

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-2468

ROCKY MOUNTAIN WILD;
NATIONAL PARKS CONSERVATION ASSOCIATION;
CENTER FOR BIOLOGICAL DIVERSITY; and
WILDEARTH GUARDIANS,

Plaintiffs,

v.

RYAN ZINKE, in his official capacity as Secretary of the Interior; and
BUREAU OF LAND MANAGEMENT,

Defendants.

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

INTRODUCTION

1. This case challenges the Bureau of Land Management’s (“BLM”) decisions to issue 121 oil and gas leases covering 117,720.59 acres in northwest Colorado and northeast Utah without considering how the air pollution from developing the leases will adversely impact public health, the environment, and treasured public lands like Dinosaur National Monument.

2. The challenged leases are located in and around the Uinta Basin, which spans parts of Rio Blanco County in northwest Colorado and Uintah and Duchesne Counties in northeast Utah. The Uinta Basin suffers from unhealthy ozone levels due to emissions from extensive oil and gas development.

3. Ground-level ozone (a primary component of smog) is a dangerous air pollutant that threatens human health. Elevated ozone levels cause asthma attacks, cardiovascular disease, and even premature death. Ozone pollution is a particularly grave threat to vulnerable populations, including children, the elderly, and people with respiratory conditions.

4. Ozone and other air pollution in the Uinta Basin also negatively impacts Dinosaur National Monument, which is located mostly in Colorado, but also partially in Utah. Elevated pollution levels impair visibility at Dinosaur National Monument, negatively impacting the experience of the more than 300,000 annual visitors who come to admire the Monument’s expansive views and dark night skies. Ozone pollution also harms Dinosaur National Monument’s ecosystems by stunting vegetation growth.

5. Oil and gas operations are the largest human-made source of ozone-forming emissions in the Uinta Basin. These operations emit nitrogen oxides (“NO_x”) and volatile organic compounds (“VOCs”), two air pollutants that mix in the atmosphere and form ground

level ozone. During the winter, inversion layers trap NO_x and VOC emissions from oil-and-gas development in the basin, causing a build-up of exceedingly high levels of ozone. As a result, the Uinta Basin's air quality has degenerated to a level that is sometimes worse than even the most polluted days in urban areas like Los Angeles and Denver.

6. For several years, air quality monitors in both Colorado and Utah have registered unhealthy ozone levels that exceed the U.S. Environmental Protection Agency's ("EPA") National Ambient Air Quality Standards ("NAAQS") for ozone. EPA has formally designated the Uinta Basin as an ozone nonattainment area under the Clean Air Act ("CAA") due to the elevated ozone levels.

7. BLM's air quality models predict that ozone levels in both Colorado and Utah will continue to exceed the NAAQS well into the next decade. Indeed, BLM's air quality models for Colorado and Utah predict that oil and gas operations will contribute to exceedances of the NAAQS under *every* modeled scenario.

8. Despite the impacts of ozone pollution on public health and the environment, including Dinosaur National Monument, BLM has continued to lease thousands of acres for oil and gas development in the Uinta Basin.

9. BLM has leased 203,880 total acres in Rio Blanco County and the Vernal Field Office since 2008. That trend continued in the December 2017 and June 2018 Colorado and Utah lease sales, when BLM leased 117,720.59 acres, including lands located just 2.5 miles from Dinosaur National Monument. Yet BLM failed to meaningfully consider how developing those leases will exacerbate the Uinta Basin's declining air quality, adversely impacting the climate, public health, and the environment, including the iconic values of Dinosaur National Monument.

10. BLM's failure to consider or address the environmental impacts of these three lease sales violates the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1712(c)(8), 1732(b); the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332(C), (E); and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), (C).

11. Accordingly, Plaintiffs seek a declaration that BLM's June 2018 Colorado State Office lease sale, the Vernal Field Office's December 2017 lease sale, and the Vernal Field Office's June 2018 lease sale are arbitrary, capricious, and contrary to law. Plaintiffs further seek an order vacating each lease sale.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. § 702.

13. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a). The Court may grant declaratory, injunctive, and other relief. *Id.* §§ 2201–2202; 5 U.S.C. §§ 705–706.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because Plaintiff Rocky Mountain Wild is a non-profit organization incorporated and headquartered in Colorado, and therefore resides in this district. Plaintiffs National Parks Conservation Association, Center for Biological Diversity, and WildEarth Guardians all maintain offices in Colorado. Collectively, Plaintiffs have 42,006 members, and employ 14 staff, in this district.

15. Furthermore, thousands of acres of the Uinta Basin and Dinosaur National Monument, which will be impacted by emissions associated with drilling on the challenged leases, are located in Colorado.

PARTIES

16. Plaintiff **Rocky Mountain Wild** is a non-profit environmental organization incorporated under Colorado law and based in Denver, Colorado, that works to conserve and recover the native species and ecosystems of the Greater Southern Rockies using the best available science. Rocky Mountain Wild has a well-established history of participation in BLM planning and management activities. Rocky Mountain Wild works to save endangered species and preserve landscapes and critical ecosystems. It achieves those goals by working with biologists and landowners, utilizing Geographic Information System (“GIS”) technology to promote complex land use issues, and monitoring government agencies whose actions affect endangered and threatened species. Its members and supporters include approximately 5,542 outdoor enthusiasts, wildlife conservationists, scientists, and concerned citizens across the country, including 2,979 in Colorado. Rocky Mountain Wild submitted comments on and protested the June 2018 Colorado lease sale challenged in this case.

17. Plaintiff **National Parks Conservation Association’s** (“NPCA”) mission is to protect and enhance America’s National Park System for present and future generations. Founded in 1919, NPCA is the leading voice for the national parks. NPCA is a national non-profit with 27 regional and field offices across the country, including offices in Grand Junction and Denver, Colorado. In support of its mission, amongst other things, NPCA engages in legislative, administrative and judicial processes to advance its deep organizational interest in protecting the air, climate and other national park resources, including at Dinosaur National Monument. NPCA represents over 1.3 million members and supporters, including 28,075 in Colorado who care about America’s shared natural and cultural heritage threatened by the

impacts of unfettered oil and gas leasing in the Uinta, Piceance and other basins. NPCA submitted comments on and protested the December 2017 Utah lease sale challenged in this case. NPCA also protested the June 2018 Colorado lease sale challenged in this case.

18. Plaintiff **Center for Biological Diversity** (“the Center”) is a non-profit environmental organization with over 63,000 members, including 2,282 in Colorado. The Center maintains an office in Denver, Colorado. The Center uses science, policy and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to advocate for increased protections for species and their habitats in Colorado. The Center submitted comments on and protested all parcels offered in the December 2017 Utah lease sale. The Center submitted scoping comments and comments on and protested the June 2018 Colorado lease sale challenged in this case. The Center also protested the June 2018 Utah lease sale challenged in this case.

19. Plaintiff **WildEarth Guardians** (“Guardians”) is a nonprofit environmental advocacy organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians maintains an office in Denver, Colorado. On behalf of its 220,973 members and supporting activists, including 8,670 in Colorado, Guardians has an interest in ensuring the BLM fully protects public lands and resources as it conveys the right for the oil and gas industry to develop publicly-owned minerals. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the air quality and climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more air pollutants. Guardians submitted comments on and protested all parcels offered in the December 2017 Utah

lease sale. Guardians submitted comments on and protested the June 2018 Colorado lease sale challenged in this case. Guardians also protested the June 2018 Utah lease sale challenged in this case.

20. Plaintiffs' members, staff, and board members live, work, and recreate in and around, and otherwise use and enjoy lands in and adjacent to the lease parcels that are the subject of this lawsuit, as well as areas outside of the lease parcels that are affected by development of the leases in each challenged lease sale. Plaintiffs' members, staff, and board members live, work, and recreate throughout the Uinta Basin, and therefore their health and interests will be harmed by air pollution from oil and gas development on the leases challenged in this case. Specifically, Plaintiffs' members, staff, and board members use, enjoy, and intend to return to Dinosaur National Monument, which will be impacted by air pollution and other harmful environmental and aesthetic impacts of oil and gas development on the leases challenged in this case. Defendants' violations of FLPMA and NEPA have caused and will continue to cause recreational, aesthetic, scientific, and educational injuries to Plaintiffs and their members, which this Court can redress.

21. Defendant **Ryan Zinke** is the Secretary of the Interior. Plaintiffs sue Secretary Zinke in his official capacity. Secretary Zinke oversees all energy development authorized by the Department of the Interior and is ultimately responsible for BLM issuing all oil and gas leases challenged in this case.

