

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

Civil Action No. 1:21-cv-1268

CITIZENS FOR A HEALTHY COMMUNITY;
HIGH COUNTRY CONSERVATION ADVOCATES;
WILDERNESS WORKSHOP;
CENTER FOR BIOLOGICAL DIVERSITY;
and WILDEARTH GUARDIANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF INTERIOR,
UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the U. S. Department
of Interior;
UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture;
Federal Defendants.

PETITION FOR REVIEW OF AGENCY ACTION AND INJUNCTIVE RELIEF

Plaintiffs, CITIZENS FOR A HEALTHY COMMUNITY, HIGH COUNTRY
CONSERVATION ADVOCATES, WILDERNESS WORKSHOP, CENTER FOR
BIOLOGICAL DIVERSITY, and WILDEARTH GUARDIANS (collectively “Conservation
Groups”) allege as follows:

INTRODUCTION

1. Conservation Groups bring this civil action for declaratory and injunctive relief against the above named federal defendants, UNITED STATES DEPARTMENT OF INTERIOR, UNITED STATES BUREAU OF LAND MANAGEMENT (“BLM”), and UNITED STATES FOREST SERVICE (“USFS”), (collectively “Federal Defendants”) in accordance with the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, for violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, NEPA’s implementing regulations promulgated by the Council on Environmental Quality (“CEQ”), 40 C.F.R. §§ 1500.1 *et seq.* (1978, as amended in 1986 and 2005)¹, as well as BLM regulations, 43 C.F.R. §§ 3160 *et seq.*

2. Plaintiffs’ action arises from Defendants’ decisions to approve the North Fork Mancos Master Development Plan (“MDP”) through an Environmental Assessment (“EA”), Record of Decision (“ROD”), and Finding of No Significant Impact (“FONSI”). The MDP as approved allows for the drilling of 35 horizontal gas wells from one existing, one expanded, and three new well pads.

3. The MDP Project Area in which these activities will occur encompasses 34,906 acres, of which 25,790 acres is administered by the Grand Mesa-Uncompahgre-Gunnison

¹ CEQ amended NEPA’s regulations, effective September 14, 2020. CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020). The new regulations do not apply to the agency actions challenged here because the actions were initiated and finalized prior to September 14, 2020. Thus, unless noted, all citations to 40 C.F.R. chapter V, subchapter A refer to the 2005 regulations in effect prior to September 14, 2020.

National Forests within the Paonia Ranger District, 468 acres is administered by the BLM Uncompahgre Field Office, and 8,648 acres is private.

4. The Project Area is in close proximity to the town of Somerset, and the towns of Paonia, Hotchkiss, and Crawford, which together comprise the population centers of the North Fork Valley. The project area itself includes portions of the Thompson Divide area of the Grand Mesa, Uncompahgre and Gunnison National Forests, and at least two inventoried roadless areas. It is home to multiple species of wildlife and serves as an important source of water for agricultural and domestic use.

5. The North Fork Valley, located on the Western Slope of Colorado's Rocky Mountains, is renowned for its combination of natural beauty, exceptional recreational opportunities, unique geology, and award-winning wines, fruits, and vegetables. The Valley is home to the largest concentration of organic and chemical-free farms within the State of Colorado, and is one of two American Viticultural Areas in the State.² North Fork Valley farmers, ranchers, orchardists, and winemakers, along with a robust outdoor recreation industry, are building a strong and resilient local economy by using the Valley's resources wisely, conserving its soil, and valuing its water and air. The local economy and Valley residents depend on clean air and flowing, clean water from the headwaters of the North Fork of the Gunnison River. This bucolic valley is also home to a number of fish and wildlife species; farther downstream, the river continues to provide important fish and wildlife habitat.

² An American Viticultural Area is a delimited grape-growing region with specific geographic or climatic features that distinguish it from the surrounding regions and affect how grapes are grown. *See*, 27 C.F.R. §9.

6. The project area exists in a part of the country already experiencing disproportionate impacts from climate change. Temperatures along Colorado’s Western Slope have already risen more than 2 degrees Celsius, on average, and the frequency and severity of droughts have increased, with corresponding impacts on the agriculture and recreation economies.

7. Defendants failed to take a hard look at impacts of development under the MDP—particularly climate impacts—and did not sufficiently evaluate available alternatives. As a result, their Finding of No Significant Impact was arbitrary, capricious, and not in accordance with NEPA.

8. Conservation Groups seek a declaratory judgment and injunctive relief to remedy the violations complained of herein. Conservation Groups also seek an award of attorneys’ fees, costs, and other expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

JURISDICTION AND VENUE

9. This action arises under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h.

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1346, because this action arises under the laws of the United States and involves the United States as a defendant.

11. This action arises from an actual, present, and justiciable controversy between Conservation Groups and Federal Defendants. Conservation Groups’ interests will be adversely affected and irreparably injured if Defendants continue to violate NEPA and if the challenged decision is implemented. These injuries are concrete, particularized, and fairly traceable to

Defendants' challenged decision, providing the requisite personal stake in the outcome of this controversy necessary to invoke this Court's jurisdiction.

12. The requested relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 705 and 706. The Challenged agency action is final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

13. This action is ripe because final approval of the MDP occurred on January 28, 2020. Prior to final approval, BLM issued a Decision Notice for the non-USFS lands within the MDP area on August 15, 2019, and USFS issued its final Decision Notice for the USFS lands within the MDP area on January 10, 2020.

14. Conservation Groups have exhausted all required administrative remedies.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), because the final agency actions concern federal surface and minerals located in Colorado that BLM manages in accordance with federal statutes. Venue is also proper under 28 U.S.C. § 1391(e)(1) because agencies of the federal government are defendants having offices in or being headquartered in the State of Colorado, a substantial part of the events and omissions giving rise to this case occurred in BLM and USFS offices located in Colorado, Plaintiffs Citizens for a Healthy Community, High Country Conservation Advocates, and Wilderness Workshop are headquartered in Colorado, Plaintiff Center for Biological Diversity has offices in Denver and Crested Butte, Colorado, and Plaintiff WildEarth Guardians has an office in Denver, Colorado.

PARTIES

16. Plaintiff CITIZENS FOR A HEALTHY COMMUNITY ("CHC") is a 500-member nonprofit organization located in Paonia, Colorado. CHC was founded in 2010 for the

purpose of protecting the Delta County region’s air, water, and foodsheds from the impact of oil and gas development. CHC’s members and supporters include farmers, ranchers, vineyard and winery owners, and other concerned citizens impacted by oil and gas development, who currently live and plan to continue to live in, use, and enjoy the communities and landscapes affected by the challenged BLM action. CHC brings this action on its own behalf and on behalf of its adversely affected members.

17. Plaintiff HIGH COUNTRY CONSERVATION ADVOCATES (“HCCA”) is a nonprofit organization located in Crested Butte, Colorado with over 950 members. HCCA was founded in 1977 to conserve and protect wild places, rivers, and wildlife in and around Gunnison County. HCCA has worked on oil, natural gas, and coal bed methane development issues in Gunnison County for over a decade to prevent irreparable harm to its members’ interests. HCCA’s members use and plan to continue to live in, use, and enjoy the communities and landscapes, including public lands, affected by the challenged BLM action. HCCA brings this action on its own behalf and on behalf of its adversely affected members.

