No. 15-2130

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, SAN JUAN CITIZENS ALLIANCE, WILDEARTH GUARDIANS, and NATURAL RESOURCES DEFENSE COUNCIL,

Plaintiffs-Appellants,

v.

SALLY JEWELL, U.S. BUREAU OF LAND MANAGEMENT, and NEIL KORNZE,

Defendants-Appellees,

and

WPX ENERGY PRODUCTION, LLC, ENCANA OIL & GAS INC., BP AMERICAN CO., CONOCOPHILLIPS CO., BURLINGTON RESOURCES OIL & GAS CO. LP, ANSCHUTZ EXLORATION CORP., and AMERICAN PETROLEUM INSTITUTE,

Intervenor-Defendants-Appellees.

On Appeal from the United States District Court for the District of New Mexico
No. 1:15-cv-00209-JB-LF, Honorable James O. Browning, District Judge

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APPELLANTS' REPLY MOTION FOR INJUNCTION PENDING APPEAL

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GLOSSARY OF TERMS:

2001 RFDS	2001 Reasonably Foreseeable Development Scenario
2003 RMP	2003 Resource Management Plan
2014 RFDS	2014 Reasonably Foreseeable Development Scenario
APA	Administrative Procedure Act
APD	Application for Permit to Drill
BLM	Bureau of Land Management
EA	Environmental Assessment
EIS	Environmental Impact Statement
FONSI	Finding Of No Significant Impact
Mancos RMPA	Mancos Shale Resource Management Plan Amendment
NEPA	National Environmental Policy Act
Order	Memorandum Opinion and Order, Preliminary Injunction No. 1:15-cv-00209-JB-SCY (D.N.M. Aug. 14, 2015)

LIST OF EXHIBITS:

Exhibit Q	Memorandum Opinion and Order, No. 1:15-cv-00209-JB-LF (D.N.M. Sept. 16, 2015) (Dkt. 82).
Exhibit R	*Diné CARE et al., v. Jewell et al.,* No. 1:15-cv-00209-JB-LF Hearing Transcript (July 13, 2015) (excerpts)

Exhibit lettering continues from Appellants' Motion for Injunction Pending Appeal

INTRODUCTION

Over 100 Mancos Shale oil wells have already been drilled in the Greater Chaco region, representing a new wave of fossil fuel exploitation to hit the broader San Jan Basin whose residents have already endured and continue to suffer from the drilling of over 30,000 gas wells. *Each* additional Mancos Shale well adds to the milieu of cumulative impacts suffered in a proverbial "death by a thousand cuts." This Motion is therefore a critical effort to preserve the status quo and allow Diné Citizens Against Ruining Our Environment, *et al*., (collectively "Citizen Groups") their day in court. *Tri-State Generation & Transmission Ass'n v. Shoshone River Power,* 805 F.2d 351, 355 (10th Cir. 1986) (recognizing a preliminary injunction is necessary "to preserve the power to render a meaningful decision on the merits").

Citizen Groups filed this Motion on September 8, 2016 pursuant to Fed. R. App. P. 8(a)(2)(A)(i) given the imminent drilling of additional Mancos Shale wells and the belief that it would be impracticable to wait for the district court's ruling on a similar motion. The district court held a hearing on that motion on September 16, 2015 and, at the urging of Citizen Groups and in recognizing our need to appeal to this Court, issued a decision the same day denying that motion (Exhibit Q).

ARGUMENT

I. CITIZEN GROUPS ARE LIKELY TO SUCCEED ON THE MERITS

BLM's justification for the ongoing approval of hundreds of Mancos Shale applications for permit to drill ("APDs") hinges on a flawed conceit: that the Farmington Field Office's 2003 Resource Management Plan ("2003 RMP") and environmental

impact statement ("EIS") offers the agency a blank check to approve any and all development within the cover of the EIS's 9,942 well prediction because the environmental analysis of impacts was "not limited to any particular formation, geographic area, or to the use of any particular technology." BLM Resp. at 4; *see also* Operators Resp. at 11. The record contradicts BLM's characterization, rendering arbitrary BLM's decisions that tier to the 2003 RMP and, even if it did not, does not supplant the obligations imposed on BLM by the National Environmental Policy Act ("NEPA").