22. Defendant **Bureau of Land Management** is an agency of the United States within the Department of the Interior. BLM is responsible for managing publicly-owned lands

and minerals, in accordance with federal law. BLM is the agency that manages and leased the public lands at issue in this case in both Colorado and Utah.

LEGAL FRAMEWORK

I. Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

23. The APA authorizes judicial review of agency actions and provides that courts “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be[] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . [or] without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (C), (D).

24. An agency’s decision is arbitrary and capricious when the agency has entirely failed to consider an important aspect of the problem.

II. Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*

25. FLPMA directs BLM to manage the public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” 43 U.S.C. § 1701(a)(8).

26. FLPMA requires that “[t]he Secretary [of the Interior] shall manage the public lands under the principles of multiple use and sustained yield.” *Id.* § 1732(a). “Multiple use” is defined as “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.” *Id.* § 1702(c).

27. At the land use planning stage, FLPMA provides that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the [public] lands.” *Id.* § 1732(b).

28. FLPMA specifically requires BLM to “provide for compliance with applicable pollution control laws, including State and Federal air . . . standards.” *Id.* § 1712(c)(8).

29. FLPMA also requires BLM to protect special places. First, BLM must “give priority to the designation and protection of areas of critical environmental concern” or “ACECs.” *Id.* § 1712(c)(3). ACECs are areas “where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” *Id.* § 1702(a).

30. Additionally, FLPMA requires BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values)” and that “[t]his inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” *Id.* § 1711(a). As part of this process, BLM must inventory lands with wilderness characteristics, such as naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and confined recreation. BLM relies on these inventories to prepare land management plans, *id.* § 1712(c)(4), where it must decide whether to manage lands with wilderness characteristics to protect those values.

31. Under FLPMA, BLM uses a three-step process when managing oil and gas development on public lands. First, BLM develops resource management plans (“RMP”) specifying which lands will be open and which will be closed to oil and gas leasing, and stipulations and conditions that may be placed on any such development. *See id.* § 1712(a).

Second, BLM may grant leases for the development of specific sites within an area, subject to the requirements of the plan. *See* 43 C.F.R. § 1610.5-3. Finally, lessees must submit, and BLM must approve, applications for permits to drill (“APD”) before a lease may be developed. *Id.* § 3162.3-1(c).

32. When issuing leases and approving APDs, BLM has an obligation to ensure that its decisions conform to the applicable RMP. FLPMA requires that “[t]he Secretary shall manage the public lands . . . in accordance with the land use plans” developed under § 1712. 43 U.S.C. § 1732(a). “All future resource management authorizations and actions . . . shall conform to the approved plan.” 43 C.F.R. § 1610.5-3(a).

III. National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

33. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1.

34. NEPA analyses are intended “to foster excellent action” and “to help public officials make decisions that are based on [an] understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(c).

35. Council on Environmental Quality (“CEQ”) regulations implementing NEPA require agencies to “integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.” *Id.* § 1501.2.

36. The assessment of all reasonably foreseeable impacts must occur at the earliest practicable point, and must take place before an agency makes an irretrievable commitment of resources.

37. In BLM’s fluid minerals program, the point of irretrievable and irreversible commitment occurs at the point of lease issuance.

38. Prior to undertaking any “major Federal action[] significantly affecting the quality of the human environment,” NEPA requires federal agencies to provide a “detailed statement” explaining “the environmental impact of the proposed action . . . alternatives to the proposed action, . . . and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(2)(C)(i), (iii), (v); *see also* 40 C.F.R. § 1501.4.

39. To determine if preparing an environmental impact statement (“EIS”) is necessary, agencies may prepare an environmental assessment (“EA”) with “sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9. Department of the Interior regulations include a similar requirement. *See* 43 C.F.R. § 46.300. When effects are significant, an agency must prepare an EIS. 40 C.F.R. § 1502.3. If impacts are not significant, an agency may issue a Finding of No Significant Impact (“FONSI”). *Id.* § 1508.13; 43 C.F.R. § 46.325(2).

40. Relevant factors in determining whether an EIS is necessary include “consideration of both context and intensity.” 40 C.F.R. § 1508.27. Some of the factors relevant to “intensity” are:

- The degree to which the proposed action affects public health or safety.
- Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.
- Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Id. § 1508.27(b)(2), (3), (4), (5), (7), (10).

41. Regardless of whether the agency completes an EIS or EA, NEPA requires that agencies “shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternate uses of available resources.” 42 U.S.C. § 4332(2)(E).

42. Agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). In mandating the comparative analysis of reasonable alternatives, agencies are able to “sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.” *Id.* § 1502.14. The alternatives analysis is the “heart” of a NEPA document. *Id.*

43. Agencies must analyze a no action alternative. *Id.* § 1502.14(d).

44. Agencies must consider alternatives consistent with their statement of purpose and need that are technically feasible and sufficiently distinct from the other alternatives considered.

45. NEPA further requires agencies to take a hard look at the direct, indirect, and cumulative impacts of each reasonable alternative to inform its decision about whether they must prepare an EIS because a proposed action significantly impacts the environment. *Id.*

§§ 1502.16(a), (b), 1508.7, 1508.8, 1508.25(c).

46. Direct impacts are those impacts “caused by the action and [that] occur at the same time and place.” *Id.* § 1508.8.

47. Indirect impacts are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.*

48. Cumulative impacts are “the impact[s] on the environment which result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7.

49. NEPA also requires that agencies evaluate the severity or significance of impacts. *See id.* § 1502.16(a)–(b).

50. Department of the Interior regulations contemplate that BLM may consider whether existing EISs or EAs “adequately assess[] the environmental effects of the proposed action and reasonable alternatives.” 43 C.F.R. § 46.120(c). If so, the agency may rely on an administrative document, called a Determination of NEPA Adequacy (“DNA”). *See id.* To rely on a DNA, an agency must evaluate “whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.” *Id.* The agency must explain why “any previously unanalyzed effects are not significant.” *Id.* § 46.140(c).

IV. The Clean Air Act, 42 U.S.C. § 7401 *et seq.*

51. The CAA’s purpose is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare.” 42 U.S.C. § 7401(b)(1).

52. The CAA requires EPA to identify, and “from time to time . . . revise,” a list of “air pollutants—emissions of which, in [its] judgment, cause or contribute to air pollution which

may reasonably be anticipated to endanger public health or welfare.” *Id.* § 7408(a)(1)(A). EPA has identified ozone as one such pollutant.

53. For identified pollutants, EPA must set, and periodically revise, “primary” NAAQS at levels “requisite to protect the public health . . . allowing an adequate margin of safety.” *Id.* § 7409(b)(1). EPA also sets “secondary” NAAQS at levels “requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.” *Id.* § 7409(b)(2).

54. The Clean Air Act Scientific Advisory Committee (“CASAC”) is an independent committee of health science experts, appointed by the EPA Administrator to recommend revisions to existing NAAQS. *Id.* § 7409(d)(2).

55. In 2010, the CASAC recommended reducing the 8-hour ozone NAAQS to the 60–70 parts per billion (“ppb”) range. The CASAC based its recommendation on a large body of data and studies demonstrating that higher ozone levels left many people at risk for negative respiratory impacts, asthma, emergency room visits, and mortality. In 2014, the CASAC again recommended that EPA set the NAAQS below 70 ppb based on scientific literature, finding substantial evidence of adverse effects at 70 ppb, including decreased lung function, and increased respiratory symptoms and airway inflammation.

56. On October 26, 2015, EPA revised the primary 8-hour ozone NAAQS to 70 ppb—the upper end of CASAC’s recommendation. 40 C.F.R. § 50.19; 80 Fed. Reg. 65,292 (Oct. 26, 2015). EPA also set the secondary 8-hour ozone NAAQS at 70 ppb, based on ozone harming public welfare by suppressing vegetation growth. *See* 80 Fed. Reg. at 65,369–410.

57. Once EPA sets or revises a NAAQS, states have one year to identify for EPA which areas of their state: (1) comply with the NAAQS and therefore should be designated “attainment;” (2) do not comply with the NAAQS and therefore should be designated “nonattainment;” and (3) areas which “cannot be classified on the basis of available information,” and therefore should be designated “unclassifiable.” 42 U.S.C. § 7407(d)(1)(A).

