evolved.²

7. An exploratory oil and gas unit such as the Blueberry Unit is a regulatory mechanism by which owners of any right, title or interest in Federal oil and gas leases can “unite with each other . . . in collectively adopting and operating under a unit plan for the development of any oil and gas pool, field, or like area, or any part thereof.” 43 C.F.R. § 3180.0-1. A federal exploratory oil and gas unit agreement governs the relationship of the parties committed thereto and the planned development of a reservoir under the joint operating agreement. *See generally id.* § 3186.1 (Model onshore unit agreement for unproven areas). The Blueberry Unit agreement followed the model onshore unit agreement for unproven areas in all respects. *See generally* Unit Agreement for the Development and Operation of the Blueberry Unit Area County of San Juan State of Utah (April 13, 2017) (Blueberry Unit Agreement or Agreement) (attached as Ex. 1).³

¹ U.S. Fish & Wildlife Service, *Endangered Species / Mammals, Mountain-Prairie Region, Gunnison’s Prairie Dog*, <https://fws.gov/mountain-prairie/es/gunnisonPrairieDog.php> (last updated July 8, 2015).

² National Park Service, *Old Spanish National Historic Trail, History & Culture*, <https://nps.gov/olsp/learn/historyculture/index.htm> (last updated May 2, 2018).

³ The Blueberry Unit Agreement also includes two additional provisions beyond those found in the model onshore unit agreement: “Special Surface Stipulations” and “State Land Provisions.” *See* Blueberry Unit Agreement ¶¶ 30, 34.

8. BLM's approval of an exploratory oil and gas unit agreement is subject to NEPA and its implementing regulations.

9. BLM approved the Blueberry Unit Agreement without complying with NEPA.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201-2202 (declaratory and injunctive relief), and 5 U.S.C. §§ 501-559, 701-706 (Administrative Procedure Act or APA).

11. Venue is proper in the United States District Court for the District of Utah, Central Division, pursuant to 28 U.S.C. § 1391(e)(1) because the statutory violations alleged herein all occurred within the state of Utah, and because plaintiff Southern Utah Wilderness Alliance (SUWA) is headquartered in Salt Lake City, Utah.⁴

PARTIES

12. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE is dedicated to the preservation of the outstanding wilderness values found throughout Utah, including in the Colorado Plateau region, and the management of wilderness-quality lands and other remarkable federal public lands in their natural state for the benefit of all Americans. SUWA promotes local and national recognition of the region's unique character through research and public education; supports both administrative and legislative initiatives to permanently protect wild places within the National Park and National Wilderness Preservation Systems, or by other protective designations where appropriate; builds support for such initiatives on both the local and national

⁴ See Designation of Case Numbers and Locations for Holding District Court, <http://www.utd.uscourts.gov/sites/utd/files/Designation%20of%20Case%20Numbers%20and%20Locations%20-%20Southern%20Region.pdf> (explaining that the county of residence of the first-listed plaintiff determines the Division in which the case is heard) (Feb. 14, 2018).

level; and provides leadership within the conservation movement through its advocacy for wilderness preservation.

13. SUWA is headquartered in Salt Lake City, Utah, and has members in all fifty states and several foreign countries. SUWA's members use and enjoy public lands in and throughout Utah, including in the Colorado Plateau and specifically the Harts Point proposed wilderness area and lands adjacent thereto, for a variety of purposes, including hiking, recreation, and aesthetic appreciation. SUWA brings this action on its own behalf and on behalf of its members.

14. Mr. Ray Bloxham, an employee and member of SUWA, has visited the lands encompassed by the Blueberry Unit on numerous occasions over the past nineteen years and did so most recently in March 2017. Mr. Bloxham intends to return often to this area and certainly within the next year. While there, Mr. Bloxham engages in many activities including, but not limited to, enjoying clear air and expansive views, enjoying the overwhelming natural and untrammelled nature of the area, and enjoying solitude.

15. SUWA and its members' interests, including Mr. Bloxham's, have been directly affected and irreparably harmed, and continue to be affected and harmed, by BLM's approval of the Blueberry Unit without conducting the appropriate level of NEPA review and analysis. As a result of BLM's legal failings, neither the agency nor the public fully understand the complete scope of impacts from BLM's approval of the Blueberry Unit Agreement which expedited the pace of oil and gas exploration and development on the public lands encompassed therein. BLM's approval of the Agreement also modified the terms and conditions and extended the life of thirty-eight⁵ federal oil and gas leases committed to that Unit.

⁵ Thirty-seven federal oil and gas leases were initially committed to the Blueberry Unit. On June 1, 2018, BLM approved an Agreement joinder for oil and gas lease UTU-93015, making that lease the thirty-eighth federal lease committed to the Unit.

16. A declaration of SUWA member Mr. Ray Bloxham is attached to this Complaint as Exhibit 2.

17. Defendant ROGER L. BANKERT is the BLM Utah State Office, Chief, Branch of Minerals, and is the BLM representative who approved the Blueberry Unit. Mr. Bankert is being sued in his official capacity as Utah BLM Chief, Branch of Minerals.

18. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR (DOI) is the federal agency responsible for managing approximately five hundred million acres of federal public lands across the United States for a variety of competing resources, including the protection of the natural and human environment. DOI must comply with NEPA and evaluate, analyze, and disclose to the public the impacts of federal undertakings.

19. Defendant BUREAU OF LAND MANAGEMENT is the agency within the DOI that is responsible for the management of approximately twenty-three million acres of federal public land in Utah, including the federal public lands at issue in this litigation. BLM is directly responsible for carrying out the DOI's obligations under statutes and regulations governing land use management and for complying with NEPA.

20. Defendant, KENT HOFFMAN, is the BLM Utah State Office, Deputy State Director, Lands and Minerals, and is the BLM representative who oversees Utah BLM's minerals program. Mr. Hoffman is being sued in his official capacity as Utah BLM, Deputy State Director, Lands and Minerals.

FACTS GIVING RISE TO SUWA'S CAUSE OF ACTION

21. On June 2, 2017, SUWA sent BLM a letter regarding BLM's longstanding and unlawful approach to approving exploratory oil and gas unit agreements, among other actions, without following proper NEPA procedure. SUWA documented that applicable law and policy

required BLM to prepare, at a minimum, a categorical exclusion prior to authorizing an exploratory oil and gas unit agreement. SUWA stated that “[i]t is incumbent on BLM to immediately change its practices and undertake the required level of NEPA review.” Letter from Stephen Bloch and Landon Newell, SUWA, to Ed Roberson and Kent Hoffman, BLM 1 (June 2, 2017) (attached as Ex. 3). BLM did not respond to this letter.

22. On July 6, 2017, BLM approved the Blueberry Unit Agreement. It approved the Unit in a three page letter without performing any NEPA analysis or considering whether extraordinary circumstances warranted a more fulsome review. BLM’s letter simply stated, “[t]he Blueberry Unit Agreement, San Juan County, Utah, is approved July 6, 2017.” Letter from Roger L. Bankert, BLM, to Daniel Gunnell, Liberty Pioneer Energy Source, Inc. 1 (July 6, 2017) (attached as Ex. 4). The letter also set forth certain Unit oil and gas drilling obligations and identified the federal leases committed to the Unit and the unitized substances. The Unit Agreement obligations became effective that same day.

23. The Blueberry Unit consists of approximately 80,380 acres of which 58,166 acres are federal public land managed by BLM, 8,931 acres are State lands, and 13,282 acres are patented lands in San Juan County, Utah.

24. The Blueberry Unit Agreement requires the drilling of five oil and gas wells, referred to as “unit obligation wells,” and to drill the initial unit obligation well within six months from the date the Agreement became effective. The Agreement identified the initial obligation well, referred to as the Blueberry 33-4H, which is located on BLM-managed public

land in Township 30 south, Range 24 east, section 33, Salt Lake Base and Meridian, in San Juan County, Utah.⁶

25. Pursuant to Section 9 of the Blueberry Unit Agreement, titled “Drilling to Discovery,” the Unit Operator – Liberty Pioneer Energy Source (Liberty) – “shall” drill each of the five obligation wells “with not more than 6 months time elapsing between the completion of one well and the commencement of drilling operations for the next well regardless of whether a discovery has been made in any well drilled under this provision.” Liberty must timely drill each well or risk having “the unit agreement approval . . . declared invalid ab initio by the [BLM].”

26. Pursuant to Section 18 of the Blueberry Unit Agreement, titled “Leases and Contracts Conformed and Extended,” BLM’s approval of the Agreement modified the terms and life of each federal oil and gas lease committed thereto. In so doing, BLM made it easier for leases committed to the Unit to remain authorized and valid rather than expire by their original terms and conditions. For example, under the modified and extended lease terms, among other things:

- A. The development and operation of lands subject to this agreement . . . shall be deemed full performance of all obligations for development and operation with respect to each and every separately owned tract subject to this agreement, regardless of whether there is any development of any particular tract of this unit area;
- B. Each lease . . . committed to this agreement which, by its terms might expire prior to the termination of this agreement, is hereby extended beyond any such term provided therein so that it shall be continued in full force and effect for and during the term of this agreement; and
- C. Any Federal lease committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production of unitized substances in paying quantities is established under this unit agreement prior to the expiration date of the term of such lease.

⁶ The original initial obligation well was located in Township 30 south, Range 24 east, section 32, Salt Lake Base and Meridian, in San Juan County, Utah. By letter dated October 13, 2017, BLM approved a request by the Unit Operator to revise the initial unit obligation well location to its current location.

Blueberry Unit Agreement § 18(a), (d), (e).

