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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

MONTANA ENVIRONMENTAL)	
INFORMATION CENTER, OIL AND GAS)	Case No. CV-08-178-M-DWM
ACCOUNTABILITY PROJECT, a project)	
of EARTHWORKS, and WILD EARTH)	COMPLAINT FOR DECLARATORY
GUARDIANS,)	AND INJUNCTIVE RELIEF
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES BUREAU OF LAND)	
MANAGEMENT, an agency within the)	
United States Department of the Interior,)	
)	
Defendant.)	
)	

I. INTRODUCTION

1. MONTANA ENVIRONMENTAL INFORMATION CENTER, OIL AND GAS ACCOUNTABILITY PROJECT, a project of EARTHWORKS, and WILD EARTH GUARDIANS (“Citizen Groups”), hereby bring this civil action for declaratory and injunctive relief against the U.S. Bureau of Land Management (“BLM”) in accord with the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, for violations of: the Federal Land Policy and Management, 43 U.S.C. §§ 1701 *et seq.*; Mineral Leasing Act (“MLA”), 30 U.S.C. §§ 181 *et seq.*, as amended; National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*; Department of the Interior Secretarial Order 3226 (January 19, 2001); and implementing regulations and policies established pursuant to these federal statutes and executive orders.

2. This action arises out of four consecutive federal oil and gas lease sales held on April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 for federal mineral resources located within the State of Montana, as well as BLM’s underlying decisions and actions that purport to justify the lease sales and satisfy BLM’s obligations pursuant to FLPMA, MLA, NEPA, and Secretarial Order 3226.

3. Three of the oil and gas leases at issue in this action – lease parcels MT 06-08-04, MT 08-08-11, and MT 08-08-12 – were justified on the basis of the 1981 Lewiston Oil and Gas Environmental Assessment. The sufficiency of the 1981 Lewiston Oil and Gas Environmental Assessment to support BLM’s leasing decisions was expressly at issue in *Mont. Wilderness Assn. v. Fry*, 310 F.Supp.2d 1127 (D. Mont. 2004) (CV 00-39-GF-DWM). *See also Mont. Wilderness Assn. v. Fry*, 310 F.Supp.2d 1127 (D. Mont. 2004) (addressing remedy).

4. Oil and gas development emits greenhouse gas (“GHG”) pollution to the atmosphere and GHG pollution contributes to global warming. GHG pollution – in particular

methane, a GHG 25 times as potent as carbon dioxide – is the product of inefficient, wasteful oil and gas operations. Otherwise known as natural gas, methane, if not wasted through emissions to the atmosphere, is also a valuable commercial product used to heat homes, businesses, and schools. In violation of federal law, BLM’s planning and decisionmaking process for the April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 oil and gas lease sales failed to address GHG pollution by quantifying and reducing GHG pollution.

5. Oil and gas development and global warming impacts the environment. In violation of federal law, BLM’s planning and decisionmaking process for the April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 oil and gas lease sales failed to address these impacts.

6. This action also challenges BLM’s failure to provide the public with environmental information regarding the April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 lease sales sufficient to permit the public to weigh in with their views regarding global warming and the responsible development of our public oil and gas resources and thereby inform BLM’s April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 lease sales.

II. JURISDICTION & VENUE

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1346 because the United States is a Defendant and this action arises under the laws of the United States.

8. This action reflects an actual, present, and justiciable controversy between the Citizen Groups and BLM; the Citizen Groups’ interests in BLM public lands, responsible energy development, and the environment within Montana will be adversely affected and irreparably

injured if BLM continues to violate federal laws as alleged herein, and if BLM affirmatively implements the decisions that the Citizen Groups challenge herein.

9. The requested relief is authorized by 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

10. The requested relief would redress the actual, concrete injuries to the Citizen Groups caused by the BLM's failure to comply with duties mandated by FLPMA, MLA, NEPA, Secretarial Order 3226, and regulations and policies promulgated pursuant to these federal statutes and the secretarial order.

11. The challenged agency action is final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, & 706.

12. The Citizen Groups have exhausted any and all available and required administrative remedies.

13. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e). A substantial part of the events and omissions giving rise to this case occurred in BLM offices located in Montana, and this case involves public lands and environmental interests located in Montana.

III. PARTIES

14. Plaintiff MONTANA ENVIRONMENTAL INFORMATION CENTER is a 501 (c)(3) nonprofit organization founded in 1973 with approx 3,000 members throughout the United States and the State of Montana. MEIC is dedicated, in part, to the preservation and enhancement of the natural resources and natural environment of Montana and to the gathering and disseminating of information concerning the protection and preservation of the human environment through education of its members and the general public concerning their rights and obligations under local, state and federal environmental protection laws and regulations. The

MEIC is also dedicated, in part, to assuring that federal officials comply with and fully uphold the laws of the United States that are designed to protect and enhance the environment from pollution.