58. EPA then has one year to review state recommendations and finalize its designations of all areas in the country as “attainment,” “nonattainment,” or “unclassifiable.” *Id.* § 7407(d)(1)(B). The statute provides that EPA must issue its designations “in no case later than 2 years from the date of promulgation of the new or revised [NAAQS].” *Id.*

59. EPA makes its ozone nonattainment designations based on data from regulatory monitors. EPA measures compliance based on an air pollution monitor’s annual fourth highest daily maximum eight-hour average ozone value. This is called the monitor’s “design value.” If the “design value” exceeds the ozone standard, the standard is violated.

60. When a regulatory monitor’s design value exceeds the ozone NAAQS, EPA must designate that area nonattainment. *See id.* § 7407(d); 40 C.F.R. pt. 50 App’x U.

61. Once an area is designated nonattainment, the CAA requires states to take various steps to bring the area back into compliance, including development of air emissions inventories and permitting programs for industrial sources, including the oil and gas sector. *See, e.g.,* 42 U.S.C. § 7511a(a). A nonattainment designation also triggers additional requirements for federal agencies to demonstrate conformity with the NAAQS. *Id.* § 7506(c)(1).

FACTUAL BACKGROUND

I. Air Pollution in the Uinta Basin Threatens Public Health and Dinosaur National Monument.

A. Air Pollution from Oil and Gas Development Threatens Public Health.

62. Elevated ozone levels can cause or exacerbate many respiratory and cardiovascular health problems, including asthma, chest pain, and even premature death. Ozone pollution poses the greatest risks to vulnerable populations, including children, the elderly, and people with respiratory conditions.

63. Ozone pollution also suppresses vegetation and crop growth by interfering with photosynthesis and breaking down other chemical pathways that are key to plant growth. *See* 80 Fed. Reg. at 63,369–410.

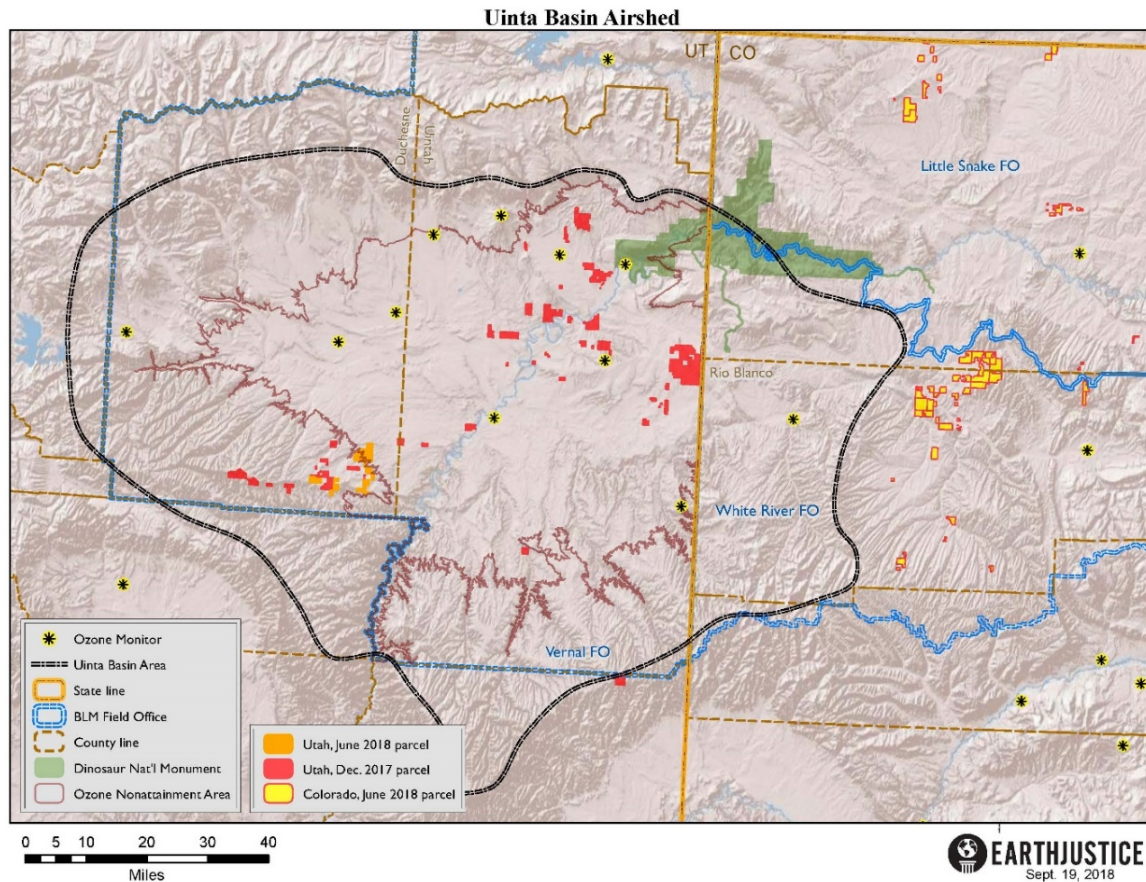
64. Ozone is produced when two other types of air pollutants, NO_x and VOCs, mix in the presence of sunlight. NO_x emissions not only contribute to ozone formation but also impair visibility. NO_x emissions also contribute to acid rain, which harms vegetation. Independently, both of these ozone precursor pollutants can also contribute to respiratory problems.

65. Because ozone requires multiple pollutants and abundant sunlight to form, ozone levels are usually highest in urban areas during the summer. But rural areas with snow-covered ground, winter sunlight, and high levels of oil and gas development, including the Uinta Basin, can experience dangerously high ozone levels during the winter.

B. The Uinta Basin's Air Quality Has Declined to Dangerous, Unhealthy Levels Because of Oil and Gas Development.

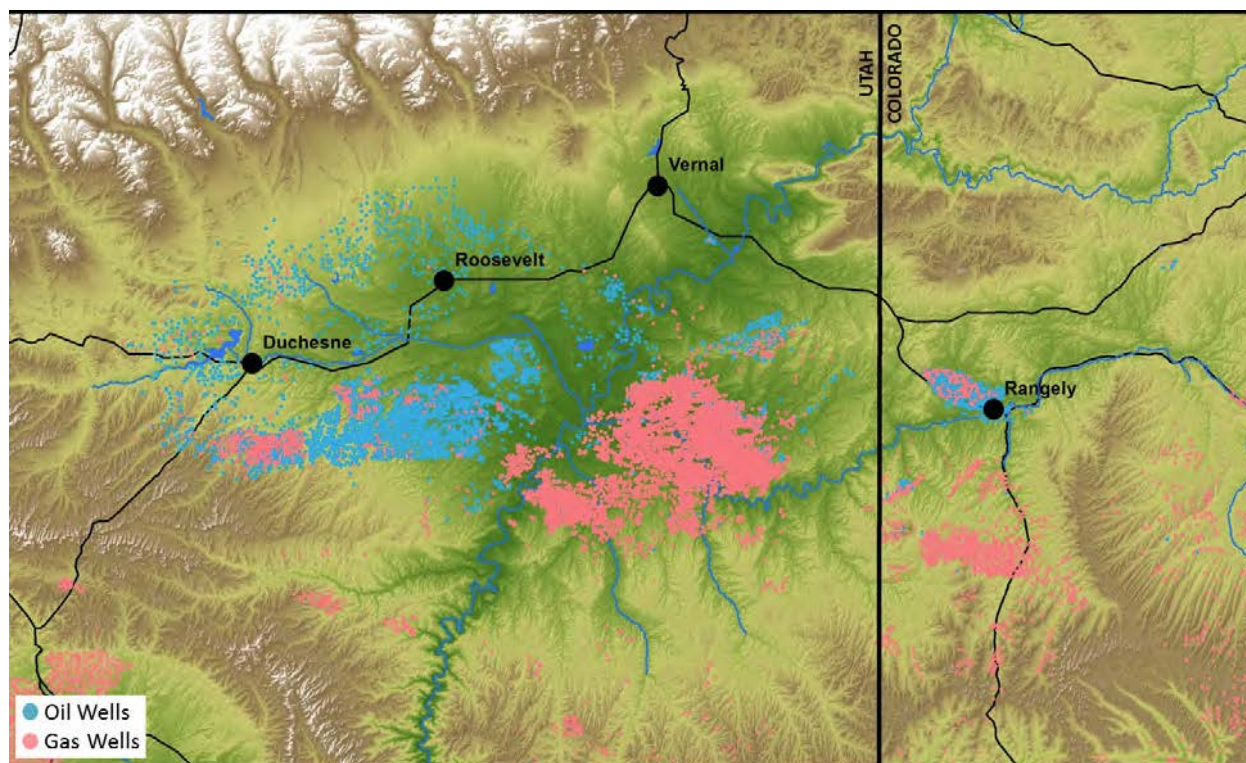
66. The Uinta Basin is a high-desert sagebrush sea in northwest Colorado and northeast Utah, enclosed on all sides by mountains and high-elevation areas. The Uinta Basin

constitutes a single airshed, and air flows freely throughout the Basin. Dinosaur National Monument is located in the northern portion of the Basin, as depicted in green in the map below.