Fundamentally, the EIS is expressly based on contextual assumptions regarding the specific locations, technologies, and practices that underlie the analysis of oil and gas development impacts anticipated in 2003, *not* 2015. For example, Table 4-4 identified five formations: Fruitland, Pictured Cliffs, Mesaverde, Dakota, and Chacra, which together account for 99.7 percent of the 9,942 wells predicted. Mot. Ex. D at 4-10. The EIS consistently identifies these "major-producing formations" in the "northern portion" of the Basin when analyzing the impacts of development, *id.* at 4-6, 4-9, 4-105, including the estimates of surface disturbance, which were calculated based on the drilling *vertical* wells, as well as for "air quality analysis, [where] it was assumed that all new wells would extract natural gas."[1, 2] *Id.* at 4-2, 4-16. Accordingly, *none* of the Mancos Shale

[1] Moreover, the 2003 EIS is devoid of any reference to Mancos Shale or horizontal drilling and multi-stage fracturing, and when Mancos Shale was identified in the 2001 Reasonably Foreseeable Development Scenario ("2001 RFDS") it was described as "approaching depletion and are marginally economic." Mot. Ex. C at 5.24.

[2] Approximately 3,860 of these predicted wells have been drilled to date, and BLM is *still* approving APDs for vertical gas wells in the northern portion of the Basin. Mot. Ex. A at 15 ¶53. *See, e.g.,* Burlington Allison Unit HZFC #123H Natural Gas Well Pad and Pipeline Project, EA DOI-BLM-NM-2015-0004 (Nov. 2014); ConocoPhillips Fogelson

wells horizontally drilled and multi-stage fractured—amounting to an estimated 3,960 wells—were contemplated by BLM's analysis and instead are, in "context," *in addition to* the 9,942 wells analyzed in the 2003 EIS. Mot. Ex. F at 16, 21; 40 C.F.R. § 1508.27(a).

Because the record demonstrates that BLM did not analyze the impacts of Mancos Shale development in the 2003 EIS, there is no foundation for the agency's remaining rationalization of its ongoing approval of hundreds of Mancos Shale wells, or that site-specific Environmental Assessments ("EA") provide a cure. BLM cannot tier to site-specific EAs approving Mancos Shale APDs to the 2003 EIS because there is simply no analysis in that document to tier to. 40 C.F.R. §§ 1502.20, 1508.28; *Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1151 (10th Cir. 2004).[3] This is particularly relevant to the cumulative landscape level impacts of Mancos Shale development,[4] where BLM relies on a combination of the 2003 EIS and individual Mancos Shale EAs to comply with NEPA.[5] BLM Resp. at 16. However, pertinent samples of these EAs reveal that BLM never performed the requisite cumulative impacts analysis of Mancos Shale development in those EAs. Indeed, the extent of BLM's EA discussions offer only that

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35 No. 1E Blanco Mesa Verde/Basin Dakota Natural Gas Well Project, EA DOI-BLM-NM-2014-0239 (Revised Oct. 2014), available at: http://www.blm.gov/nm/st/en/fo/Farmington_Field_Office/ffo_document_library/apd_ea_2015.html.

[3] *See also* Mot. Ex. G at 1-1 ("The existing 2003 RMP does not satisfactorily address the impacts of changing patterns of oil and gas development").

[4] A "cumulative impact" is the "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." 40 C.F.R. § 1508.7.

[5] In *Pennaco*, this Court clearly outlines the necessary process for reviewing the sufficiency of an agency's environmental analysis, and that is by considering the site-specific document and programmatic EIS together. 377 F.3d at 1159-60. Here, there is no evidence that the district court actually performed this review.

"[a]nalysis of cumulative impacts … was presented in the [2003] RMP."[6, 7] Because BLM's APD approvals tier to the cumulative impacts analysis in the 2003 EIS—analysis that did not include Mancos Shale development using horizontal drilling and multi-stage fracturing—the challenged approvals are arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (finding agency action is arbitrary and capricious where, as here, it "entirely faile[s] to consider" an issue).