18. Plaintiff WILDERNESS WORKSHOP (“WW”) is a nonprofit organization with more than 700 members, whose mission is to protect and conserve the wilderness and natural landscapes in and around the White River National Forest, including public lands affected by the MDP. WW engages in research, education, legal advocacy and grassroots organizing to protect the ecological integrity of these lands. WW also advocates for adding lands of wilderness quality to the National Wilderness Preservation System. WW members use and plan to continue to live in, use and enjoy the communities and landscapes, including public lands, affected by the MDP. WW brings this action on its own behalf and on behalf of its adversely affected members.

19. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“the CENTER”) is a non-profit conservation organization headquartered in Tucson, Arizona, with offices in a number of states and Mexico. The Center has two offices in Colorado, located in Denver and Crested Butte. 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 has over 81,000 members and 1.7 million members and online activities. The Center’s board, staff, and members use public lands in Colorado, including lands that will be affected by the MDP, for quiet recreation, scientific research, aesthetic pursuits, and spiritual renewal. The Center brings this action on its own behalf and on behalf of its adversely affected members.

20. Plaintiff WILDEARTH GUARDIANS (“GUARDIANS”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians has offices in Colorado, Montana, New Mexico, Arizona, Washington, and Oregon. With more than 184,000 members and supporters—including more than 10,000 members and supporters in Colorado—Guardians works to sustain a transition from fossil fuels to clean energy in order to safeguard the West. Guardians has actively engaged in issues related to the federal government’s management of public lands and publicly owned fossil fuel minerals throughout the American West, including in the North Fork Valley of western Colorado. The organization and its members have an interest in ensuring that management of public lands and fossil fuels takes into account concerns such as climate change, water and air quality impacts, and cumulative impacts to the western Colorado landscape. Guardians brings this action on its own behalf and on behalf of its adversely affected members.

21. Conservation Groups and their members have concrete and particularized interests in the valley and surrounding landscape of the North Fork of the Gunnison River (hereinafter “North Fork”)—which includes the MDP Project Area—and, in particular, in the protection of fragile land, wildlands, air, water, habitat, wildlife, and communities impacted by oil and gas development and climate change, which oil and gas development contributes to.

22. Conservation Groups’ members regularly recreate on public lands that the MDP will impact, and live and work in the North Fork Valley, which will be adversely impacted by the MDP both economically and ecologically. Conservation Groups’ members derive health, recreational, inspirational, religious, scientific, educational, economic, and aesthetic benefits from their activities in this area. They enjoy hiking, camping, viewing wildlife, photography, and experiencing undeveloped lands within and near the North Fork Mancos MDP, including but not limited to the Thompson Divide area. They also engage in economic activities such as farming, agritourism, and the tourist economy, which will be adversely impacted by the implementation of the MDP.

23. Implementation of the MDP will harm Conservation Groups’ members by interfering with their recreational, scientific, and spiritual enjoyment of these lands. It will also harm members’ livelihoods and the economic prosperity of the North Fork region, which many members call home. The challenged action will lead to increased noise and air pollution, the sights and sounds of industrial activity, truck and heavy equipment traffic, and other impacts, which will undermine members’ recreational, scientific, spiritual, and economic enjoyment of the area. The challenged action will exacerbate the impacts of climate change, which are already being felt to a disproportionate degree in western Colorado. Through their members,

Conservation Groups have an interest in ensuring the MDP is as environmentally protective as possible and is implemented based on the most up-to-date and informed analysis possible.

24. The health, aesthetic, recreational, scientific, educational, religious, and procedural interests of Conservation Groups and their members have and will be adversely affected and irreparably injured by the process Federal Defendants used to approve the MDP and by the approval itself. The adverse impacts that will result from BLM's process and decision threaten actual, imminent, concrete, and particularized harm to Conservation Groups' and their members' interests.

25. Conservation Groups seek relief that will remedy the harm that they and their members have suffered. If Conservation Groups obtain their requested relief, Federal Defendants will be required to revisit the challenged MDP and take action to meaningfully evaluate and prevent, mitigate, or abate significant impacts that will result from the authorization of oil and gas development in this area. The relief sought would redress Plaintiffs' injuries.

26. Defendant DEPARTMENT OF INTERIOR is an executive department of the United States Government. The Department is responsible for protecting and managing the Nation's natural resources and cultural heritage, providing scientific information about those resources, and honoring its trust responsibilities and treaty obligations to American Indians, Alaska Natives, and affiliated Island Communities.

27. Defendant BUREAU OF LAND MANAGEMENT is an executive agency within the United States Department of Interior and is the federal agency charged with managing public lands and resources, including federal fluid mineral leases of oil and natural gas, which are at issue here.

28. In this capacity, BLM is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

29. Defendant FOREST SERVICE is an executive agency within the United States Department of Agriculture, which is charged with sustaining the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.

30. In this capacity, USFS was responsible for reviewing and approving a Surface Use Plan of Operations (SUPO) for the challenged action that complies with federal law.

LEGAL BACKGROUND

National Environmental Policy Act

31. In 1970, NEPA was enacted “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.” 40 C.F.R. § 1500.1(c). “The policies and goals set forth in [NEPA] are supplementary to those set forth in existing authorizations of Federal agencies.” 42 U.S.C. § 4335.

32. Recognizing that “each person should enjoy a healthful environment,” NEPA ensures that the federal government uses all practicable means to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,” and to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,” among other policies. 42 U.S.C. § 4331(b), (c).

33. NEPA regulations explain, in 40 C.F.R. § 1500.1(c), that:

Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

34. NEPA’s purpose is to ensure informed decision making. NEPA sets forth specific procedural requirements federal agencies must follow as they carefully gather and evaluate relevant information about the potential impact of a proposed agency action on the environment. 42 U.S.C. § 4332. NEPA is also intended to ensure that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process, thereby guaranteeing that the public is involved in and aware of agency processes. 40 C.F.R. §§ 1500.1(b); 1500.2(d); 1506.6.

35. NEPA contains “‘action-forcing’ provisions to make sure that federal agencies act according to the letter and spirit of the Act.” 40 C.F.R. § 1500.1(a).

36. These “action-forcing” provisions are implemented by the Council on Environmental Quality (“CEQ”) regulations³ through what is known as the “NEPA process,” which the CEQ regulations define to “mean[] all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.” 40 C.F.R. § 1508.21. CEQ administers NEPA and its implementing regulations, which are binding on all federal agencies. *See* 42 U.S.C. §§ 4342, 4344(3); 40 C.F.R. §§ 1501-08.

³ *See* FN 1. All references are to 40 C.F.R. §§ 1500.1 *et seq.* (1978, as amended in 1986 and 2005).