67. BLM administers portions of the Uinta Basin's lands and minerals on both the Colorado and Utah sides of the border.

68. There are thousands of oil and gas wells in the Uinta Basin, as depicted by the blue and pink dots in the figure below.



69. Over the past decade, BLM has authorized substantial oil and gas development throughout the Uinta Basin. Since 2008, BLM has leased approximately 95,980 acres in Rio Blanco County, Colorado. There are approximately 2,011 producing wells in Rio Blanco County, many under BLM jurisdiction, including 668 within 15 kilometers of the Rangely ozone monitor.

70. BLM has leased approximately 107,800 acres in its Vernal Field Office—the Utah side of the Uinta Basin—since 2008. There are approximately 9,629 producing wells in the Vernal Field Office, many under BLM jurisdiction.

71. The Uinta Basin’s substantial oil and gas development threatens public health in several ways.

72. First, the primary component of natural gas is methane. Methane is a greenhouse gas 87 times more powerful than carbon dioxide on a 20-year time scale, and 36 times more powerful on a 100-year time scale. Oil and gas developers accidentally leaking or intentionally venting methane into the air contributes to climate change.

73. Second, other hydrocarbons vented and leaked by oil and gas development are hazardous air pollutants that are toxic to humans, including known carcinogens like benzene.

74. Finally, because of the Uinta Basin's unique topography and meteorology, oil and gas development has driven the area's ozone levels to well above the NAAQS.

75. Oil and gas development emits significant quantities of VOCs when companies intentionally vent or accidentally leak natural gas into the air. Oil and gas sources account for 98–99% of VOCs in the Uinta Basin. Oil and gas development also emits NO_x from compressor, rig, and truck engines. Oil and gas sources contribute 57% to 61% of the Uinta Basin's NO_x emissions.

76. The Uinta Basin experiences high ozone levels during the winter because of what is known as a “cold pool” process. Under meteorological conditions common in the enclosed Uinta Basin during the winter, air is trapped beneath inversion layers, where it stagnates. When sunlight reflects off snow-covered ground in the Uinta Basin, it reacts with NO_x and VOCs in the stagnant air to form ozone.

77. Certified regulatory ozone monitors on both the Colorado and Utah sides of the Uinta Basin have routinely measure ozone levels well above 70 ppb. Ozone monitors were first placed in the Uinta Basin in 2008 and immediately began recording elevated ozone levels, including levels as high as 139 ppb in 2011. According to EPA, one monitor recorded a fourth-

highest value of 132 ppb in 2013. Between 2015 and 2017, seven regulatory monitors in the Uinta Basin registered exceedances of the 2015 ozone NAAQS.

78. For example, a monitor in Rangely, Colorado had a design value of 73 in 2011 and 91 in 2013. A monitor in Dinosaur National Monument registered maximum ozone levels of 106 ppb in 2011, 126 ppb in 2013, 83 ppb in 2016, and 77 ppb in 2017.

79. Monitors on the Utah side of the Uinta Basin measured ozone levels above 70 ppb 38 times in 2017 alone. Uinta Basin monitors have measured ozone levels equal to or higher than the worst ozone levels measured in the most polluted areas of Los Angeles.

80. On April 30, 2018, EPA designated the portions of the Uinta Basin within Duchesne and Uintah Counties, Utah that are below 6,250 feet in elevation as nonattainment with the 2015 ozone NAAQS. *See* 83 Fed. Reg. 25,776, 25,837 (June 4, 2018). EPA attributed ozone formation in the Uinta Basin to oil and gas development.

81. Even though the Rangely monitor in Rio Blanco County, Colorado registered a design value that exceeds the NAAQS, EPA did not designate any portion of the county as nonattainment. *See* 83 Fed. Reg. at 25,793. The State of Colorado recognized that oil and gas development in Colorado contributes to ozone formation in Rio Blanco County. The State of Colorado recommended that EPA not designate a nonattainment area in Colorado because oil and gas development in Utah contributes a substantial portion of the region's VOC emissions. EPA concurred with this result.

C. The Uinta Basin's Deteriorating Air Quality Imperils Dinosaur National Monument.

82. Dinosaur National Monument spans over 200,000 acres in the heart of the Uinta Basin. The monument is mostly located in Colorado, with part of it in Utah.

83. Initially established in 1915 by President Woodrow Wilson to protect an “extraordinary deposit” of Jurassic-era dinosaur fossils, Dinosaur National Monument showcases millions of years of paleontological and geological heritage.

84. The monument also continues to be home to rich biological heritage. Today, it features exceptional biological diversity and species abundance, with over 1,000 native plants and animal species found within the park’s six major vegetation communities.

85. Approximately 300,000 annual visitors flock to Dinosaur National Monument to raft and experience its scenic and wilderness values. These visitors contributed over \$17 million in local economic benefits in 2015, and over \$18 million in 2016.

86. Because over 90% of Dinosaur National Monument retains wilderness character, it is one of the few areas in the Intermountain West where natural ecosystem processes function relatively free from human interference. This provides opportunities for remote solitude, dark night skies, and natural sounds.

87. The National Park Service has determined that pristine air quality and expansive views are an integral part of the visitor experience at Dinosaur National Monument. To preserve this experience, the National Park Service has stated that it is necessary to maintain the Monument’s viewsheds and dark night skies. The National Park Service has explained that scenic vistas from high elevation points provide dramatic views of the remote and far-reaching landscape and expansive skies, which is fundamental to the visitor experience.

88. The National Park Service recognizes that air pollution from extensive oil and gas development in the Uinta Basin “contribute[s] to visibility degradation in national parks, adverse

effects to human health, which is a concern for park visitors and staff, and adverse ecosystem effects from . . . ozone impacts to vegetation.”

D. BLM’s Models Show that Additional Oil and Gas Development in the Uinta Basin Will Further Impair Air Quality and Adversely Impact Dinosaur National Monument.

89. Two BLM models demonstrate that oil and gas development in Colorado and Utah will contribute to exceedances of the ozone NAAQS well into the next decade.

90. In January 2015, BLM released the Colorado Air Resource Management Modeling Study (“CARMMS 1.0”) to assess air quality impacts from oil and gas development across Colorado.

91. In August 2017, BLM released CARMMS 2.0, a revised model that relies on new information to better estimate oil and development’s air quality impacts. CARMMS 2.0 uses an updated emissions inventory to correct CARMMS 1.0’s tendency to under-predict the amount of emissions from leaks. CARMMS 2.0 also corrects the CARMMS 1.0 model’s underestimation bias for wintertime ozone.

92. Most importantly, CARMMS 2.0 models emissions at 18 additional monitors that CARMMS 1.0 did not analyze, including the Rangely Monitor in Rio Blanco County. CARMMS 2.0 also expands the analysis of air quality impacts at Dinosaur National Monument.

93. CARMMS 2.0 predicts ozone NAAQS exceedances at the Rangely monitor in 2025 under every reasonably foreseeable oil and gas development scenario. According to the modeling, oil and gas development within the Little Snake and White River Field Offices will contribute to the exceedances of the ozone NAAQS.

94. BLM also developed an air quality model for Utah. In 2011 BLM finalized the Air Resource Management Strategy (“ARMS”), a model of air quality impacts from reasonably foreseeable future oil and gas development in the Uinta Basin. ARMS modeled four different regulatory scenarios. All four scenarios predict that the Uinta Basin’s ozone levels will exceed the NAAQS in 2021. Oil and gas development is a substantial contributor to these predicted exceedances.

95. ARMS shows an underestimation bias during the winter, meaning it likely under-predicts Uinta Basin ozone formation. ARMS also significantly underestimates emissions due to leaks from oil and gas sources—a major source of the Uinta Basin’s ozone formation.

E. Greenhouse Gas Emissions from Oil and Gas Development Threaten Public Health and the Environment, Including Dinosaur National Monument.

96. The world’s leading climate scientists have found that “[h]uman influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.”

97. Emissions of greenhouse gases (“GHGs”) such as carbon dioxide and methane fuel climate change. In 2009, EPA found that GHGs “endanger both the public health and the public welfare of current and future generations.” 74 Fed. Reg. 66,496, 66,496 (Dec. 15, 2009).