Critically, because the 2003 EIS never anticipated or analyzed the landscape level impacts of Mancos Shale development, BLM is now preparing the Mancos Shale RMP Amendment and EIS ("Mancos RMPA/EIS") to consider these new, additional impacts *for the first time*. 79 Fed. Reg. 10,548 (Feb. 25, 2014). While BLM attempts to deflect this fact by asserting the need in the RMPA to also "update planning issues concerning the management of vegetation and land with wilderness characteristics," the agency fails to offer any record evidence contradicting the RMPA's fundamental need, as compelled by NEPA, to analyze the cumulative landscape level impacts of horizontal drilling and multi-stage fracturing technology used to target the Mancos Shale. BLM Resp. at 19.

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[6] *See, e.g.* Mot. Ex. H at 28; Mot. Ex. I at 25; Mot. Ex. J at 23-24; Mot. Ex. K at 22.

[7] BLM also cites to the 2014 Air Resources Technical Report (Gov. Ex. 5), claiming that it provides "a thorough study of the impacts of horizontal drilling and fracking on air quality." BLM Resp. at 17. While the Report includes general statements such as "[m]ost new oil and gas wells drilled today use the hydraulic fracturing process," and that "flaring emissions for the U.S. are on the rise and increased by 50% in 2011 because of the significant increase in fracking for shale oil production," the Report does not analyze how the addition of 3,960 Mancos Shale wells will contribute to cumulative air quality in the region, and therefore cannot cure analysis deficiencies of BLM's NEPA documentation. Gov. Ex. 5 at 7, 55. Moreover, "tiering to a document that has not itself been subject to NEPA review is not permitted, for it circumvents the purpose of NEPA." *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1073 (9th Cir. 2002).

Finally, BLM wrongly tries to limit this Court's equitable authority to preserve the status quo. BLM Resp. at 12-14. Courts have broad equitable power—and thus broad discretion—to remedy encroachments upon public rights, including environmental harms, and to impose preventative measures that "guard against" future agency action and the imminent risk of likely irreparable harm. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 162, 175 (2010).[8] As the Supreme Court recognized in *Monsanto*:

> The applicable [NEPA] regulations, to which the District Court owed deference, provide that during the preparation of an EIS, 'no action concerning the [agency's] proposal shall be taken which would ... [h]ave an adverse environmental impact' or '[l]imit the choice of reasonable alternatives.' 40 C.F.R. § 1506.1. Courts must remember that in many cases allowing an agency to proceed makes a mockery of the EIS process, converting it from analysis to rationalization.

Id. at 178-179 (citations omitted); *see also* 42 U.S.C. § 4332(2)(C)(v); 40 C.F.R. § 1501.2. Moreover, issues going to the justiciability of claims should be raised in the district court through a motion to dismiss, not as part of this Court's inquiry as to whether Citizen Groups have demonstrated a likelihood of success on the merits.

II. CITIZEN GROUPS SUFFER IRREPARABLE HARM

But for new horizontal drilling and multi-stage fracturing technology, Mancos Shale development would not be possible and impacts would not occur. Mot. Ex. A at 15-16, ¶¶ 59, 61. The drilling of *each* new Mancos Shale well causes irreparable harm from: (1) permanent environmental destruction; (2) harm to human health; and (3) harm from BLM's failure to comply with NEPA.

[8] *See also Winter v. Natural Res. Def. Council,* 555 U.S. 7, 51 (2008) (recognizing the essence of equity jurisdiction is the power of the Court to do equity and mould each decree to the necessities of the particular case); *eBay v. MercExchange*, 547 U.S. 388, 391 (2006) (holding injunctive relief rests within the equitable discretion of the court).