37. Federal agencies must comply with NEPA before there are “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)(v).

38. This compliance requires federal agencies to prepare a “detailed statement” regarding all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An EIS must, among other things, rigorously explore and objectively evaluate all reasonable alternatives, analyze all direct, indirect, and cumulative environmental effects, and include a discussion of the means to mitigate adverse environmental impacts. 40 C.F.R. §§ 1502.14, 1502.16. The scope of the analysis must include “[c]umulative actions,” or actions that “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same statement,” and “[s]imilar actions,” or actions that “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” 40 C.F.R. § 1508.25(a)(2), (3).

39. Agencies’ duty to consider “alternatives to the proposed action” is the “heart” of the NEPA process. 42 U.S.C. §§ 4332(2)(C)(iii), 4332(2)(E); 40 C.F.R. § 1502.14(a). Agencies are required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of resources.” 42 U.S.C. §§ 4332(2)(C)(iii) & (E); 40 C.F.R. § 1502.14. The evaluation of alternatives must constitute a “substantial treatment,” presenting the impacts of the alternatives in comparative form, “sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and public.” 40 C.F.R. § 1502.14.

40. The effects an agency is required to analyze include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative” effects. 40 C.F.R. § 1508.8.

41. Direct effects include those that “are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects include effects that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” Id. § 1508.8(b). Cumulative effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” Id. § 1508.7. “Effects” are synonymous with “impacts.” Id. § 1508.8.

42. BLM’s analysis must do more than merely identify impacts; it must also “evaluate the severity” of effects. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); 40 C.F.R. § 1502.16(a)–(b) (recognizing that agency must explain the “significance” of effects).

43. An agency may prepare an environmental assessment (“EA”) to determine whether an EIS is necessary. Id. §§ 1501.3, 1508.9. An EA must include a discussion of alternatives and the environmental impacts of the action. Id. § 1508.9.

44. If an agency decides not to prepare an EIS, an EA must “provide sufficient evidence” to support a Finding of No Significant Impact (“FONSI”). Id. § 1508.9(a)(1). Such evidence must demonstrate that the action “will not have a significant effect on the human environment.” Id. § 1508.13. An assessment of whether or not an impact is “significant” is based on a consideration of the “context and intensity” of the impact. Id. § 1508.27. “Context” refers to

the scope of the proposed action, including the interests affected. *Id.* § 1508.27(a). “Intensity” refers to the severity of the impact and must be evaluated with a host of factors in mind, including but not limited to [u]nique characteristics of the geographic area[,]” “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks[,]” and “[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).

The Administrative Procedure Act

45. The Administrative Procedure Act (“APA”) requires agencies to engage in reasoned decision-making based on a fully developed factual record. 5 U.S.C. §§ 701, *et seq.* An APA claim must be asserted to address NEPA violations set forth herein. The APA provides jurisdiction, standards of review, and available relief for persons who challenge a federal action. The APA requires agencies to substantiate their actions in a contemporaneously prepared administrative record.

46. Under the APA, a reviewing court shall, *inter alia*, “hold unlawful and set aside agency action...found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706(2)(A). Agency actions may also be set aside in other circumstances, such as where the action is “without observance of procedure required by law.” *Id.* § 706(2)(B)-(F).

BLM’s Planning and Management of Oil and Gas Operations on Federal Land

47. Oil and gas development is only one of the multiple uses managed in accord with the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.* FLPMA, in 43 U.S.C. § 1732(b), provides that, “[i]n managing the public lands,” BLM “shall, by

regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." FLPMA, in 43 U.S.C. § 1701(a)(8), further provides that BLM must manage the public lands:

[I]n 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.

48. BLM manages onshore oil and gas development through a three-phase process. Each phase is distinct, serves distinct purposes, and is subject to distinct rules, policies, and procedures.

49. In the first phase of oil and gas development, BLM prepares a Resource Management Plan ("RMP") for a particular area of public land. RMPs are prepared in accordance with FLPMA and FLPMA's planning regulations, 43 C.F.R. §§ 1600 et seq., with additional guidance from BLM's Land Use Planning Handbook (H-1601-1) ("BLM Handbook"). An RMP anticipates and limits present and future use of public lands and associated resources by establishing management priorities, as well as guiding and constraining BLM's implementation-stage management. With respect to oil and gas leasing decisions, the RMP determines which lands containing federal minerals will be open to leasing and under what conditions.

50. Underlying BLM's assumptions regarding the pace and scope of oil and gas development for the duration of the RMP is a reasonably foreseeable development scenario, which is not a NEPA or "environmental document" as that term is defined by NEPA. 40 C.F.R. § 1508.10.

51. With regard to the RMP planning process, the BLM Handbook provides:

The determination whether to amend or revise an RMP based on new proposals, circumstances, or information depends on (1) the nature of new proposals, (2) the significance of the new information or circumstances, (3) specific wording of the existing land use plan decisions, including any provisions for flexibility, and (4) the level and detail of the NEPA analysis.” The existence of any of these circumstances “suggests the need to revisit existing decisions and/or the NEPA analysis.

52. BLM is required to supplement its RMP/EIS if BLM makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information that are relevant to environmental concerns and bear on the proposed action or its impacts. 40 C.F.R. §§ 1502.9(c)(1)(i), (ii).

53. In the second phase of oil and gas development, BLM identifies the boundaries for lands it will offer for sale and proceeds to sell and execute leases for those lands through a lease sale. Leases are sold in accordance with 43 C.F.R. §§ 3120 et seq.

54. After an oil and gas lease is issued, BLM may impose conditions of approval (“COAs”) on submitted applications for permits to drill (“APDs”) that are delimited by the terms and conditions of the lease. *See* 43 C.F.R. § 3162.3-1.⁴

55. The third phase of oil and gas development occurs once a lease is issued, when the lessee is required to submit an application for permit to drill (“APD”), which the BLM must approve before the lessee may drill a well.

56. NEPA allows BLM to tier oil and gas decision-making at the APD stage to an analysis completed in an overarching RMP/EIS. 40 C.F.R. § 1508.28. Where specific issues in subsequent oil and gas decision-making processes are not covered in the RMP/EIS, BLM cannot

⁴ *See also Yates Petroleum Inc.*, 176 I.B.L.A. 144, 154 (2008) (upholding mitigation measures imposed as COAs that were more stringent than standards in the RMP).

tier to the RMP/EIS. In such a case, a site-specific NEPA analysis must be prepared which includes analysis of all relevant impacts.

STATEMENT OF FACTS

The Planning Decision

57. On January 12, 2017, the BLM and USFS made available Gunnison Energy, LLC's proposal for a 35-well MDP in Gunnison and Delta Counties.⁵

58. On January 18, 2017, the Federal Defendants issued legal notice of the North Fork Mancos MDP proposed by Gunnison Energy, LLC, and their stated intention to approve the project with an Environmental Assessment ("EA"), and initiated a 30-day scoping period.

59. On February 10, 2017, Federal Defendants extended the scoping period from 30 to 60 days.

60. On March 22, 2017, Western Environmental Law Center ("WELC") on behalf of Conservation Groups and other environmental organizations submitted comments in response to BLM's scoping notice. WELC's comments faulted the agencies for failing to prepare an EIS, failing to take a hard look at project impacts, failing to consider all reasonable alternatives, and failing to sufficiently analyze impacts to threatened and endangered species in the project area.