15. Plaintiff OIL AND GAS ACCOUNTABILITY PROJECT is a program of EARTHWORKS, a 501(c)(3) nonprofit dedicated to working with communities to reduce and prevent the devastating impacts of drilling, digging, and mining. OGAP/EARTHWORKS works with community groups, landowners, organizations, and individuals to protect our environment, public health, and communities. OGAP/EARTHWORKS provides technical, policy, and organizing assistance, and serves as a clearinghouse of information for organizations and individuals concerned with oil and gas development in Montana and throughout the United States. As a nonprofit organization dedicated to supporting the public interest on a number of issues associated with oil and gas development, OGAP/EARTHWORKS's interests in this process are based on its interest in participating in, and informing the public at large about, energy policy in the United States.

16. Plaintiff WILD EARTH GUARDIANS is a non-profit corporation with approximately 9,000 members and supporters throughout the United States. WildEarth Guardians protects and restores wildlife, wild rivers and wild places in the American West. WildEarth Guardians is based in Santa Fe, New Mexico and has an office in Bozeman, Montana. WildEarth Guardians is dedicated to protecting the American West from the dangers it faces from the climate crisis. WildEarth Guardians members and staff have recreational, aesthetic, scientific, professional, and spiritual interests in the areas at issue in this protest and in areas that would be impacted if the proposed actions go forward.

17. The Citizen Groups' members use and enjoy the wildlands, wildlife habitat, rivers, streams, and healthy environment on BLM and other lands in Montana for hiking, fishing, hunting, camping, photographing scenery and wildlife, wildlife viewing, aesthetic enjoyment, spiritual contemplation, and engaging in other vocational, scientific, and recreational activities. Citizens Groups' members derive recreational, inspirational, religious, scientific, educational, and aesthetic benefit from their activities. Citizen Groups' members intend to continue to use and enjoy BLM and other Montana public lands, wildlands, wildlife habitat, rivers, streams, and healthy environment frequently and on an ongoing basis in the future, including this winter, spring, summer, and fall.

18. The Citizen Groups have a procedural interest in BLM's full compliance with FLPMA, NEPA, MLA, and Secretarial Order 3226's planning and decisionmaking processes for the April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 oil and gas leases, and BLM's attendant duty to substantiate its decisions in the record for these lease sales.

19. The aesthetic, recreational, scientific, educational, religious, and procedural interests of the Citizens Groups' members have been adversely affected and irreparably injured by the process by which BLM conducted the April 8, 2008, June 17, 2008, August 26, 2008, and November 4, 2008 oil and gas lease sales, and will be adversely affected and irreparably injured by BLM's efforts to enable and authorize irresponsible development on the leases sold by BLM. These are actual, concrete injuries caused by BLM's failure to comply with mandatory duties under FLPMA, NEPA, MLA, and Secretarial Order 3226. These injuries would be redressed by the relief sought.

20. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT is an agency within the United States Department of the Interior and is responsible for managing

public lands and resources in Montana and, in that capacity, is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

IV. OPERATIVE FACTS

A. Global Warming

21. Global warming has been intensively studied and acknowledged at the global, national, regional, and, increasingly, local scale.

22. Montana Governor Brian Schweitzer explained in 2005 that:

Montana has been locked in the grip of a drought for most of the past two decades. During that time, we have seen some of the lowest precipitation levels in the state's recorded history, and Montana is not alone in this suffering. Most Western states find themselves in the same situation. Chronic drought has severely impacted our lake levels, our crop and livestock production, our forests, our fish and wildlife resources, and our tourism industry. I am very concerned about the connection these conditions have to global climate change, and ultimately the effect they will have on Montana's short and long-term future.

23. Scientists with the Department of the Interior's United States Geological Survey predict that Montana's own Glacier National Park, a UNESCO World Heritage Site, will lose its glaciers by 2030. www.nrmsc.usgs.gov/research/glaciers.htm.

24. A July 2008 report by Montana's Clark Fork Coalition reports that climate change is leading to lower river flows and lake levels, declines in fish and wildlife populations, including imperiled species like the westslope cutthroat trout, bull trout, and grizzly bear, and more catastrophic fires and drier summers.

25. In Montana, drought and higher temperatures have led to fishing closures and restrictions to sustain fish populations in eight out of the last ten years, counting from 2007.

26. The Nobel-prize winning Intergovernmental Panel on Climate Change ("IPCC") has determined that "[w]arming of the climate system is unequivocal" and, further, that

“[o]bservational evidence from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases.”

www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf.