The impacts of drilling Mancos Shale wells include unique "air pollution, water usage, and surface impacts" caused by horizontal drilling and multi-stage fracturing. Mot. Ex. A at 93, ¶53 (referring *supra* at 21 ¶¶ 88-90 (citing Mot Ex. E ¶¶ 36, 66, 47)). As admitted by BLM: "All wells that will be drilled in the Mancos Shale will be horizontally drilled and fractured." July 13, 2014 Hearing, Tr. At 109, lines 21-23 (Exhibit R). Therefore, arguments attempting to conflate the impacts of vertical drilling with horizontal drilling and multi-stage fracturing—even going so far as to claim "horizontal drilling actually decreases environmental impacts"[9]—are a red herring, and only obscure the plain truth that "the particular environmental injury in this case … is irreversible once a well is fracked." Mot. Ex. A at 3. *Each* additional Mancos Shale well causes "adverse conditions that form an existing environmental milieu [in the Greater Chaco area]. One more [well] polluting air and water … may represent the straw that breaks the back of the environmental camel." *Hanly v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972). These cumulative and site-specific environmental harms support a finding of irreparable harm.[10]

BLM also misunderstands the nature of these irreparable harms suffered, claiming

[9] *See, e.g.,* Operators Resp. at 4, 7; BLM Resp. at 8.

[10] *See United States v. Power Eng'g Co.*, 10 F. Supp. 2d 1145, 1163 (D. Colo. 1998) *aff'd*, 191 F.3d 1224 (10th Cir. 1999) (recognizing "damage to the environment has occurred. Further, the damage continues. If an injunction does not issue, there is a substantial likelihood that the public health and environment will suffer ongoing irreparable harm."); *San Luis Valley Ecosystem Council v. U.S. Fish & Wildlife Serv.*, 657 F. Supp. 2d 1233, 1240 (D. Colo. 2009) (finding irreparable harm from drilling *two* exploratory oil and gas wells disturbing 14 acres of pubic land because such development would threaten, *inter alia*: "water for the community, clean air, and [a] large expanse of undeveloped land with a significant 'sense of place' and quiet[,]" and because plaintiffs "have interests in the water, wildlife, air, solitude and quiet, and natural beauty [the area] provides."); *Colo. Wild v. U.S. Forest Serv.,* 523 F. Supp. 2d 1213, 1220 (D. Colo. 2007) (accord); *Davis v. Mineta*, 302 F.3d 1104, 1115-16 (10th Cir. 2002) (accord).

that Citizen Groups "cannot show any connection between [Mancos Shale] wells and [our] alleged injuries." BLM Resp. at 9. Several of Citizen Groups' members are members of the Navajo Nation, whose ancestors have called this land home for generations, and who have slowly, well-by-well, watched the transformation of their pastoral homeland into an industrial zone. Navajo origin stories say people emerged as humans from the earth in these lands, and where ceremonial and traditional offering practices still occur.[11] To claim that these individuals are not injured by *each* additional Mancos Shale well, which adds to the cumulative burden they are forced to endure, misjudges their relationship to the Greater Chaco landscape. *S. Utah Wilderness Alliance v. Palma*, 707 F.3d 1143, 1156 (10th Cir. 2013) (recognizing as sufficient individuals who have "traversed through or within view of the parcels where oil and gas development will occur").[12] Citizen Groups' members and their families live in this landscape, including the Escrito area between Crow Mesa and Rincon Largo where the challenged wells will be drilled.[13] As the district court rightly recognized: "*Any* fracking-related environmental impacts that accrue during the pendency of this case—and it is undisputed that such impacts exist—would be irreversible." Mot. Ex. A at 91 ¶ 50 (emphasis added).