98. 2017 was the third warmest year on record since record-keeping began in 1895, surpassed only by 2012 and 2016. The National Aeronautics and Space Administration concluded that “June 2018 continued the warming trend of the past 40 years,” and is tied as “the third warmest June in 138 years of modern record-keeping.”

99. Climate change directly impacts the American West. The West is experiencing increasing temperatures, droughts and reduced snowpack, declining groundwater supplies, and more frequent wildfires. In areas with scarce water resources like the Uinta Basin, these impacts may affect water-dependent industries like agriculture and recreation.

100. The National Park Service has found that “ongoing and future climate change will likely affect all aspects of park management [at Dinosaur National Monument], including natural and cultural resource protection as well as park operations and visitor experience.”

101. Climate change results from the incremental addition of GHG emissions from millions of individual sources, which collectively have a large impact on a global scale. CEQ recognizes that the totality of climate impacts is not attributable to any single action, but are exacerbated by a series of actions including actions taken pursuant to the decisions of the federal government.

102. Oil and gas development on BLM-administered lands accounts for approximately 15% of the United State’s GHG emissions.

II. BLM Has Ignored the Air Quality Impacts of Oil and Gas Development in the Uinta Basin and on Dinosaur National Monument in Land Use Planning and Recent Lease Sales.

103. Plaintiffs challenge three recent BLM oil and gas lease sales in and around the Uinta Basin: the June 2018 Colorado lease sale and the Vernal Field Office’s December 2017 and June 2018 lease sales.

104. These lease sales are governed by RMPs prepared by BLM’s Field Offices. The White River, Kremmling, and Little Snake RMPs govern the June 2018 Colorado lease sale. The Vernal RMP governs the Vernal Field Office’s December 2017 and June 2018 lease sales.

A. Colorado June 2018 Lease Sale

1. BLM's RMPs for Northwest Colorado Do not Analyze the Impacts of Ozone Pollution on Public Health and the Environment.

105. BLM opened tens of thousands of acres of public lands in its northwest Colorado Field Offices to leasing without considering the public health and environmental implications of oil and gas development in areas that exceed the ozone NAAQS.

106. In the White River RMP, BLM opened 1.7 million acres of public lands to oil and gas development. This decision was based on a 2015 EIS that ignored the impacts of wintertime ozone formation in the Uinta Basin and failed to analyze the public health or environmental impacts of issuing oil and gas leases in areas where ozone levels exceed the NAAQS.

107. In the Kremmling RMP, BLM opened approximately 590,300 acres of public lands to oil and gas development. This decision was based on a 2015 EIS that assumed ozone levels would remain below the NAAQS, and thus omitted any analysis of the public health and environmental implications of issuing oil and gas leases in areas where ozone levels exceed the NAAQS.

108. In the Little Snake RMP, BLM opened approximately 2.8 million acres of public lands for oil and gas development. This decision was based on a 2011 EIS that assumed ozone levels would not exceed the NAAQS, and thus did not analyze the public health and environmental implications of issuing oil and gas leases in areas where ozone levels exceed the NAAQS.

2. BLM Leases Nearly 56,000 Acres Without Any NEPA Analysis.

109. On September 5, 2017, BLM initiated a scoping process for the June 2018 Colorado lease sale, proposing to lease 64 parcels containing 58,893.95 acres in Rio Blanco,

Moffat, Routt, and Jackson Counties. The parcels were located within lands managed by all three of BLM's northwest Colorado Field Offices: the White River Field Office, Little Snake Field Office, and Kremmling Field Office.

110. BLM received ten scoping comments, including several from Plaintiffs.

111. On December 7, 2017, BLM released a preliminary DNA for a 30-day public comment period. BLM once again proposed to lease 64 parcels, totaling 58,753.95 acres.

112. BLM received eight comments, including several from Plaintiffs.

113. On April 20, 2018, BLM announced that all 64 parcels would be offered in the June 2018 lease sale, triggering a 10-day public protest period.

114. Plaintiffs submitted protests and a report from air quality expert Megan Williams, explaining why CARMMS 2.0 constituted significant new information that BLM must consider in a NEPA document.

115. BLM denied all the protests on June 6, 2018. BLM went forward with leasing 62 parcels, totaling 55,809.67 acres.¹

116. BLM relied entirely on a DNA for the sale. BLM did not conduct any additional NEPA analysis.

¹ The parcels leased were: COC78956, COC78970, COC78967, COC78973, COC78961, COC78988, COC78987, COC78972, COC78959, COC78943, COC78978, COC78995, COC78999, COC78937, COC78983, COC78979, COC78958, COC78944, COC78975, COC78991, COC78952, COC78936, COC78976, COC78974, COC78954, COC78985, COC78953, COC78949, COC78955, COC78964, COC78963, COC78940, COC78966, COC78971, COC78992, COC78969, COC78993, COC78986, COC78968, COC78982, COC78981, COC78948, COC78941, COC78965, COC78977, COC78990, COC78942, COC78938, COC78994, COC78960, COC78939, COC78984, COC78980, COC78998, COC78957, COC78945, COC78996, COC78997, COC78947, COC78951, COC78989, and COC78962.

117. BLM concluded that it was appropriate to rely instead on the NEPA analysis it conducted in four earlier documents: the EISs accompanying the 2015 White River, 2011 Little Snake, and 2015 Kremmling RMPs, and an EA that BLM completed for an oil and gas lease sale involving entirely different parcels held a year earlier, in June 2017.

118. BLM concluded that there was no significant new information that warranted additional analysis of the parcels in the leasing decision challenged here, and that the earlier NEPA documents assessed an adequate range of alternatives.

3. BLM Overlooked Significant New Information About Oil and Gas Development Contributing to Rio Blanco County's Ozone Levels.

119. The four NEPA documents on which BLM relied to support its DNA predate the August 2017 release of BLM's CARMMS 2.0 model.

120. CARMMS 2.0 presents new information because it models emissions at 18 monitors not analyzed in CARMMS 1.0, including the Rangely Monitor. CARMMS 2.0 also expands the analysis of how oil and gas development throughout northwest Colorado impacts air quality at Dinosaur National Monument.

121. CARMMS 2.0 demonstrates that under every reasonably foreseeable development scenario, continuing oil and gas operations in Rio Blanco County and elsewhere will contribute to exceedances of the ozone NAAQS at the Rangely Monitor through 2025. These elevated ozone levels pose a threat to public health and the environment. CARMMS 2.0 further projects significant visibility impairment at Dinosaur National Monument, partially attributable to federally-administered oil and gas development in northwest Colorado.

122. BLM's prior NEPA documents did not consider the CARMMS 2.0 modeling results. The prior documents did not consider whether oil and gas leasing would contribute to a

violation of the ozone NAAQS at the Rangely, Colorado monitor. Nor did they consider how ozone levels in excess of the NAAQS at this site would impact the health of northwest Colorado residents and visitors, and visibility and other resources at iconic places like Dinosaur National Monument.