61. On June 5, 2017, WELC, on behalf of the same groups, submitted supplemental comments on the proposed MDP, requesting the agencies to revise their timeline for environmental review and reiterating the earlier request to complete an EIS instead of the planned EA.

⁵ A FOIA request filed by Plaintiff CHC yielded information from 2016 indicating Gunnison Energy's intent to develop a 104 well project. The Final EA for the MDP also indicates that the MDP as currently proposed is likely to be part of a larger project. *See* EA at 11.

62. On December 26, 2017, the United States Fish and Wildlife Service released a programmatic Biological Opinion (“BiOp”) for the BLM’s fluid mineral program within the Upper Colorado River Basin. The BiOp summarized impacts to four endangered Colorado River Fish Species from water depletions associated with BLM’s fluid mineral program.

63. On May 10, 2018, Federal Defendants made available the Preliminary EA for the MDP.

64. On June 8, 2018, WELC submitted comments on the Preliminary EA on behalf of Conservation Groups and other environmental organizations that raised issues including, but not limited to: the requirement to prepare an EIS; failing to take a hard look at direct, indirect and cumulative impacts in the context of air quality, human health, climate change, fracking, water quality, soils, and wildlife; failing to analyze economic impacts to the North Fork Valley community and economy; failing to consider a reasonable range of alternatives; and concerns about the validity of the leases on USFS lands that BLM had suspended.

65. On June 8, 2018, Wilderness Workshop, together with the Wilderness Society, filed comments on the Preliminary EA, which identified violations of NEPA in the issuance of leases on USFS lands, and argued that certain undeveloped oil and gas leases on USFS lands were improperly extended and should instead have expired by operation of law.

66. On June 22, 2018, Citizens for a Healthy Community submitted a comment letter requesting BLM deem invalid and exclude from the record a letter submitted by the Delta County Board of Commissioners.

67. On February 28, 2019, Federal Defendants issued a Revised Preliminary EA, which incorporated changes to the project design suggested by proponent Gunnison Energy,

LLC. These included a change in the proposed drilling method, a drastic increase in the amount of water needed to complete drilling as a result of the newly proposed method, and commensurate changes to the EA and Biological Assessment reflecting the impact of increased water needs on threatened and endangered species in the project area.

68. On April 1, 2019, Citizens for a Healthy Community submitted a supplemental comment letter on the Revised Preliminary EA regarding increased levels of total trihalomethanes in drinking water, potentially attributable to Bromide resulting from oil and gas development or prior coal mining activity.

69. Federal Defendants issued the final EA for the MDP on August 15, 2019. The EA analyzed the proposed action, and a no action or “baseline” alternative. The EA considered but ultimately eliminated four additional alternatives that contemplated alternate access routes, truck-only transport of water and sand, phased project development, and various environmental mitigation measures, respectively.

70. Also on August 15, 2019, BLM issued its ROD approving the MDP with respect to non-USFS lands, and deferring its decision as to USFS lands. The USFS issued a draft, unsigned decision notice.

71. On the same day, Federal Defendants issued their joint FONSI for the project.

72. On January 10, 2020, the USFS issued its signed decision notice and SUPO approval for the MDP.

73. On January 28, 2020, the BLM issued its signed ROD for the USFS components of the MDP.

74. The RODs issued by BLM, combined with the USFS's approval of the SUPO, constituted final agency action approving the MDP and authorizing the drilling and operation of up to 35 horizontal natural gas wells from one existing, one expanded, and three new well pads. The MDP will include associated access road and pipeline construction. The life of the project is estimated by the BLM at 30 years, during which up to 700 billion cubic feet ("bcf") of natural gas will be produced.

Background on the Climate Crisis

75. The scientific consensus is clear: as a result of greenhouse gas ("GHG") emissions, our climate is rapidly destabilizing with potentially catastrophic results, including rising seas, more extreme heatwaves, increased drought and flooding, larger and more devastating wildfires and hurricanes, and other destructive changes, many of which are already occurring. It is now conclusively established that GHG emissions from the production and combustion of fossil fuels are the predominant drivers of the climate crisis.

76. Carbon dioxide ("CO₂") emissions are the leading source of planetary heating and the largest source of GHG emissions in the United States. According to a 2017 EPA report, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2015*, carbon dioxide comprised 82.2 percent of total U.S. GHG emissions—or 5,411.4 million metric tons—in 2015. EPA's data indicates that fossil fuel combustion accounted for 93.3 percent of CO₂ emissions within the U.S. in 2015.

77. Methane ("CH₄") is an extremely potent GHG, with a global warming potential 87 times that of CO₂ over a 20-year period. Over a 100-year period, methane has a climate impact 36 times greater than that of CO₂. Large amounts of methane are released during the

extraction, processing, transportation, and delivery of oil and gas, with significant climate impacts.

78. The Intergovernmental Panel on Climate Change (“IPCC”) is a Nobel Prize-winning scientific body within the United Nations that reviews and assesses the most recent scientific, technical, and socio-economic information relevant to our understanding of climate change. In its 2014 assessment report on climate change, the IPCC provided a summary of our understanding of human-caused climate change:

- Human influence on the climate system is clear, and recent anthropogenic emissions of [GHGs] gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.
- Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.
- Anthropogenic [GHG] emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane, and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are extremely likely to have been the dominant cause of the observed warming since the mid-20th century.
- In recent decades, changes in climate have caused impacts on natural and human systems on all continents and across the oceans. Impacts are due to observed climate change, irrespective of its cause, indicating the sensitivity of natural and human systems to changing climate.
- Continued emission of [GHGs] will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive, and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in [GHG] emissions which, together with adaptation, can limit climate change risks.

- Surface temperature is projected to rise over the 21st century under all assessed emission scenarios. It is very likely that heat waves will occur more often and last longer, and that extreme precipitation events will become more intense and frequent in many regions. The ocean will continue to warm and acidify, and global mean sea level will continue to rise.

79. The IPCC issued a special report in October 2018 that examined, in greater depth, the impacts of global warming of 1.5°C above pre-industrial levels, as compared to warming of 2.0°C. The IPCC's findings included:

- Climate models project robust differences in regional climate characteristics between present-day and global warming of 1.5°C, and between 1.5°C and 2°C. These differences include increases in: mean temperature in most land and ocean regions (high confidence), hot extremes in most inhabited regions (high confidence), heavy precipitation in several regions (medium confidence), and the probability of drought and precipitation deficits in some regions (medium confidence).
- By 2100, global mean sea level rise is projected to be around 0.1 meter lower with global warming of 1.5°C compared to 2°C (medium confidence).
- On land, impacts on biodiversity and ecosystems, including species loss and extinction, are projected to be lower at 1.5°C of global warming compared to 2°C. Of 105,000 species studied, 6% of insects, 8% of plants and 4% of vertebrates are projected to lose over half of their climatically determined geographic range for global warming of 1.5°C, compared with 18% of insects, 16% of plants, and 8% of vertebrates for global warming of 2°C (medium confidence).
- For oceans, coral reefs are projected to decline by a further 70-90% at 1.5°C (high confidence) with larger losses (> 99%) at 2°C (high confidence).
- Climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C. Limiting warming to 1.5°C could reduce the number of people both exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050 (medium confidence).
- Pathways limiting global warming to 1.5°C with no or limited overshoot would require rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems (high confidence).