27. The IPCC, in a report (www.ipcc.ch/SPM13apr07.pdf), has identified numerous observed and future impacts to the environment from global warming including temperature increases, degradation of terrestrial and aquatic ecosystems, increased risk of species extirpation, and negative impacts to ecosystem goods and services, such as food and water supply.

28. Dr. James Hansen of NASA’s Goddard Institute for Space Studies has warned that we are approaching various “tipping points” – i.e., points in the climate system past which feedback mechanisms will drive global warming at accelerating rates beyond human control.

29. The Department of the Interior has explained in Secretarial Order 3226, *Evaluating Climate Change Impacts in Management Planning* (January 19, 2001), 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.”

30. 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* (“2007 GAO Report”), 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.

31. The 2007 GAO Report identified a myriad of substantial and specific environmental impacts to federal public lands including “drought, floods, glacial melting, sea level rise, and ocean acidification.”

32. “The American West has heated up even more than the world as a whole” and “in the five latest years” experienced warming “70 percent[] more than the overall planet’s warming,” according a report in 2008 entitled *Hotter and Drier: The West’s Changed Climate* published by the Rocky Mountain Climate Organization and Natural Resources Defense Council.

33. Scientists have “demonstrat[ed] statistically that the majority of the observed low frequency changes in the hydrological cycle (river flow, temperature, and snow pack) over the western U.S. from 1950-1999 are due to human-caused climate changes from greenhouse gases and aerosols.” See Barnett, Tim P., *et al.*, *Human-induced changes in the hydrology of the western United States*, revised version submitted to the Journal *Science* January 10, 2008, and published in *Science Express* January 31, 2008.

34. In addition to the research and science discussed above, the Citizen Groups, through the administrative process giving rise this action, provided BLM with information regarding the observed and anticipated impacts from global warming to our environment, including relative to cumulative environmental stresses caused by other natural and human activities.

35. In 1997, the Council on Environmental Quality (“CEQ”) issued draft guidance which provided that the “NEPA process provides an excellent mechanism for consideration of ideas related to global climate change.” CEQ concluded that “it would be prudent to consider in the context of planning for major federal actions, both their potential impact on emissions of greenhouse gases and how climate change might itself affect major federal projects.”

36. The Minerals Management Service (“MMS”), which manages our country’s offshore oil and gas resources, established NEPA Procedures for addressing global warming considerations in NEPA documents, citing to CEQ’s 1997 guidance document.

37. MMS has inventoried GHG emissions caused by oil and gas leasing on the Outer Continental Shelf and considers the contribution of such leases to global warming in both programmatic and lease-specific NEPA analyses.

38. The National Park Service's Handbook for Environmental Impact Analysis has noted that programmatic documents are often "ideal places" to address global warming issues.

39. BLM has itself acknowledged global warming in the context of geothermal and solar energy development. For example:

- a. BLM's Information Notice of Planning Criteria for the Programmatic Environmental Impact Statement for Leasing of Geothermal Resources provides that the "BLM will consider and analyze relevant climate change impacts in its land use plans and associated NEPA documents, including the anticipated climate change benefits of geothermal energy." 73 Fed. Reg. 28500, 28501 (May 16, 2008).
- b. BLM's Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Solar Energy Development, Develop and Implement Agency-Specific Programs, Conduct Public Scoping Meetings, Amend Relevant Agency Land Use Plans, and Provide Notice of Proposed Planning Criteria identifies provides that "BLM will consider and analyze relevant climate change impacts in its land use plans and associated NEPA documents, including the anticipated climate change benefits of solar energy." 73 Fed. Reg. 30908, 30911 (May 29, 2008).

B. Global Warming, GHG Pollution, and Oil and Gas

40. Oil and gas production, processing, transmission, and distribution activities emit GHG pollution into the atmosphere, contributing to global warming.

41. The IPCC defines GHGs as:

those gaseous constituents of the *atmosphere*, both natural and *anthropogenic*, that absorb and emit radiation at specific wavelengths within the spectrum of *infrared radiation* emitted by the Earth's surface, the atmosphere, and clouds. This property causes the *greenhouse effect*. Water vapor (H₂O), *carbon dioxide* (CO₂), *nitrous oxide* (N₂O), *methane* (CH₄), and *ozone* (O₃) are the primary greenhouse gases in the Earth's atmosphere. Moreover there are a number of entirely human-made greenhouse gases in the atmosphere, such as the *halocarbons* and other chlorine- and bromine-containing substances, dealt with under the *Montreal Protocol*. Besides CO₂, N₂O, and CH₄, the *Kyoto Protocol* deals with the greenhouse gases *sulfur hexafluoride* (SF₆), *hydrofluorocarbons* (HFCs), and *perfluorocarbons* (PFCs).