III. CITIZEN GROUPS' HARMS OUTWEIGH PURELY ECONOMIC HARM

Permanent harm to the environment, human health, and Citizen Groups' legal

[11] Mot. Ex. M ¶¶ 3, 5-7, 10; Mot. Ex. N ¶¶ 3-6, 8; Mot. Ex. O ¶¶ 3, 5, 7.
[12] *See also Friends of the Earth v. Laidlaw*, 528 U.S. 167, 169 (2000) (environmental plaintiffs' reasonable concerns about the effects of the proposed action is sufficient); *Friends of the Earth v. Gaston Copper*, 204 F.3d 149, 161 (4th Cir. 2000) (noting causation for pollution cases is not one of scientific certainty, but rather whether the pollutant causes or contributes to the kind of harm alleged in the geographic area).
[13] *Supra.* n.10; Mot. Ex. L ¶¶ 5, 12, 13.

rights outweigh the temporary, conditional, and purely economic harm to operators. As this Court and others have consistently recognized, "financial concerns alone generally do not outweigh environmental harm." *Valley Cmty. Pres. Comm'n v. Mineta*, 373 F.3d 1078, 1086 (10th Cir. 2004).[14] This case is no exception. BLM attempts to distract from the weight of precedent by citing the few exceptional cases that find otherwise, and that are clearly distinguishable.[15] Not only are the environmental harms in this case "sufficiently likely," but these harms are "undisputed" and "irreversible once a well is fracked." *Amoco*, 480 U.S. at 545; Mot. Ex A. at 91 ¶ 50, 3.

BLM marginalizes this irreversible harm by focusing on the *two* wells imminently scheduled to be drilled,[16] but then allege tens-of-millions in economic harm from a shutdown to the entire oil and gas industry in the San Juan Basin. BLM Resp. at 11. BLM cannot have it both ways. Moreover, BLM ignores the cumulative impacts from 115 Mancos Shale wells already drilled and fails to acknowledge that the drilling decisions at issue—and the economic gains derived therefrom—are subject to and conditioned upon

[14] *Amoco Prod. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (finding where environmental harm "is sufficiently likely… the balance of harms will usually favor the issuance of an injunction to protect to environment."); *Acierno v. New Castle Cnty.,* 40 F.3d 645, 653 (3d Cir. 1994) ("Economic loss does not constitute irreparable harm…"); *San Luis Valley,* 657 F.Supp.2d at 1242 (accord).

[15] *See, e.g., Sierra Club v. Bostick*, 539 F. App'x 885, 892 (10th Cir. 2013) (weighing economic harm of $500 million versus what the Court called a "minimal environmental impact" to less than one acre of water); *Amoco*, 480 U.S. at 545 (involving injury that was "not at all probable" versus the loss of $70 million); *Village of Logan v. U.S. Dep't of Interior,* 577 F. App'x 760, 768 (10th Cir. 2014) (involving a failure to show future harm where the project had already been completed).

[16] *Cf. San Luis Valley*, 657 F.Supp.2d at 1240 (finding irreparable harm from the proposed drilling of *two* exploratory wells).

compliance with NEPA.[17]

What is perhaps most troubling is that the district court's decision conflates the balancing prong with the independent bonding standard of Fed. R. Civ. P. 65 (c), the consequences of which would effectively preclude any poor plaintiff from seeking relief through a preliminary injunction, dramatically chilling efforts to vindicate the public interest against transgressions by federal agencies and powerful economic interests. Mot Ex. A. at 4 ("a money bond would have been sufficed to swing the balance-of-harms prong in the Plaintiffs' favor"), 97 ¶ 58. This Court should resolve this possible monumental shift in jurisprudence, which alone warrants an injunction to allow this Court the time to resolve that question on appeal.

IV. AN INJUNCTION IS IN THE PUBLIC INTEREST

There is an overwhelming public interest in protecting human health and the environment, as well as in ensuring BLM's compliance with NEPA.[18] *But for* the advent of new horizontal drilling and multi-stage fracturing technology, none of the challenged wells would be drilled and no harm would occur. BLM has never analyzed the

[17] *See* 30 U.S.C. § 226(p)(2) (requiring BLM to defer APD approval where it has not sufficiently completed the NEPA process); 43 C.F.R. § 3162.1(a) (requiring oil and gas operating rights to comply with applicable laws and regulations). *See also Foundation on Economic Trends v. Heckler,* 756 F.2d 143, 155 (D.C. Cir.1985) (holding "[w]here such non-federal entities to act without the necessary federal approval, they obviously would be acting unlawfully and subject to injunction.").