These systems transitions are unprecedented in terms of scale, but not necessarily in terms of speed, and imply deep emissions reductions in all sectors, a wide portfolio of mitigation options, and a significant upscaling of investments in those options (medium confidence).

- Estimates of the global emissions outcome of current nationally stated mitigation ambitions as submitted under the Paris Agreement would lead to global [GHG] emissions in 2030 of 52-58 Gt CO₂eq yr⁻¹ (medium confidence). Pathways reflecting these ambitions would not limit global warming to 1.5°C, even if supplemented by very challenging increases in the scale and ambition of emissions reductions after 2030 (high confidence). Avoiding overshoot and reliance on future large-scale deployment of carbon dioxide removal (CDR) can only be achieved if global CO₂ emissions start to decline well before 2030 (high confidence).

80. The U.S. Government Accountability Office (“GAO”) has recognized that federal land and water resources are vulnerable to a wide range of effects from climate change, some of which are already occurring. These effects include: “(1) physical effects, such as droughts, floods, glacial melting, and sea level rise; (2) biological effects, such as increases in insect and disease infestations, shifts in species distribution, and changes in the timing of natural events; and (3) economic and social effects, such as adverse impacts on tourism, infrastructure, fishing, and other resource uses.”

81. It is not too late for the United States government to take action to significantly reduce the risk of additional warming and potentially catastrophic climate disruption. Indeed, it is obligated to do so, not only as a matter of scientific and humanitarian urgency but in order to meet its commitments under the United Nations Framework Convention on Climate Change, Conference of Parties’ “Adoption of the Paris Agreement.”⁶ The Agreement, ratified on

⁶ Former President Trump withdrew the United States from the Paris Agreement, effective November 4, 2020. President Biden, on his first day in office, signed the instrument recommitting the United States to the Agreement. It officially became a party to the agreement again on February 19, 2021.

December 12, 2015, obligates 196 nations, including the United States, to take and increase concrete measures to abate climate change by reducing global greenhouse gas emissions and, among other things, “pursue efforts to limit the [average global] temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”

82. Interior Secretarial Order 3226, *Evaluating Climate Change Impacts in Management Planning* (January 19, 2001), states that “[t]here is a consensus in the international community that global climate change is occurring and that it should be addressed in governmental decision making.” SO 3226 established the responsibility of agencies to “consider and analyze potential climate change impacts when undertaking long-range planning exercises, when setting priorities for scientific research and investigations, when developing multi-year management plans, and/or when making major decisions regarding potential utilization of resources under the Department’s purview.”

83. The Government Accountability Office, in a 2007 report entitled *Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources*, concluded that the Department of the Interior had not provided specific guidance to implement Secretarial Order 3226, that officials were not even aware of Secretarial Order 3226, and that Secretarial Order 3226 had effectively been ignored.

84. Interior Secretarial Order 3289, *Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources* (September 14, 2009), reinstated the provisions of Order 3226, and recognized that “the realities of climate change require us to change how we manage land, water, fish and wildlife, and cultural heritage and

tribal lands and resources we oversee,” and acknowledged that the Department of the Interior is “responsible for helping protect the nation from the impacts of climate change.”

85. More recently, President Biden has issued two executive orders describing the urgent need to address the climate crisis and directing all branches of federal government to utilize accepted scientific methods in so doing. *See* Exec. Order No. 13990, 86 FR 7037 (Jan. 25, 2021) (“Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” signed January 20, 2021); Exec. Order 14008, 86 FR 7619 (Feb. 1, 2021) (“Tackling the Climate Crisis at Home and Abroad,” signed January 27, 2021.)

86. Executive Order 13990, directs “all executive departments and agencies . . . to immediately commence work to confront the climate crisis,” and calls for a government-wide agency review of programs and institution of scientific methods, such as the social cost of greenhouse gases, to analyze the costs and benefits of agency action relative to climate.

87. Executive Order 14008 recognizes that “we face a climate crisis that threatens our people and communities, public health and economy, and, starkly, our ability to live on planet Earth.” Exec. Ord. § 201. In pertinent part, EO 14008 establishes a government-wide approach to the climate crisis based on science, and directs the Government to,

[D]eploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth. *Id.*

88. Executive Order 14008 calls for a comprehensive review and reconsideration of the federal oil and gas leasing program, which the Department of Interior and BLM are currently engaged in. Exec. Order 14008 § 208.

89. In recognition of the consequences of human-caused climate change, federal agencies have developed a protocol for assessing the social cost of CO₂ emissions. The social cost of carbon (“SCC”) is “an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year.” Conversely, the social cost of carbon can represent “the value of damages avoided for a small emission reduction (i.e., the benefit of a CO₂ reduction).” The EPA has explained:

The [social cost of carbon protocol] is meant to be a comprehensive estimate of climate change damages and includes changes in net agricultural productivity, human health, property damages from increased flood risk, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning. However, given current modeling and data limitations, it does not include all important damages.

90. The federal Interagency Working Group’s (“IWG”) Social Cost of Carbon estimates vary according to assumed discount rates and presumptions regarding the longevity and damages caused by carbon pollution in the atmosphere, which for 2020 produced a range of between \$12 and \$123 per metric ton of CO₂. Accepted practice typically applies the median value (\$42 per metric ton for 2020) to determine the social costs of a given project, although the four values provided by the IWG offer a means of comparing alternative courses of action.

91. Although the Trump Administration, through Executive Order 13783, disbanded the IWG in March of 2017, the Social Cost of Carbon protocol has consistently remained a useful and broadly accepted tool within the scientific community for assessing the impacts of GHG emissions.

92. Executive Order 13990 reestablished the IWG. EO 13990 also stresses the importance of the SCC and related tools, including the social cost of nitrous oxide and social cost of methane (collectively social cost of greenhouse gases or “SC-GHG,” to agency decision-

making: “An accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.” Exec. Order No. 13990, 86 FR 7037 (Jan. 25, 2021)

93. Secretarial Order 3399 “prioritizes action on climate change and establishes a Departmental Climate Task Force,” at the Department of Interior. Sec. Ord. 3399 § 1, April 16, 2021. SO 3399 provides, with regard to the SC-GHG, that it can be “a useful measure to assess the climate impacts of GHG emission changes for federal proposed actions, in addition to rulemakings,” and “is an essential tool to quantify the costs and benefits associated with a proposed action’s GHG emissions *and relevant to the choice among alternatives.*” *Id.* §5(b) (emphasis added).

94. Carbon budgeting is another well-established method for estimating the impacts of GHG emissions

95. A “carbon budget” offers a cap on the remaining amount of greenhouse gases that can be emitted while still keeping global average temperature rise below scientifically-based warming thresholds.