42. According to the American Petroleum Institute ("API"), key sources of GHGs associated with oil and gas exploration, production, and processing (i.e., the upstream end of the oil and gas industry) include combustion sources, such as natural gas compressor engines, vented methane from sources such as tanks, pneumatic devices, well completions and workovers, and gas dehydration and sweetening, and vented CO₂ from coalbed methane gas. These activities additionally involve the emission of GHGs from electricity imports.

43. According to the API, key sources of GHGs in downstream oil and gas operations include the transportation and distribution of oil and gas, and oil refining.

44. According to the API, other oil and gas industry operations which release GHGs include petrochemical manufacturing, mining, and heat and electricity generation.

45. Given the existing atmospheric GHG concentration in the atmosphere (385 parts per million of carbon dioxide equivalent ("CO₂e")), science-based estimates of the requisite maximum concentration necessary to provide a measure of climatic stability (350 parts per million CO₂e), and the potential for tipping points as the concentration increases, incremental GHGs emissions throughout the lifecycle of oil and gas production, processing, transmission, and distribution process may induce cumulatively significant impacts to the environment.

46. GHG emissions from oil and gas operations can be quantified using available emissions factors and methodologies.

47. According to the State of Montana's September 2007 Final Montana Greenhouse Gas Emissions Inventory and Reference Case Projections 1990-2020G, oil and gas operations released 4.7 million metric tons of CO₂e in 2005, more than 12% of the state's total GHG emissions. The 2007 GHG Inventory projects that GHGs from oil and gas operations in Montana will increase by more than 10% by 2020.

48. In Montana's sister state of Wyoming, the State of Wyoming's Final Wyoming Greenhouse Gas Emissions Inventory and Reference Case Projections 1990-2020 found that oil and gas operations in Wyoming released 11.5 tons of CO₂e in 2005, more than 20% of the state's total GHG emissions. Furthermore, by 2020, GHGs from oil and gas operations are projected to increase by nearly 10%.

49. Oil and gas development in Wyoming is relevant to Montana because of cross-boundary impacts and development in, for example, the Powder River Basin.

50. The API has identified emissions factors and methodologies to estimate GHG emissions from a host of oil and gas operations, including compressor engines, fugitive sources, pneumatic controllers, and among many other pieces of equipment and processes.

51. The API Compendium provides the best available information to quantify GHG emissions from oil and gas operations. A recent review by the California Energy Commission found that the API Compendium's "methods and data on evaluating combustion emissions and refinery emissions are considered the best information." Although this same review recommended refinement of certain API Compendium methodologies, the review found the Compendium to be accurate and reliable.

52. The California Climate Action Registry is finalizing protocols for quantifying GHGs from the natural gas transmission and distribution industry sector. In a 2007 final draft report, the California Climate Action Registry identified methods to quantify GHG emissions from combustion sources, including compressor engines, direct emissions from process vents, fugitive emissions, and indirect GHG emissions. Although the final draft report focuses on the natural gas transmission and distribution sector, many of the processes and equipment used by this sector are also used at the exploration and production stage of natural gas development.

53. GHG emissions from oil and gas development can be reduced or eliminated through the deployment of often cost-effective measures including, for example:

- a. Retrofitting or replacing high-bleed pneumatic controllers with low-bleed or no-bleed pneumatics.
- b. Requiring green completions to be used when completing CBM and conventional natural gas wells. Green completions essentially capture methane and other gases typically vented or flared during completion flowback operations.
- c. Enhancing maintenance of compressor engines, including periodic replacement of compressor rods and rod packing.
- d. Replacing glycol dehydrators with desiccant dehydrators, utilizing flash tank separators at glycol dehydrators, optimizing glycol circulation rate, or utilizing other zero emission dehydrator technologies.
- e. Installing plunger lift systems in gas wells.
- f. Conducting directed inspection and maintenance at wellheads, compressor stations, and processing plants to reduce fugitive leaks from valves, flanges, and other connectors.

- g. Installing vapor recovery units on crude oil, condensate, or other tanks storing liquid petroleum products.

54. The Environmental Protection Agency's ("EPA's) Natural Gas STAR program is designed to "encourage[] oil and natural gas companies – both domestically and abroad – to adopt cost-effective technologies and practices that improve operational efficiency and reduce emissions of methane, a potent greenhouse gas and clean energy source." *See* www.epa.gov/gasstar/.

55. According to EPA's Inventory of U.S. GHG Gases and Sinks: 1990-2006, dated April 2008, oil and gas systems are the largest human-made source of methane emissions and account for 24% of methane emissions in the United States – 2% of the U.S.'s total GHG emissions.