4. BLM Failed to Consider a Reasonable Range of Alternatives.

123. BLM never considered a no-leasing alternative for the 62 parcels it leased in the June 2018 Colorado lease sale.

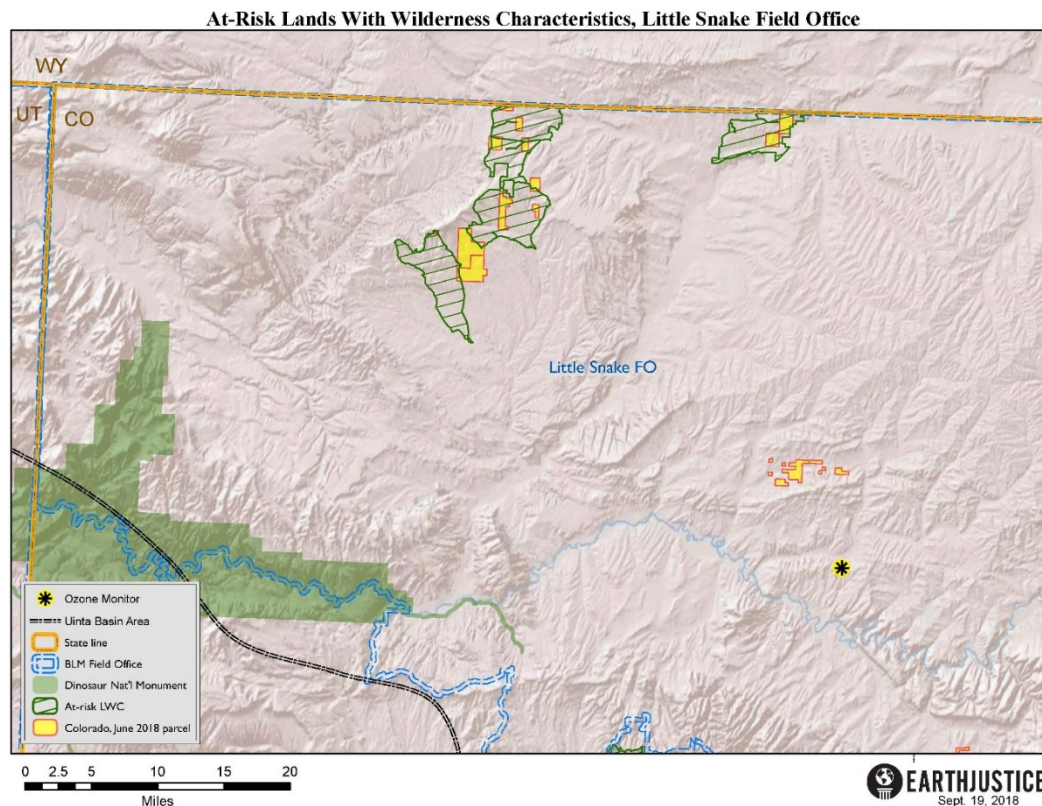
124. BLM purports to rely upon four other NEPA documents. None of them considered in detail a no-leasing alternative for the parcels in question.

5. BLM Ignored Significant New Information About Lands with Wilderness Characteristics.

125. BLM overlooked significant new information—the presence of newly-inventoried lands with wilderness characteristics managed by the Little Snake Field Office—when it relied on a DNA for the June 2018 Colorado lease sale.

126. When BLM issued the Little Snake RMP EIS in 2011, it evaluated nine areas with potential wilderness character, and concluded that five qualified as lands with wilderness characteristics.

127. In 2012 and 2013, BLM inventoried additional lands with wilderness characteristics that were not analyzed in the 2011 Little Snake RMP EIS. BLM did not decide how to manage these wilderness values in the Little Snake RMP.



128. Six of the parcels BLM leased in the June 2018 Colorado lease sale overlap with the LWCs inventoried in 2012 and 2013.²

129. BLM did not consider the impacts of oil and gas leasing on the wilderness characteristics of these lands prior to issuing the leases challenged in this case.

B. Vernal Field Office December 2017 and June 2018 Lease Sales.

1. The Vernal RMP Does not Analyze the Uinta Basin's Ozone Problem.

130. BLM's Vernal Field Office encompasses 5.5 million acres in Utah, comprising Uintah, Duchesne, and Daggett Counties, and portions of Grand County. In the Vernal Field

² The parcels are COC78973, COC78995, COC78996, COC78997, COC78998, and COC78999.

Office, BLM administers 1.7 million acres of surface estate and 3.9 million acres of mineral estate, much of which is within the Uinta Basin.

131. BLM approved the Vernal RMP in October 2008. The Vernal RMP designated 1,727,200 acres of mineral estate as open for oil and gas leasing and development.

132. The public expressed concern that the Vernal proposed RMP would authorize activities that would lead to exceedances of federal and state air quality standards. BLM responded by asserting that it developed the Vernal RMP to continue to manage air quality in accordance with the air quality standards prescribed by Federal, state, and local laws, regulations and policies. The Vernal RMP states that BLM will “ensure that authorizations granted to use public lands and the BLM’s own management programs comply with and support applicable local, state and federal laws, regulations, and implementation plans pertaining to air quality.”

133. BLM conducted an EIS for the Vernal RMP. That EIS did not address the reasonably foreseeable impacts of oil and gas development on ozone formation in the Uinta Basin. The EIS did not address the public health impacts of ozone pollution or the impacts of ozone pollution on Dinosaur National Monument.

134. Although BLM conducted modeling for other pollutants as part of the Vernal RMP EIS, it did not model ozone formation.

2. BLM Continues to Ignore the Area’s Ozone Problems Despite Leasing Additional Parcels in the Vernal Field Office.

135. In early 2017, the Vernal Field Office began preparing for its December 2017 lease sale by soliciting scoping comments from other agencies, but not the public.

136. The National Park Service submitted scoping comments on May 1, 2017. The Park Service expressed concerns about the impacts of oil and gas development on air quality,

noting that cumulative emissions from oil and gas operations can cause significant effects on air quality, adversely impacting Dinosaur National Monument's visitors and ecosystems.

137. On June 22, 2017, BLM released a draft EA and a FONSI for public review and comment. BLM proposed leasing 64 parcels, comprising 66,626 acres. The parcels were located throughout the Uinta Basin. Several were very close to Dinosaur National Monument, and two parcels were on the Colorado-Utah border.

138. The public had 30 days to comment. BLM received over 13,000 public comments, raising concerns about the lease sale's impacts on air quality, public health, and the environment.

139. The National Park Service submitted comments, again expressing concerns about negative impacts to air quality, visibility, and vegetation from leasing parcels close to Dinosaur National Monument.

140. Several Plaintiffs and other members of the public also submitted detailed comments, raising concerns about BLM's cursory analysis of air quality impacts and failure to analyze impacts on public health and the environment.

141. On September 1, 2017, BLM released its final EA, a FONSI, and a Notice of Competitive Lease Sale, proposing to lease all 64 parcels.

3. BLM Failed to Take a Hard Look at the Direct, Indirect, and Cumulative Impacts of Leasing the Parcels to Public Health and Dinosaur National Monument.

142. In the final EA, BLM acknowledged that the proposed lease sale would lead to an increase in emissions of pollutants that cause ozone formation. BLM estimated VOC and NOx emissions per well. BLM also noted that the reasonably foreseeable development scenario it

created for the 2008 Vernal RMP predicted a minimum of 135 wells being drilled on the leases. Multiplying 135 wells by BLM's estimate of per-well emissions, the lease sale would result in an additional 2,214 tons per year of NO_x and 1,215 tons per year of VOCs.

143. Despite these projections, however, the EA does not include any discussion of the public health or environmental impacts of developing the leases in combination with other past, present, and reasonably foreseeable development in the region. For example, BLM did not discuss the documented health impacts of ozone such as asthma, decreased lung function, or even premature death.

144. The EA contains no discussion of the health impacts of being exposed to hazardous air pollutants emitted by developing the leases, such as the elevated cancer risk from breathing in benzene emissions.

145. The EA also contains no discussion of the air quality impacts to Dinosaur National Monument that will result from developing the leased parcels along with other past, present, and reasonably foreseeable development in the region. For example, the EA does not discuss the health impacts of poor air quality on visitors to Dinosaur National Monument, or the impacts of ozone on ecosystem function, despite the fact that the National Park Service and public identified these concerns in comments.

146. Although the EA does not examine the impacts to public health or Dinosaur National Monument, BLM nevertheless issued a FONSI, concluding that leasing the parcels would not have a significant impact on the environment, and that completing an EIS was not necessary. BLM concluded that leasing the parcels will have no impacts, "individually or

cumulatively with other actions in the general project area, beyond those disclosed in the” Vernal RMP EIS.

147. BLM asserted that the stipulations and lease notices attached to the leases would adequately eliminate health impacts, and assumed that operators would comply with voluntary guidance and best management practices to reduce impacts. BLM provides no support for these conclusions.

148. In the FONSI, BLM also asserts that “the lease parcels were not within or adjacent to any park lands.” BLM did not acknowledge the proximity of several parcels to Dinosaur National Monument.

149. BLM concluded that the lease sale would have no cumulatively significant impacts, and that the EA and Vernal RMP EIS had adequately addressed cumulative impacts. This assertion runs contrary to the evidence demonstrating exceedances of the NAAQS under every regulatory scenario, which poses a threat to public health and welfare.

150. Finally, BLM predicted that the lease sale would not lead to violations of “any known federal, state, local or tribal law or any other requirement imposed for the protection of the environment.” But BLM failed to explain how it could come to this conclusion when its own modeling projects violations of federal air quality standards under every development scenario.

151. BLM did not explain why leasing parcels in an area that is already violating air quality standards does not constitute unnecessary and undue degradation of air quality or increase the frequency of violations of existing standards. BLM neither attempted to mitigate VOC and NO_x emissions to avoid NAAQS violations, nor provided a plan for how it would ensure NAAQS compliance at a later stage. Instead, BLM simply listed optional best

management practices (most of which do not address VOC emissions) and claimed that the stipulations and lease notices it attached to the parcels would be adequate to protect air quality. BLM provides no support for these claims.