[18] *See Colo. Wild v. U.S. Forest Serv.,* 299 F.Supp.2d 1184, 1191 (D. Colo. 2004) (finding "overriding public interest in the preservation of [the environment] that outweighs public or private economic loss"); *San Luis Valley,* 657 F.Supp.2d at1242 (recognizing the "large volume of public comments submitted … also indicates that there is a public interest in maintaining the status quo pending proper review.")

cumulative effect of adding 3,960 Mancos Shale wells to an already impaired landscape. BLM recognizes its obligation to undertake this analysis through a new programmatic EIS, yet proceeds in approving hundreds of new wells through isolated EAs, contravening NEPA's fundamental intent. *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies must perform hard look analysis "*before* committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values").

BLM diverts attention from these facts through the equivalent of screaming fire—trumpeting millions in royalty and tax payments and the loss of hundreds of jobs. BLM Resp. at 11. In reality, royalty and tax payments will be unaffected, as Citizen Groups' motion does not challenge currently producing wells. Mot. Ex. A. at 37 ¶ 20 ("Motion applies only to wells that have not yet been drilled"). Moreover, given that there are only two drill rigs currently operating in the Mancos Shale, a preliminary injunction is unlikely to cost the alleged "100 jobs per day."[19]

BLM is required "to promote the orderly and efficient exploration, development and production of oil and gas." 43 C.F.R. § 3160.0-4. The agency cannot do this when it allows development to proceed without the benefit, as required by law, of a completed Mancos Shale RMPA. *See Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989).

CONCLUSION

For the foregoing reasons, and those raised in the original motion, Citizen Groups respectfully request that this Court grant their request for injunction pending appeal.

[19] *See* Operators Ex. 3 ¶ 6, Ex. 4 ¶ 14; BLM Resp. at 11.

RESPECTFULLY SUBMITTED this 25th day of September, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2015 a copy of this APPELLANTS' REPLY MOTION FOR INJUNCTION PENDING APPEAL was with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to the following:

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made pursuant to 10th Cir. R. 25.5;

(2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Symantec Endpoint Protection, version 12.1.4013.4013, updated September 25, 2015, and according to the program are free of viruses.

/s/ Kyle Tisdel
Kyle J. Tisdel

EXHIBIT Q

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT; SAN JUAN CITIZENS ALLIANCE; WILDEARTH GUARDIANS; and NATURAL RESOURCES DEFENSE COUNCIL,

Plaintiffs,

vs. No. CIV 15-0209 JB/SCY

SALLY JEWELL, in her official capacity as Secretary of the United States Department of the Interior; UNITED STATES BUREAU OF LAND MANAGEMENT, an agency within the United States Department of the Interior; and NEIL KORNZE, in his official capacity as Director of the United States Bureau of Land Management,

Defendants,

and

WPX ENERGY PRODUCTION, LLC; ENCANA OIL & GAS (USA) INC.; BP AMERICA COMPANY; CONOCOPHILLIPS COMPANY; BURLINGTON RESOURCES OIL & GAS COMPANY LP; AMERICAN PETROLEUM INSTITUTE; and ANSCHUTZ EXPLORATION CORPORATION,

Intervenor-Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiffs' Motion for Injunction Pending Appeal, filed August 25, 2015 (Doc. 70)("Motion"). The Court held a hearing on September 16, 2015. The primary issue is whether the Court should grant the Plaintiffs' request to enter an injunction pending appeal to prevent commencement of development on at least two

applications for permits to drill in the Mancos Shale formation in northwestern New Mexico. The Court has, in preparation for the hearing, reviewed the Memorandum Opinion and Order, filed August 14, 2015 (Doc. 63)("MOO"), denying the Plaintiffs' Motion for Preliminary Injunction, filed May 11, 2015 (Doc. 16). The Court has also carefully reviewed the parties' briefing on the Motion.