56. EPA's Natural Gas STAR program identifies over 120 cost-effective GHG reduction technologies and practices.

57. EPA's Natural Gas STAR program reported on its website that its partners achieved GHG emission reductions totaling 92.3 billion cubic feet. *See* www.epa.gov/gasstar/accomplishments/index.html#four. The domestic reductions alone are "equivalent to":

- a. "The additional revenue of nearly \$648 million in natural gas sales."
- b. "The avoidance of 37.4 million tons of CO₂ equivalent."
- c. "The CO₂ emissions from the electricity use of nearly 5 million homes per year."
- d. "The annual greenhouse gas emissions from approximately 6.8 million passenger vehicles."
- e. "The carbon sequestered annually by 8.5 million acres of pine or fir forests."

58. The Four Corners Air Quality Task Force has identified, in a November 1, 2007 report, methane reduction measures for oil and gas operations.

59. The State of Montana's November 2007 Climate Change Action Plan recommends that the oil and gas production sector reduce emissions by: (a) using new efficient compressors; (b) optimizing gas flow to improve compressor efficiency; (c) improving performance of compressor cylinder ends; (d) capturing compressor waste heat; (e) replacing compressor driver engines; and (f) using waste heat recovery boilers.

60. Companies producing oil and gas in Montana have reported success in utilizing a number of methane reduction measures including EnCana Oil and Gas (USA), Marathon Oil, and Burlington Resources. Specifically:

- a. EnCana Oil and Gas (USA) has replaced a number of high-bleed pneumatic controllers with low-bleed pneumatics, installed a number of plunger lifts, and utilized green completions, replaced gas-actuated pumps with solar electric pumps, and utilized vapor recovery units.
- b. Marathon Oil has undertaken a number of methane reduction measures, including installing vapor recovery units, replacing high-bleed pneumatic controllers with low or no-bleed pneumatic controllers, and installing plunger lifts.
- c. Burlington Resources, a subsidiary of ConocoPhillips, has successfully reduced methane emissions through the use of plunger lift systems.

61. Montana's Climate Action Plan recommends that greenhouse gas emissions be reduced to 1990 levels by 2020.

62. BLM has yet to follow the lead of EPA, the State of Montana, and private industry to address global warming and its nexus with responsible energy development.

C. BLM's Three-Phase Oil & Gas Planning and Management Framework

63. BLM manages onshore oil and gas development through a three-phase process.

64. Each phase is distinct, each phase serves distinct purposes, and each phase is subject to distinct rules, policies, and procedures.

65. In the first phase, BLM prepares a Resource Management Plan ("RMP").

66. RMPs are prepared in accordance with 43 C.F.R. Part 1600.

67. RMPs project present and future use of public lands and their resources by establishing management priorities and guiding and constraining BLM's implementation-stage management.

68. Relative to oil and gas development, at the RMP phase, BLM determines what areas are available for leasing. In some instances, Montana's leasing availability decisions were not made in RMPs but, instead, in pre-FLPMA Management Framework Plans and oil and gas leasing analyses.

69. At the RMP-phase, BLM does not identify specific leaseholds for sale.

70. In the second phase, BLM identifies the boundaries for lands to be offered for sale and proceeds to sell those leases through a lease sale.

71. The leaseholds offered for sale are typically nominated by oil and gas companies through the submission of an "Expression of Interest."

72. Leases are sold in accordance with 43 C.F.R. Part 3120.

73. Prior to the point BLM sells a lease, BLM may refuse to lease public lands, even if public lands were made available for leasing pursuant to the RMP.

74. Prior to the point BLM sells a lease, BLM's authority to subject leases to terms and conditions to protect the environment is at an apex; once leases are sold, BLM may not

retroactively impose lease stipulations. Instead, BLM may only impose conditions of approval which are delimited by the terms and conditions of the lease.

75. Oil and gas operations on a lease are conducted in accordance with 43 C.F.R. Part 3160.

76. Once a lease is issued, the lessee must submit an application for permit to drill (“APD”) to BLM prior to drilling. The APD is prepared by the lessee to realize the lessee’s investment-backed expectations, expectations that are derivative of the terms and conditions of the oil and gas lease. Prior to submitting an APD, BLM requires the lessee or the lessee’s operator to obtain all necessary right-of-way permits and include details on any new roads, and/or maintenance plans for existing roads, that will be used to access proposed well sites.

D. BLM’s Oil and Gas Lease Sales

77. BLM manages approximately 32 million acres of fluid mineral resources in Montana; Montana itself covers approximately 92 million acres.

78. On February 22, 2008, BLM provided notice that it would hold a competitive oil and gas lease sale on April 8, 2008 lease sale for federal mineral resources located within the State of Montana.

79. On March 21, 2008, the Natural Resources Defense Council, Oil and Gas Accountability Project, and Rocky Mountain Clean Air Action submitted a timely protest to the April 8th lease sale.