96. The October 2018 IPCC Global Warming of 1.5°C special report provided a revised carbon budget, for a 66 percent probability of limiting warming to 1.5°C, estimated at 420 gigatons (Gt) CO₂ and 570 Gt CO₂ depending on the temperature dataset used, from January 2018 onwards. One gigaton is equivalent to 1 billion tons. The IPCC also explained that the global emissions rate has increased to 42 Gt CO₂ per year. At this rate, the global carbon budget will be expended by the end of this decade, underscoring the urgent need for transformative

global action to transition away from fossil fuel exploitation and combustion to clean, renewable energy resources.

97. To put these global carbon budgets in the specific context of domestic U.S. emissions and the United States' obligation to reduce emissions, the United States is the world's largest historic emitter of greenhouse gas pollution, responsible for 26 percent of cumulative global CO₂ emissions since 1870, and is currently the world's second highest emitter on an annual and per capita basis. Between 2003 and 2014, approximately 25% of all United States and 3-4% of global fossil fuel GHG emissions were attributable to federal minerals leased and developed by the Department of the Interior.

98. To meet the 1.5°C target, the estimated total U.S. carbon budget (for all time) is 25 Gt CO₂ to 57 Gt CO₂ on average, depending on the sharing principles used to apportion the global budget across countries. The estimated U.S. carbon budget consistent with limiting temperature rise to 2°C ranges from 34 Gt CO₂ to 123 Gt CO₂, depending on the sharing principles used. EPA estimated 6.5 Gt CO₂e total U.S. GHG emissions in 2017. Thus, under any scenario, the remaining U.S. carbon budget compatible with the Paris climate targets is extremely small.

99. Not accounting for revised calculations from its 2018 report, the IPCC, in its 2014 AR5 Synthesis Report, found that carbon emissions from burning existing fossil fuel reserves—the known belowground stock of extractable fossil fuels—would considerably exceed both 1.5°C and 2°C of warming. “For the 2°C or 1.5°C limits, respectively 68% or 85% of reserves must remain in the ground.” The reserves in currently operating oil and gas fields alone, even with no coal, would take the world beyond 1.5°C of warming. In raw magnitude, global coal, oil and gas

resources considered currently economically recoverable contain potential greenhouse gas emissions of 4,196 Gt CO₂e, with the IPCC indicating they are as high as 7,120 Gt CO₂e.

100. There remains a fundamental disconnect between public land management for energy production, particularly in the West, including public lands in the Uncompahgre Field Office and Grand Mesa-Uncompahgre-Gunnison National Forests, and the scientific consensus on the climate crisis and what must be done in the near future to mitigate its worst effects. This dissonance between scientific reality and federal land management, including the action challenged here, is particularly glaring in light of Executive Orders 13990 and 14008 and their directives to federal agencies.

101. Federal Defendants cannot take informed action to address climate change, as required by Secretarial Orders 3226, 3289, and 3399, without taking a hard look at the climate impacts of oil and gas development on our public lands.

102. The White House Council on Environmental Quality (“CEQ”), the federal agency responsible for NEPA oversight, has recognized that:

[M]any agency NEPA analyses to date have concluded that GHG emissions from an individual agency action will have small, if any, potential climate change effects. Government action occurs incrementally, program-by-program and step-by-step, and climate impacts are not attributable to any single action, but are exacerbated by a series of smaller decisions, including decisions made by the government. Therefore, the statement that emissions from a government action or approval represent only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether to consider climate impacts under NEPA. Moreover, these comparisons are not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations. This approach does not reveal anything beyond the nature of the climate change challenge itself: The fact that diverse individual sources of emissions each make

relatively small additions to global atmospheric GHG concentrations that collectively have huge impact.⁷

103. BLM is responsible for the management of nearly 700 million acres of federal onshore subsurface minerals. The ultimate downstream GHG emissions from fossil fuel extraction of federally managed minerals by private leaseholders could account for approximately 23% of total United States GHG emissions and 27% of all energy-related GHG emissions.

The MDP and Climate

104. The western United States is particularly susceptible to the effects of climate change. The West is experiencing increasing temperatures and prolonged droughts, with widespread impacts across forests, wildlife, and human communities that threaten resilience in the face of continued warming. Local economies, which rely on consistent precipitation and snowfall for surface and groundwater recharge, agriculture, recreation, and other uses, have also seen significant impacts.

105. Western Colorado exemplifies this susceptibility to the effects of climate change and is already experiencing them in the form of increasing temperatures and prolonged droughts. The Western Slope of Colorado, along with 3 counties in Utah, has warmed more than 2°C—double the global average—making it one of the largest 2°C hot spots in the continental US.⁸

⁷ Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 79 Fed. Reg. 77802 (Dec. 24, 2014). Final guidance withdrawn pursuant to 82 Fed. Reg. 16576 (Apr. 5, 2017).

⁸ Eilperin, Juliet, “2°C Beyond the Limit: This giant climate hot spot is robbing the West of its water,” The Washington Post, August 7, 2020 available at: <https://www.washingtonpost.com/graphics/2020/national/climate-environment/climate-change-colorado-utah-hot->

With the region's snowpack shrinking and melting earlier, the ground absorbs more heat. In addition, early snowmelt results in more water evaporation and less water availability for farmers later in the season. Of particular relevance to the MDP, both counties within the Project Area have already exceeded the thresholds analyzed by the IPCC report: Gunnison County has warmed more than 1.5°C and Delta County 2.1°C above historic levels.⁹

106. The impacts of these changes are widespread across forests, wildlife, and human communities, threatening the area's resilience in the face of continued warming. These impacts also have significant impact to local economies that are reliant on consistent snowfall, not only for recreational pursuits within the planning area, but also for agricultural and residential water supplies. Forty million people downstream of the Colorado River's headwaters rely on the River's water, a portion of which is derived from headwaters in the planning area.

107. A recent report on the economic impact of oil and gas development in Delta County concluded that every dollar of economic gain from the MDP had the potential to cause two dollars in loss from impacts to the county's existing tax revenue, apart from any additional costs associated with health, infrastructure, or environmental impacts. The potential losses stem from decreased property values, decreased recreation visitation, and decreased agritourism revenue.

108. Estimated direct GHGs from development under the MDP contemplate 14,733 metric tons per year of Carbon Dioxide Equivalent ("CO₂e") emissions, which include Carbon Dioxide ("CO₂"), Methane ("CH₄"), and Nitrous Oxide ("N₂O"). Emissions from the production

[spot/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most.](#)

⁹ *Id.*

phase of the project are projected to be 25,257 metric tons per year of CO₂e, and downstream or end-use emissions to be 12,953,068 metric tons per year of CO₂e. Appendix D to EA at 23.

109. Federal Defendants have failed to adequately address climate change in the MDP as NEPA requires, through robust consideration of reasonable alternatives, through evaluation of both short- and long-term climate impacts, and by use of available tools or methods generally accepted in the scientific community to evaluate the impact of GHG emissions, including the Social Cost of Greenhouse Gases and global carbon budgets.