After carefully considering the parties' arguments and needs, particularly the Plaintiffs' need to appeal to the United States Court of Appeals for the Tenth Circuit as soon as possible, the Court denies the Motion. If the Court had more time to treat the Motion as a motion to reconsider, it might address in more detail at least some of the Plaintiffs' arguments. Because the Court remains confident, on this expedited basis, that it correctly decided the motion for preliminary injunction, it is unlikely to change its bottom line, even if it ultimately decided to tweak its analysis, which it is not at this time inclined to do. The four prongs of this Motion are the same, or are arguably even more rigorous, than they are for a motion for preliminary injunction. See In re Lang, 414 F.3d 1191, 1201 (10th Cir. 2005); Fed. R. Civ. P. 62(c). Because the Plaintiffs are, in essence, requesting that the Court grant it the relief, pending appeal, that the Court recently decided they were not entitled to receive, "the burden of meeting the standard is a heavy one." 11 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 2904 (3d ed. 2015). See Fullmer v. Mich. Dep't of State Police, 207 F. Supp. 2d 663, 664 (E.D. Mich. 2002)(because Rule 62(c) factors are the same as preliminary injunction factors, movant will have more difficulty establishing the first factor, likelihood of success on the merits, due to the difference in procedural posture: a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal, not merely the possibility of success on the merits); Millennium Pipeline Co., LLC v. Certain Permanent & Temp.

Easements in (No Number) Thayer Rd., 812 F. Supp. 2d 273, 275 (W.D.N.Y. 2011)("[L]ogic dictates that a court will seldom [issue an order or judgment and] then turn around and grant [a stay] pending appeal, finding, in part, that the party seeking [the stay] is likely to prevail on appeal, i.e., that it is likely that the court erred in [issuing the underlying order or judgment]." (quoting Dayton Christian Sch. V. Ohio Civil Rights Comm'n, 604 F. Supp. 101, 103 (S.D. Ohio 1984))).

The Court has carefully considered those four prongs and has done the best it can in the limited time available. The parties and the Court agree that a quick ruling by the Court will most assist the Plaintiffs in getting their request for an injunction pending appeal to the Tenth Circuit. See Fed. R. App. P. 8 ("**Stay or Injunction Pending Appeal. (a) Motion for Stay. (1) Initial Motion in the District Court.** A party must ordinarily move first in the district court . . . "). Accordingly, for the reasons stated on the record at the hearing, and in the Court's MOO, the Court declines the Motion.

IT IS ORDERED that the Plaintiffs' Motion for Injunction Pending Appeal, filed August 8, 2015, is denied.

UNITED STATES DISTRICT JUDGE

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EXHIBIT R

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

DINE CITIZENS AGAINST RUINING OUR ENVIRONMENT, et al.,

Plaintiffs,

VS. NO. CV 15-0209 JB SCY

SALLY JEWELL, et al.,

Defendants.

Transcript of Preliminary Injunction Proceedings before The Honorable James O. Browning, United States District Judge, Albuquerque, Bernalillo County, New Mexico, commencing on July 13, 2015.

For the Plaintiffs: Ms. Samantha Ruscavage-Barz; Mr. Kyle Tisdel

For the Defendants: Ms. Clare Boronow; Mr. Brad Berge; Mr. John Shepherd; Ms. Dessa Reimer; Mr. Michael Comeau; Mr. Steve Rosenbaum

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yet. The actual statement in the Federal Register notice says, "As full field development occurs, especially in the shale oil play, additional impacts may occur that previously were not anticipated in the RFD or analyzed in the RMP."

That's not a statement that those impacts are occurring right now, or that they're certain to occur. It's that they may occur. And they may occur at the time of full field development.

And as I've stated, we're nowhere near full field development at this time. We're at 156 wells out of a potential 4,000 total.

THE COURT: What do you do about, the plaintiffs' position is that the wells that haven't been drilled with conventional I should just ignore? I shouldn't be taking those into account. I should just say, Well, those weren't drilled, so we're really looking at 4,000 totally new wells.

MS. BORONOW: At this time, as far as I understand, no one anticipates drilling any conventional wells in the Mancos shale. All wells that will be drilled in the Mancos shale will be horizontally drilled and fracked. And so there will be no conventional wells that will add to that total number anticipated by the RMP at this point.