4. BLM Failed to Take a Hard Look at the Cumulative Climate Impacts That Will Result from Development of the Leases.

152. In the Vernal Field Office’s December 2017 Lease Sale EA, BLM acknowledged that climate change is happening and is caused by human activities. BLM also acknowledged that developing the lease parcels would result in direct and indirect GHG emissions and quantified these emissions.

153. BLM refused to quantify or otherwise analyze the December 2017 lease sale’s cumulative GHG emissions in conjunction with other past, present, and future lease sales in the Uinta Basin, including the Colorado June 2018 lease sale.

5. BLM Failed to Address Reasonable Alternatives.

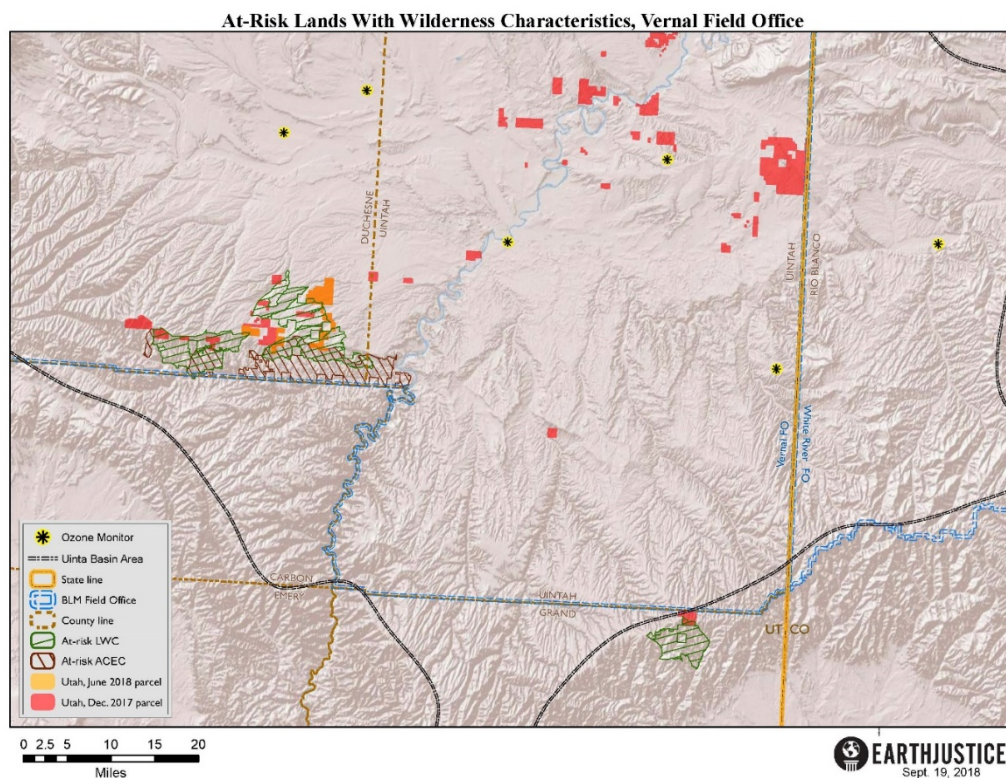
154. BLM framed the purpose for its proposed action broadly: “respond[ing] to the nominations or expressions of interest for oil and gas leasing on specific federal mineral estate through a competitive leasing process.” BLM explained that the need for its action was to comply with the Mineral Leasing Act, FLPMA, and other laws, and to promote oil and gas development on the public domain.

155. BLM analyzed only two alternatives: a no-action alternative of leasing no parcels, and the proposed action of leasing all 64 parcels. BLM claimed that “[n]o other alternatives to the Proposed Action were identified that would meet the purpose and need of the Proposed Action.”

156. But commenters had identified several alternatives that would, in fact, meet BLM's purpose and need.

157. For example, commenters recommended an alternative to defer leasing all parcels within Dinosaur National Monument's viewshed.

158. Commenters also identified the alternative of deferring parcels in areas with wilderness characteristics and the Nine Mile Canyon ACEC. BLM inventoried several areas with wilderness characteristics, including Badlands Cliffs, Big Wash, Sheep Wash, Pete's Wash, and Currant Canyon, but has not yet decided whether to protect wilderness characteristics on these lands in the governing RMP. Management of these parcels is therefore an unresolved resource conflict that has not been addressed in any land use plan. Sixteen of the parcels BLM proposed for leasing overlap with these five areas.



159. BLM admitted that development within these areas would likely fragment, and thus permanently destroy, their wilderness characteristics by reducing their wild areas to below the minimum size criteria of 5,000 contiguous acres.

160. BLM never disputed that the recommended alternatives to defer leasing in these areas would accomplish the purpose and need of the lease sale, were technically and economically feasible, and would have a lesser impact on air quality and wilderness resources.

6. BLM Rejected Plaintiffs' Protests and Issued the Leases.

161. BLM's September 1, 2017 Notice of Competitive Lease Sale triggered a 30-day protest period, ending October 2, 2017.

162. BLM received seven protests on the Vernal Field Office parcels, including protests from Plaintiffs NPCA, the Center, and Guardians.

163. BLM conducted the lease sale on December 12, 2017. BLM leased 59 parcels, encompassing 61,910.92 acres. BLM attached stipulations and lease notices to the leases, but none of the leases entirely prohibited surface occupancy.³

164. BLM denied all nine protests in January 2018.

³ The parcels leased in December 2017 were: UTU92656, UTU92687, UTU92657, UTU92688, UTU92658, UTU92689, UTU92659, UTU92690, UTU92660, UTU92691, UTU92661, UTU92692, UTU92662, UTU92693, UTU92663, UTU92694, UTU92664, UTU92695, UTU92665, UTU92696, UTU92666, UTU92697, UTU92667, UTU92698, UTU92668, UTU92699, UTU92669, UTU92700, UTU92670, UTU92701, UTU92671, UTU92702, UTU92672, UTU92703, UTU92673, UTU92704, UTU92674, UTU92705, UTU92675, UTU92706, UTU92676, UTU92707, UTU92677, UTU92708, UTU92678, UTU92709, UTU92679, UTU92710, UTU92680, UTU92711, UTU92682, UTU92712, UTU92683, UTU92713, UTU92684, UTU92714, UTU92685, UTU92730, and UTU92686.

165. On January 9, 2018, BLM issued its final Record of Decision (“ROD”) approving the decision to lease all 59 leases, approving the FONSI, and certifying conformance with the Vernal Field Office RMP, NEPA, and FLPMA.

7. Vernal June 2018 Lease Sale

166. The prospective buyer that bid on eight of the parcels offered during the December 2017 Utah lease sale did not make timely payments. Accordingly, BLM rejected the bids.

167. BLM decided to reoffer the eight parcels in its June 2018 lease sale.⁴ BLM announced its decision on April 26, 2018 by releasing a DNA and a Notice of Competitive Lease Sale, triggering a 10-day protest period.

168. BLM did not prepare any additional NEPA analysis, instead relying solely on its prior 2017 EA and claiming that “[n]o changed circumstances have been identified by the [interdisciplinary] team review.”

169. During the interim period between the initial lease sale and end of the protest period, however, EPA designated the Uinta Basin nonattainment for the 2015 ozone NAAQS. 83 Fed. Reg. at 25,837. EPA therefore recognized that the Uinta Basin’s ozone levels exceeded safe levels for public health. Four of the eight parcels BLM proposed to lease are located within the boundaries of the nonattainment area.

170. BLM conducted the lease sale on June 12, 2018. All eight parcels received bids at the sale.

⁴ The eight parcels are UTU93254, UTU93255, UTU93256, UTU93257, UTU93258, UTU93259, UTU93260, and UTU93261.

171. BLM issued a ROD approving the lease sale on August 9, 2018. BLM certified that the lease sale was in conformance with the Vernal Field Office RMP, and was “consistent with the requirements of the FLPMA and NEPA.”

172. BLM did not reference the nonattainment designation or other new information in the ROD. BLM did not update or otherwise revise its DNA.

173. BLM denied Plaintiffs’ protests on August 7, 2018.

FIRST CAUSE OF ACTION

Violation of NEPA: Failure to Consider the Public Health and Environmental Impacts of Leasing Public Lands for Oil and Gas Development

174. Plaintiffs incorporate herein by reference paragraphs 1–173, above.

175. NEPA requires federal agencies to prepare an EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4.

176. To forego preparation of an EIS, an agency must prepare an EA that provides sufficient evidence and analysis to support a FONSI. 40 C.F.R. § 1508.9; 43 C.F.R. § 46.300.