110. Conservation Groups raised these issues in their comments and protest of the Draft and Final MDP/EA. BLM acknowledged the scientific consensus regarding climate change and that the MDP will result in the emission of GHGs, and thus contribute to the accumulation of atmospheric greenhouse gases, and potential climate change effects as projected by the Intergovernmental Panel on Climate Change. Appendix D to EA at 13-16. However, instead of taking action to meaningfully analyze, reduce, or mitigate GHG impacts from the MDP through the examination of less carbon-intensive alternatives or the imposition of conditions to address GHG emissions, BLM insists that such analysis is either not possible or not meaningful:

Given the global and complex nature of climate change, it is not possible to attribute a particular climate impact in any given region to GHG emissions from a particular source. The uncertainty in applying results from Global Climate Models to the regional or local scale (a process known as downscaling) limits the ability to quantify potential future localized physical impacts from GHGs emissions at this scale. When further information on the impacts of local emissions to climate change is known, such information would be incorporated into BLM planning and NEPA documents as appropriate.

Appendix D to EA at 17.

111. In light of this statement, Federal Defendants' stated reasons for refusing to use the Social Cost of Greenhouse Gases, carbon budgeting, or equivalent tool to analyze the

potential impacts of climate change as a result of the MDP are even less comprehensible, as those tools are designed to do precisely what Federal Defendants assert is impossible. Their reason for failing to utilize such tools is equally confounding:

Research indicates that for difficult environmental issues such as climate change, most people more readily understand if the issue is brought to a scale that is relatable to their everyday life; when the science and technical aspects are presented in an engaging way such as narratives about the potential implications of the climate impacts.

Appendix D to EA at 43 (*Internal citation omitted*).

112. The SCC not only allows the impacts of an individual action, such as the MDP, to be represented in isolation notwithstanding the “global and complex nature of climate change,” but also allows for those effects to be quantified in a way “that is relatable to . . . everyday life.”

113. This disconnect between the fundamentally incremental nature of the climate crisis and Federal Defendants’ characterization of their obligation to analyze the contribution of individual federal actions to that crisis lies at the heart of their failure to comply with NEPA. Federal Defendants failed to satisfy NEPA, in part because they chose to ignore the guidance provided by Interior Secretarial Order 3226. While subsequent to the challenged action, Secretarial Order 3390 only underscores the need for Federal Defendants to comply with NEPA in their analysis of the MDP’s contribution to GHG emissions.

114. Federal Defendants were required, but failed, to take a fact-based hard look at the GHG pollution impacts of oil and gas exploration and development allowed by the MDP, as an incremental contribution to emissions from all BLM lands and from federal agency management decisions more broadly.

115. In addition to refusing to take a hard look at climate impacts, Federal Defendants declined to consider alternatives or conditions of approval that would reduce or mitigate the expected impacts of the project. Of relevance to Conservation Groups' claims, Federal Defendants declined to meaningfully consider alternatives or COAs that would have analyzed and applied best available methane reduction technologies to all development occurring under the MDP; an alternative or COAs that would have ensured that best management practices ("BMPs") for oil and gas development applied uniformly to all lease parcels within the MDP project area; and an alternative or COAs that would have applied BMPs for roadless areas, along with a no surface occupancy requirement for leases occurring within designated roadless areas.

116. Finally, Federal Defendants all but ignored the concurrent Uncompahgre Field Office RMP revision that was occurring contemporaneously with the MDP planning process. Federal Defendants dismissed the suggestion that they should have issued the MDP under the revised RMP, based on the rationale that "the precise timing of its completion and implementation is unknown." MDP EA at 11. Given that the same field office was working on both the MDP and revised RMP, BLM presumably had some inkling that the revised RMP was nearing completion. In fact, the Decision Record for the revised RMP was issued on April 10, 2020, less than three months after the BLM issued its final Decision Record for the MDP. The revised RMP should—at a minimum—have informed the reasonably foreseeable development scenario Federal Defendants used to analyze cumulative impacts from the MDP. More comprehensively, Federal Defendants' failure to supplement their NEPA analysis with new and updated information the BLM relied on in the development of the revised RMP violated NEPA.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:

Failure to take a Hard Look at Greenhouse Gas Emissions

117. Conservation Groups incorporate by reference all preceding paragraphs.

118. NEPA requires a federal agency's EA to present a hard look at the effects of proposed major federal actions and alternatives. These effects include "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative" effects. 40 C.F.R. § 1508.8.

119. Mere quantification of projected greenhouse gas emissions does not constitute the requisite hard look required by NEPA to fully analyze direct, indirect, and cumulative impacts to people and the environment of these emissions. 40 C.F.R. §§ 1508.7, 1508.8.

120. Federal Defendants failed to analyze downstream indirect impacts of the wells to be developed under the MDP, and failed to analyze the cumulative impacts of project emissions in combination with past, present, and reasonably foreseeable future actions in the North Fork Valley, regionally, and nationally, specifically with regard to existing and projected federal fossil fuel development under the revised Uncompahgre RMP and other plans. 40 C.F.R. § 1508.7.

121. Federal Defendants all but ignored the contemporaneous RMP planning process in their NEPA review. While the final ROD for the MDP was released less than three months before the revised Uncompahgre Field Office Resource Management Plan and EIS, it was prepared under the stale 1989 Resource Management Plan and the 1991 Land and Resource

Management Plan¹⁰ for the Grand Mesa, Uncompahgre and Gunnison National Forests, neither of which address oil and gas development in light of the present scientific, technological, or economic contexts. This fact alone calls into question the accuracy and adequacy of Federal Defendants' reasonably foreseeable development assumptions and consequent analysis of resource impacts, including cumulative impacts.

122. Federal Defendants also failed to take a hard look at the context and intensity of the direct, indirect, and cumulative greenhouse gas emissions from the MDP. NEPA requires such an analysis to determine whether these emissions will have a significant impact. 40 C.F.R. § 1508.27. Federal Defendants incorrectly assert that in the absence of policies setting specific greenhouse gas concentration levels, it is impossible to identify regional or global impacts from a specific project.

123. Where information relevant to foreseeable adverse impacts is unavailable, agencies must nonetheless bear in mind NEPA's mandate to "develop methods and procedures ... which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. § 4332(2)(B). Agencies must also evaluate impacts for which relevant information is lacking "based upon theoretical approaches or research methods generally accepted in the scientific community." 40 C.F.R. § 2502.22(b)(4).

124. As described above, one widely accepted approach to evaluating the impact of greenhouse gas emissions is to estimate the costs of those emissions to society through the Social

¹⁰ The Grand Mesa, Uncompahgre and Gunnison National Forests Land and Resource Management Plan is currently undergoing revision, as it was during the pendency of the MDP planning process.

Cost of Greenhouse Gases; another is through the use of carbon budgeting. These tools are formulated to be easy for agencies to use and easy for the public to understand. These protocols estimate the global financial cost of each additional ton of greenhouse gas pollution emitted into the atmosphere, taking into account factors such as diminished agricultural productivity, droughts, wildfires, increased intensity and duration of storms, ocean acidification, and sea-level rise.

125. In the MDP EA, Federal Defendants failed to take a hard look at the project's greenhouse gas emissions because they declined to employ either of these protocols, or any other quantitatively sound methodology, to assess the impact of the climate pollution caused by the production and combustion of the federal mineral resources that will be developed under the MDP, opting instead for a "qualitative approach" that fails utterly to describe the severity or impact of emissions that will occur as a result of the MDP.