27. Liberty has submitted an Application for Permit to Drill (APD) for the Blueberry 33-4H well – the initial Unit obligation well – which is currently being reviewed by BLM. *See* BLM, Blueberry 33-4H Application for Permit to Drill, DOI-BLM-UT-Y020-2018-0018-EA (Blueberry 33-4H APD).⁷ The development and construction of the Blueberry 33-4H will cause new surface disturbances related to wellpad, road, and pipeline construction.

28. Liberty has taken additional steps to explore for and develop oil and gas resources on lands committed to the Blueberry Unit. Following BLM's approval of that Agreement, Dawson Geophysical Company acting on behalf of Liberty, submitted to BLM a proposal to conduct an intrusive three-dimensional geophysical seismic project over an area encompassing 67.2 square miles to better delineate the structural and stratigraphic features of the subsurface geological formations in the Blueberry Unit to inform and facilitate future oil and gas development in the Unit. *See generally* BLM, Blueberry 3D Geophysical Project, DOI-BLM-UT-Y020-2018-0011-CX (Blueberry 3-D Seismic Project).⁸ The Blueberry 3-D Seismic Project is intended to provide extensive subsurface geological information necessary to inform any future plan of development.

29. The Blueberry 33-4H APD and Blueberry 3-D Seismic Project exploration and development activities are anticipated by and in furtherance of and consistent with the Blueberry Unit Agreement.

30. BLM approved the Blueberry Unit without preparing any NEPA documentation,

⁷ Available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=145676> (last updated Jan. 31, 2018).

⁸ Available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=140923> (last updated Feb. 7, 2018).

without considering whether extraordinary circumstances existed, and without providing public notice of its decision.

CAUSE OF ACTION

Violation of NEPA

(Failure to Comply with the National Environmental Policy Act)

31. Plaintiff incorporates by reference all preceding paragraphs.

32. For actions subject to NEPA a federal agency must prepare one of the following documents: (1) an environmental impact statement (EIS), (2) an environmental assessment (EA), or (3) a categorical exclusion (CX). *See, e.g.*, 40 C.F.R. § 1508.4 (categorical exclusion); *id.* § 1508.9 (environmental assessment); *id.* § 1508.11 (environmental impact statement). The NEPA document must be prepared prior to BLM's authorization of any project subject to the statute.

33. With regard to CXs, BLM must determine (1) whether the proposed action qualifies for a CX, and if it does, (2) whether preparation of that CX is precluded by the presence of extraordinary circumstances. 40 C.F.R. § 1508.4. Extraordinary circumstances include, but are not limited to, actions that may:

- A. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks . . . and other ecologically significant or critical areas;
- B. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources; or
- C. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

43 C.F.R. § 46.215(b), (c), (f).

34. "A CX is a form of NEPA compliance, without the analysis that occurs in an EA or EIS. It is not an exemption from the NEPA." BLM Handbook 1790-1, National Environmental

Policy Act (Public) § 4, pg. 17 (January 2008) (BLM Handbook 1790). *See also* 40 C.F.R. § 1508.4.

35. If BLM elects not to prepare a CX for an action subject to NEPA or if BLM determines that extraordinary circumstances exist then the agency must prepare either an EA or EIS prior to authorizing that action. *See* 40 C.F.R. §§ 1508.9, 1508.11, 1508.27.

36. Failure to prepare a CX, at a minimum, for an action subject to NEPA violates the “twin aims” of that statute, which are to: (1) force government agencies to consider every significant aspect of the environmental impact of a proposed action, and (2) mandate that government agencies inform the public of the potential environmental impacts of the proposed actions and explain how their decisions address those impacts. *See* 42 U.S.C. § 4332(2)(c).

37. BLM’s approval of an exploratory oil and gas unit agreement is subject to NEPA and its implementing regulations. *See* 40 C.F.R. § 1508.4; BLM Handbook 1790, Appendix 4 (listing BLM-specific CXs including “[a]pproval of unitization agreements”).

38. BLM did not prepare a CX, EA, or EIS prior to approving the Blueberry Unit.

39. BLM’s failure to comply with NEPA prior to approving the Blueberry Unit violated NEPA, and is arbitrary, capricious, and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that this Court enter judgement in its favor and against Defendants, Roger L. Bankert, in his official capacity, the United States Department of the Interior, the Bureau of Land Management, and Kent Hoffman, in his official capacity, and that the Court:

1. Declare that Defendants approved the Blueberry Unit in violation of the National

Environmental Policy Act and its regulations;

2. Enjoin Defendants from relying on and/or implementing any of the terms, conditions, modifications, or extensions authorized by the Blueberry Unit;

3. Award injunctive relief directing Defendants to cancel and rescind the Blueberry Unit, and prohibiting Defendant BLM from re-approving that Unit until BLM prepares the appropriate NEPA documentation;

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

5. Award Plaintiff the costs it has incurred in pursuing this action, including attorneys' fees, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable provisions; and

6. Grant such other and further relief as is proper.

DATED: June 28, 2018

Respectfully submitted,

/s/ Stephen Bloch

Stephen Bloch
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Attorneys for Plaintiffs
Southern Utah Wilderness Alliance