177. Agencies must take a hard look at the direct, indirect, and cumulative impacts of each reasonable alternative to determine if there may be any significant impacts requiring preparation of an EIS. 40 C.F.R. §§ 1502.16(a), (b), 1508.25(c).

178. Determining whether there are significant impacts requires agencies to consider “both context and intensity.” *Id.* § 1508.27. Factors relevant to “intensity” include: (1) “[t]he degree to which the proposed action affects public health or safety”; (2) “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas”; (3) “[w]hether the

action is related to other actions with individually insignificant but cumulatively significant impacts”; and (4) “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” *Id.* § 1508.27(b)(2), (3), (7), (10). Any one of these factors may be sufficient to require preparation of an EIS.

179. BLM can only rely on a DNA to forego any additional NEPA analysis for a federal action if existing EISs or EAs “adequately assess[] the environment effects of the proposed action and reasonable alternatives.” 43 C.F.R. § 46.120(c).

180. To rely on a DNA, BLM must evaluate “whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.” *Id.* The agency must explain why “any previously unanalyzed effects are not significant.” *Id.* § 46.140. Agencies may use DNAs only when they determine that the new impacts will not be significant or not significantly different from those already considered in prior NEPA documents.

181. BLM failed to analyze the significant public health and the environment impacts caused by its decisions to issue 121 oil and gas leases covering 117,720.59 acres in northwest Colorado and northeast Utah.

182. BLM relied on a DNA to forego any additional NEPA analysis of its decision to lease 62 parcels in the June 2018 Colorado lease sale, encompassing nearly 56,000 acres. BLM’s prior NEPA analyses, however, failed to analyze significant new information showing that oil and gas development will contribute to exceedances of the ozone NAAQS under every reasonably foreseeable development scenario, thereby threatening public health and the environment, including Dinosaur National Monument. BLM’s prior NEPA analyses also failed

to analyze the permanent impacts of its leasing decision on newly inventoried lands with wilderness characteristics. BLM's reliance on a DNA for the June 2018 Colorado Lease Sale violated NEPA and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706.

183. BLM relied on a flawed EA prepared for the Vernal Field Office lease sale in December 2017 to conclude that leasing 59 parcels, encompassing 61,910.92 acres, in the Uinta Basin would not have a significant impact on the environment. The December 2017 EA failed to take a hard look at (1) the public health implications of leasing thousands of acres of public lands for oil and gas development in an ozone nonattainment area, (2) the impacts of emissions from developing the leases on public health, visibility and vegetation in Dinosaur National Monument, a unique geographic place, (3) the cumulative impacts of emissions from developing the leases combined with emissions from other BLM-administered oil and gas development in both the Colorado and Utah portions of the Uinta Basin, including the extent to which those cumulative emissions will impact public health, welfare, the environment, climate, and Dinosaur National Monument, and (4) whether and to what degree the leasing decision would threaten violations of federal law given that every modeled scenario leads to exceedances of the ozone NAAQS. As a result of the flawed EA, BLM's FONSI and decision to forego preparation of an EIS for the Vernal Field Office December 2017 lease sale violated NEPA and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. *Id.*

184. BLM relied on a DNA to forego any additional NEPA analysis for its decision to lease eight parcels in June 2018. Instead, BLM relied solely on its prior NEPA analysis—the EA for the December 2017 Vernal Field Office lease sale. Because the December 2017 EA was

fatally flawed, as discussed above, BLM's reliance on a DNA to reissue the leases in June 2018 violated NEPA and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. *Id.*

SECOND CAUSE OF ACTION

Violation of NEPA: Failure to Consider a Reasonable Range of Alternatives

185. Plaintiffs incorporate herein by reference paragraphs 1–173, above.

186. When completing an EA or EIS, NEPA requires BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternate uses of available resources.” 42 U.S.C. § 4332(2)(E).

187. Agencies must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a).

188. Agencies must analyze a no action alternative. *Id.* § 1502.14(d).

189. BLM failed to rigorously analyze and objectively evaluate reasonable alternatives to its decisions to issue 121 oil and gas leases covering 117,720.59 acres in northwest Colorado and northeast Utah.

190. By relying on a DNA for the June 2018 Colorado Lease Sale, BLM never considered a no-leasing alternative for the 62 parcels it leased in the June 2018 Colorado lease sale. BLM's failure to consider a no action alternative for this lease sale violated NEPA and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. 5 U.S.C. § 706.

191. In its EA for the December 2017 Vernal Field Office lease sale, BLM refused to consider an alternative to defer leasing on all parcels within Dinosaur National Monument's

viewshed. BLM also refused to consider an alternative deferring all parcels that overlap with lands with wilderness characteristics inventoried after the BLM's prior planning process (the 2008 Vernal Field Office RMP) or within the Nine Mile Canyon ACEC. BLM's refusal to consider these reasonable middle-ground alternatives violated NEPA and was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. *Id.*

THIRD CAUSE OF ACTION

Violations of FLPMA: Failure to Prevent Unnecessary or Undue Degradation; Provide for Compliance with the NAAQS; and Ensure Conformity with Resource Management Plans

192. Plaintiffs incorporate herein by reference paragraphs 1–173, above.

193. FLPMA provides that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the [public] lands.” 43 U.S.C. § 1732(b).

194. FLPMA requires BLM to “provide for compliance with applicable pollution control laws, including State and Federal air . . . standards” when developing land use plans. *Id.* § 1712(c)(8).

195. FLPMA further requires that “[t]he Secretary shall manage the public lands . . . in accordance with the land use plans” developed under § 1712(a). *Id.* § 1732(a). “All future resource management authorizations and actions . . . shall conform to the approved plan.” 43 C.F.R. § 1610.5-3(a).

196. The 2008 Vernal Field Office RMP states that BLM will “ensure that authorizations granted to use public lands . . . comply with and support applicable local, state and federal laws, regulations, and implementation plans pertaining to air quality.”

197. Air pollution in the Uinta Basin exceeds EPA’s 2015 ozone NAAQS, which are “Federal . . . air standards” set to protect public health and welfare. EPA designated most of the Uinta Basin as nonattainment for the 2015 ozone NAAQS.

198. BLM has modeled the air quality impacts of oil and gas development in the Uinta Basin. Under every modeled emissions-control scenario, the model projects violations of the NAAQS.

199. BLM leased 59 parcels in its December 2017 and eight parcels in its June 2018 Utah lease sales, all located in BLM’s Vernal Field Office, in Duchesne and Uintah Counties, Utah, which are within the Uinta Basin. Because some level of development is foreseeable on these leases, the leases authorize additional air pollution that will exacerbate the existing violations of the federal NAAQS in the Uinta Basin.

200. By authorizing additional air pollution in a nonattainment area, BLM has failed to “provide for compliance” with and “support” federal air quality standards. Indeed, BLM does not explain how its leasing decisions meet these legal mandates, and fails to provide any support for the claim that it is possible to mitigate the pollution sufficiently to ensure compliance with the NAAQS.

201. Additional air pollution in an area that is already in nonattainment with the ozone NAAQS is both unnecessary and undue. By authorizing additional air pollution in a nonattainment area, BLM has allowed unnecessary and/or undue degradation of air quality on public lands. BLM did not analyze or explain why issuing the leases would not cause unnecessary or undue degradation of the Uinta Basin’s air quality.

202. BLM's failure to prevent unnecessary or undue degradation, to provide for compliance with relevant air quality standards, and to ensure conformance with the Vernal Field Office RMP prior to issuing the 59 leases in the December 2017 sale and the eight leases in the June 2018 sale violates FLPMA and its implementing regulations and is arbitrary, capricious, and contrary to law in violation of the APA. 5 U.S.C. § 706.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and provide the following relief:

1. Issue a declaratory judgment that Defendants violated FLPMA and NEPA, and acted arbitrarily, capriciously, contrary to law, and in excess of statutory authority by conducting the June 2018 Colorado lease sale, the December 2017 Vernal Field Office lease sale, and the June 2018 Vernal Field Office lease sale;
2. Set aside and vacate all leases sold in the challenged sales;
3. Award Plaintiffs' costs, expenses, and reasonable attorney fees; and
4. Provide such other relief as the Court deems just and proper.

Respectfully submitted this 27th day of September, 2018,

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