80. On April 8, 2008, BLM sold all 10 leases within the State of Montana offered for sale; these 10 leases totaled 6050.34 acres of federal public minerals.

81. On May 2, 2008, BLM provided notice that it would hold a competitive oil and gas lease sale on June 17, 2008 lease sale for federal mineral resources located within the State of Montana.

82. On May 30, 2008, the Natural Resources Defense Council, Oil and Gas Accountability Project, and Rocky Mountain Clean Air Action submitted a timely protest to the June 17th lease sale.

83. On June 17, 2008, BLM sold all 24 leases within the State of Montana offered for sale; these 24 leases totaled 11,289.77 acres of federal public minerals.

84. On July 11, 2008, 2008, BLM provided notice that it would hold a competitive oil and gas lease sale on August 26, 2008 lease sale for federal mineral resources located within the State of Montana.

85. On August 8, 2008, Common Ground United, Defenders of Wildlife, the Natural Resources Defense Council, Oil and Gas Accountability Project, Rocky Mountain Clean Air Action, and WildEarth Guardians submitted a timely protest to the August 26th lease sale.

86. On August 26, 2008, BLM sold 12 of 15 leases within the State of Montana offered for sale; these 12 leases totaled 7,957.42 acres of federal public minerals.

87. On September 19, 2008, BLM provided notice that it would hold a competitive oil and gas lease sale on November 4, 2008 lease sale for federal mineral resources located within the State of Montana.

88. On October 17, 2008, Common Ground United, Defenders of Wildlife, Oil and Gas Accountability Project, and WildEarth Guardians submitted a timely protest to the November 4th lease sale.

89. On November 4, 2008, BLM sold all 17 leases within the State of Montana offered for sale; these 17 leases totaled 14,879.31 acres of federal public minerals.

90. On October 27, 2008, BLM dismissed the Citizen Groups' protests of the April 8th, June 17th, and August 26th oil and gas lease sales.

91. On December 3, 2008, BLM dismissed the Citizen Groups' protests of the November 4, 2008 oil and gas lease sale.

92. The sale and issuance of the April 8th, June 17th, August 26th, and November 4th leases conferred contractually-enforceable development rights.

93. BLM never prepared lease-stage NEPA analyses to justify the April 8th, June 17th, August 26th, and November 4th lease sales. Instead, BLM relied on Documentations of Land Use Plan Conformance and NEPA Adequacy ("DNA") "worksheet[s]." DNAs are not NEPA documents. The DNA's purported to justify the lease sales on the basis of RMP-phase decisions and analyses and, in certain instances, on the basis of pre-FLPMA Management Framework Plans and oil and gas environmental analyses.

94. BLM, in approving and proceeding with the April 8th, June 17th, August 26th, and November 4th lease sales did not consider global warming impacts to the environment, did not quantify GHG emissions from oil and gas operations and those emissions' contribution to global warming, and did not consider measures to reduce GHG emissions and thereby improve the efficiency of and reduce waste from oil and gas operations.

95. BLM has acknowledged global warming in the context of geothermal and solar energy development. For example:

- c. BLM's Information Notice of Planning Criteria for the Programmatic Environmental Impact Statement for Leasing of Geothermal Resources provides

that the “BLM will consider and analyze relevant climate change impacts in its land use plans and associated NEPA documents, including the anticipated climate change benefits of geothermal energy.” 73 Fed. Reg. 28500, 28501 (May 16, 2008).

- d. BLM’s Notice of Intent To Prepare a Programmatic Environmental Impact Statement To Evaluate Solar Energy Development, Develop and Implement Agency-Specific Programs, Conduct Public Scoping Meetings, Amend Relevant Agency Land Use Plans, and Provide Notice of Proposed Planning Criteria identifies provides that “BLM will consider and analyze relevant climate change impacts in its land use plans and associated NEPA documents, including the anticipated climate change benefits of solar energy.” 73 Fed. Reg. 30908, 30911 (May 29, 2008).

96. The Citizen Groups have been required to expend costs and to obtain the services of a law firm, including attorneys, law clerks, and legal assistants to prosecute this action. The Citizen Groups are entitled to costs of disbursements and costs of litigation, including reasonable attorney and expert witness fees, as provided for under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d).

V. CLAIMS FOR RELIEF

A. BLM FAILED TO CONSIDER AND ANALYZE GLOBAL WARMING IMPACTS

(Violation of Dept. of the Int. Secretarial Order 3226)

97. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

98. BLM violated Secretarial Order 3226 by failing to consider and analyze global warming and its impacts in its planning and decisionmaking process for the April 8th, June 17th, August 26th, and November 4th oil and gas lease sales.