126. Federal Defendants also predicated their refusal to utilize tools such as the Social Cost of Greenhouse Gases on the fact that they did not conduct a cost-benefit analysis. Defendants cannot have it both ways—while it is true that the absence of a cost-benefit analysis does not compel use of tools such as the Social Cost of Greenhouse Gases, the care they took to avoid a cost-benefit analysis resulted in a GHG analysis that fails to meaningfully consider both the scope and intensity of impacts associated with project greenhouse gas emissions as required by 40 C.F.R. § 1508.27.

127. Federal Defendants moreover conducted their already deficient analysis in the context of a stale RMP and refused to consider the implications of the soon to be revised Uncompahgre RMP to their analysis. Federal Defendants' failure to meaningfully analyze the

emissions they acknowledge will occur as a result of this development is arbitrary, capricious, an abuse of discretion, and contrary to NEPA's requirements. 42 U.S.C. § 4332(C)(ii), its implementing regulations, in 40 C.F.R. § 2508.8, and the APA, 5 U.S.C. § 706(2)(A).

**SECOND CLAIM FOR RELIEF:
Failure to take a Hard Look at Methane Emissions**

128. Conservation Groups incorporate by reference all preceding paragraphs.

129. Federal Defendants are required to provide a hard look analysis of the impacts before there are “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” Id. § 4332(2)(C)(v); see also 40 C.F.R. §§ 1501.2, 1502.5(a).

130. In the EA, Federal Defendants failed to take a hard look at the environmental impacts of the methane pollution that is projected under the MDP, including by failing to properly quantify the magnitude of existing methane pollution from oil and gas emissions sources in the planning areas, and by using an outdated global warming potential for methane, thereby underestimating the impacts of methane emissions and their contribution to the climate crisis by an order of magnitude.

131. Federal Defendants' failure to take a hard look at methane waste is arbitrary, capricious, an abuse of discretion, and contrary to NEPA, 42 U.S.C. § 4332(2)(C)(ii), its implementing regulations in 40 C.F.R. §§ 1501.2, 1502.5(a), and the APA, 5 U.S.C. § 706(2)(A).

**THIRD CLAIM FOR RELIEF:
Federal Defendants Failed to Consider a Reasonable Range of Alternatives and
Conditions of Approval.**

132. Conservation Groups incorporate by reference all preceding paragraphs.

133. NEPA requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). Federal Defendants must consider “alternatives to the proposed action.” *Id.* § 4332(2)(C)(iii).

134. This analysis must “[r]igorously explore and objectively evaluate all reasonable alternatives” to their proposed action. 40 C.F.R. § 1502.14(a). This analysis is the “heart” of the EA. *Id.* at § 1502.14.

135. BLM also failed to consider possible COAs to reduce or mitigate project impacts. 43 C.F.R. § 3162.3-1.

136. Federal Defendants violated NEPA by preparing, issuing, and approving the MDP without considering all reasonable alternatives and COAs. 42 U.S.C. §§4332(2)(C)(iii), (E); 40 C.F.R. §1502.14.

137. Federal Defendants did not meaningfully consider, evaluate, and disclose all reasonable alternatives and COAs. These omissions include but were not limited to Federal Defendants’ failure to evaluate alternatives or COAs to meaningfully reduce emissions, particularly with regard to the application of best available technology for reduction of methane, and an alternative that adequately protects important roadless values in the MDP area. Federal Defendants dismissed the no-action alternative as not meeting the purpose and need of the project. Federal Defendants’ conclusory dismissal—without meaningful analysis—of diverse resource-protective alternatives violates NEPA and its implementing regulations. The existence of reasonable but unexamined alternatives and COAs renders a NEPA analysis inadequate.

138. Federal Defendants' failure to consider a reasonable range of alternatives and COAs with respect to the resource protections described above is arbitrary and capricious and unlawful in violation of NEPA, 42 U.S.C. § 4332(2)(C)(iii), (E), its implementing regulations, in 40 C.F.R. § 1502.14(a), and the APA, 5 U.S.C. § 706(2)(A).

**FOURTH CLAIM FOR RELIEF:
Federal Defendants' Finding of No Significant Impact was Arbitrary and Capricious**

139. Conservation Groups incorporate by reference all preceding paragraphs.

140. Under NEPA, Defendants are required to prepare an EIS for major federal actions that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.4, 1508.3 (“*Affecting* means will or may have an effect on”). “Significant” requires consideration of both context and intensity, in which both short and long-term impacts are relevant. 40 C.F.R. § 1508.27. The intensity or severity of the impacts must be evaluated in light of various factors including but not limited to: unique characteristics of the geographic area, whether the action is highly controversial, whether it may have uncertain or unknown risks, the degree to which the action may establish precedent for future similar actions, whether there are cumulatively significant impacts, whether the action may adversely affect or cause loss or destruction of significant resources, the degree to which the action may affect endangered or threatened species or critical habitat, and whether the action threatens a violation of law imposed for the protection of the environment. 40 C.F.R. §§ 1508.27(a), (b)(3) – (10).

141. Numerous deficiencies in Federal Defendants' analysis preclude a justifiable finding of no significant impact. For example, Federal Defendants' refusal to conduct a cost-benefit analysis renders their conclusion that the development will not significantly affect the human environment arbitrary. Without such an analysis there is no support for the Federal

Defendants’ assertion that the development authorized by the MDP will not significantly affect the human environment in the project area—whether that environment is the economic conditions prevailing in Delta County or the environmental conditions in and around the project area. Therefore, the possible effects on the human environment are highly uncertain. 40 C.F.R. § 1508.27(b)(5); EA at 56.

142. Given the magnitude of the proposed action and possible direct, indirect and cumulative impacts to the human environment, Federal Defendants’ finding of no significant impact is unsupportable and was arbitrary, capricious an abuse of discretion, and contrary to NEPA, 42 U.S.C. § 4332(2)(C), its implementing regulations, in 40 C.F.R. § 1508.27, and the APA, 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

WHEREFORE, Conservation Groups respectfully request that this court:

- A. Declare Federal Defendants’ actions in approving the North Fork Mancos Master Development Plan violated NEPA, the regulations and policies promulgated thereunder, and the APA;
- B. Vacate and set aside Federal Defendants’ actions, including the MDP EA, Decision notices, and Findings of no Significant Impact;
- C. Enjoin Federal Defendants from approving the development of oil and gas resources within the MDP area until they have demonstrated NEPA compliance;
- D. Remand this matter to BLM and USFS for further action in accordance with applicable laws;

E. Retain continuing jurisdiction of this matter until BLM and USFS fully remedy the violations of law complained of herein;

F. Award Conservation Groups their fees, costs, and other expenses as provided by applicable law; and,

G. Issue such additional and further relief as Conservation Groups subsequently request and this court may deem just, proper, and equitable.

RESPECTFULLY SUBMITTED this 10th day of May, 2021

/s/ Melissa Hornbein

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