99. Section 3 of Secretarial Order 3226 requires that:

Each bureau and office of the Department [of the Interior] will 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 the potential utilization of resources under the Department's purview.

100. Section 3 of Secretarial Order 3226 provides that:

Departmental activities covered by this Order include, but are not limited to, programmatic and long-term environmental reviews undertaken by the Department, management plans and activities developed for public lands, planning and management activities associated with oil, gas and mineral development on public lands, and planning and management activities for water projects and water resources.

101. Secretarial Order 3226 is self-executing; Section 4 provides that

Secretarial Order 3226 "is effective immediately and will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first."

102. Secretarial Order 3226 had not been converted to the Departmental Manual, nor has Secretarial Order 3226 been amended, superceded, or revoked.

103. Secretarial Order 3226 remains in effect.

104. BLM's actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law because BLM failed to comply with Secretarial Order 3226 and failed to explain why it did not comply with Secretarial Order 3226. 5 U.S.C. §§ 706(2)(A), (C), (D).

**B. BLM FAILED TO PROVIDE FOR PUBLIC INVOLVEMENT
(Violation of NEPA)**

105. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

106. BLM violated NEPA and NEPA's implementing regulations promulgated by the CEQ because BLM failed to provide the public with sufficient environmental information to permit members of the public to weigh in with their views and thus inform BLM's April 8th, June 17th, August 26th, and November 4th lease sales regarding global warming and the responsible development of our public oil and gas resources.

107. NEPA is our "basic national charter for the protection of the environment." 40 C.F.R. § 1500.1.

108. NEPA explains, 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 proposes 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.

109. BLM 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); *see also* 40 C.F.R. §§ 1501.2, 1502.5(a).

110. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to NEPA's implementation. 40 C.F.R. §§ 1500.1(b), 1502.24.

111. NEPA's implementing regulations require BLM to "involve ... the public, to the extent practicable," in the preparation of an EA. 40 C.F.R. § 1501.4(b).

112. NEPA's implementing regulations further require BLM to "(a) [m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures," to (b) [p]rovide public notice of . . . the availability of environmental documents so as to inform those persons and agencies who may be interested or affected," and to "(d) solicit appropriate information from the public." 40 C.F.R. §§ 1506.6(a), (b), (d).

113. BLM must comply with NEPA's procedures to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). Such information must be of "high quality" as "[a]ccurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.*

114. BLM's actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM violated their NEPA obligations to provide the public with sufficient environmental information to permit members of the public to weigh in with their views and thus inform BLM's April 8th, June 17th, August 26th, and November 4th lease sales regarding global warming and the responsible development of our public oil and gas resources. 5 U.S.C. §§ 706(2)(A), (C), (D).

C. BLM FAILED TO TAKE A HARD LOOK AT IMPACTS TO THE ENVIRONMENT

(Violation of NEPA)

115. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

116. BLM failed to take a hard look at the direct, indirect, and cumulative impacts of global warming, oil and gas development, and GHG pollution to the environment implicated by the April 8th, June 17th, August 26th, and November 4th sale of oil and gas leases located within Montana.

117. BLM failed to take a hard look at the direct, indirect, and cumulative impacts to the environment caused by the inefficient production and waste of oil and gas implicated by the April 8th, June 17th, August 26th, and November 4th sale of oil and gas leases located within Montana.

118. BLM failed to disclose baseline conditions relevant to an analysis of direct, indirect, and cumulative impacts implicated by the April 8th, June 17th, August 26th, and November 4th sale of oil and gas leases located within Montana.

119. BLM, pursuant to NEPA and NEPA's implementing regulations, must take a hard look at the direct, indirect, and cumulative environmental consequences of a proposed action and its alternatives to the human environment; disclose unavoidable adverse impacts; address the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and identify irreversible and irretrievable commitments of resources. *See* 42 U.S.C. §§ 4332(2)(C)(i)-(v); 40 C.F.R. §§ 1502.14(a), 1502.16, 1508.7, 1508.8, and 1508.14.

120. BLM's hard look must be premised upon a sound understanding of baseline conditions to ensure that BLM and the public can compare, contrast, and ultimately choose amongst alternatives. 40 C.F.R. §§ 1502.14, 1502.15.

121. Direct impacts relevant here include the GHG emissions from oil and gas operations to the atmosphere; the indirect, secondary GHG emissions and impacts triggered by oil and gas exploration, production, and processing, transportation and distribution, and refining; the cumulative impacts of GHG emissions and development to the atmosphere from oil and gas operations when combined with oil and gas operations on other private and public leaseholds within the region's Resource Areas and other GHG emitting sources, such as coal-mining and coal-fired power plants; and the role that these impacts play in contributing to Global Warming.

122. Direct, indirect, and cumulative impacts include consequences arising from the inefficient production and waste of public oil and gas resources.

123. BLM failed to take a hard look at direct, indirect, and cumulative impacts to the environment caused by global warming, the inefficient production and waste of public oil and gas resources, and BLM's April 8th, June 17th, August 26th, and November 4th lease sales.

124. BLM's actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM failed to take a hard look at direct, indirect, and cumulative impacts to the environment. 5 U.S.C. §§ 706(2)(A), (C), (D).

**D. BLM FAILED TO CONSIDER REASONABLE ALTERNATIVES
(Violation of NEPA)**

125. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

126. BLM violated NEPA and NEPA's implementing regulations because BLM failed to consider reasonable alternatives to address GHG pollution, the inefficient production and waste of oil and gas resources, and global warming's impact to our environment.

127. BLM, pursuant to NEPA, must consider "alternatives to the proposed action" and "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)(C)(iii), 4332(E).

128. In considering alternatives, BLM must "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action including a "no action" alternative. 40 C.F.R. § 1502.14(a), (d).

129. Alternatives must be presented in a "comparative form ... thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." 40 C.F.R. § 1502.14.

130. In crafting the proposal and range of reasonable alternatives, BLM must properly define the scope of the NEPA analysis. 40 C.F.R. § 1502.4. In some instances, “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” *Id.* Scope is determined by considering “[c]onnected actions,” “[c]umulative actions,” and “[s]imilar actions”; “[a]lternatives,” including “[o]ther reasonable courses of actions” and “[m]itigation measures (not in the proposed action)”; and direct, indirect, and cumulative impacts. 40 C.F.R. § 1508.25.

131. BLM “shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1)” and must prepare NEPA analyses such that they “serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 C.F.R. §§ 1502.2(f), (g); 40 C.F.R. § 1506.1.

132. BLM failed to consider reasonable alternatives, such as:

- a. Alternatives to quantify and reduce GHG emissions from oil and gas operations, improve the efficiency of oil and gas operations, and reduce if not eliminate waste from oil and gas operations;
- b. Alternatives to prevent unnecessary or undue degradation to public lands and resources and minimize the adverse impacts caused by global warming and the April 8th, June 17th, August 26th, and November 4th lease sales.
- c. A no-leasing alternative.

133. BLM’s actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM failed to consider reasonable alternatives. 5 U.S.C. §§ 706(2)(A), (C), (D).

E. BLM FAILED TO PREPARE ENVIRONMENTAL ASSESSMENTS OR ENVIRONMENTAL IMPACT STATEMENTS

(Violation of NEPA)

134. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

135. BLM violated NEPA and NEPA's implementing regulations because BLM failed to prepare an EA or EIS to justify the April 8th, June 17th, August 26th, and November 4th lease sales.

136. NEPA obligates federal agencies to prepare an EIS for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

137. An agency may first prepare an Environmental Assessment ("EA"): (1) to provide evidence and analysis that establish whether or not an EIS or a Finding of No Significant Impact ("FONSI") should be prepared; (2) to help it comply with NEPA when no EIS is necessary; and (3) to facilitate preparation of an EIS when one is necessary. 40 C.F.R. § 1508.9.

138. If there are substantial questions whether a proposed action may significantly impact the environment, an EIS must be prepared.

139. Whether or not a proposed action "significantly" impacts the environment is determined by considering "context and intensity." 40 C.F.R. § 1508.27.

140. BLM has not prepared any FONSI's justifying the decision to forgo preparation of an EIS. BLM has, instead, prepared DNAs. DNAs are not NEPA documents and may be used to justify an action only if the action conforms to the existing land use plan and the NEPA analysis for the land use plan is adequate to justify the action.

141. The April 8th, June 17th, August 26th, and November 4th lease sales are major federal actions.

142. The April 8th, June 17th, August 26th, and November 4th lease sales are major federal actions distinct from BLM's RMP-phase leasing availability actions.

143. The April 8th, June 17th, August 26th, and November 4th lease sales raise substantial questions whether BLM's actions may significantly impact the environment.

144. The DNAs do not support the conclusion that the April 8th, June 17th, August 26th, and November 4th lease sales are supported by BLM's relevant land use plan NEPA analyses. BLM's relevant land use plan NEPA analyses do not address global warming impacts, do not address GHG emissions from oil and gas operations and the contribution of such emissions to global warming, and do not address the related inefficiency and waste issues identified by the Citizen Groups. BLM must therefore prepare an EIS or, if appropriate, prepare an EA with a FONSI .

145. BLM's actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM improperly relied on DNAs and failed to prepare either an EA or EIS. 5 U.S.C. §§ 706(2)(A), (C), (D).

**F. BLM FAILED TO PREPARE SUPPLEMENTAL NEPA ANALYSES
(Violation of NEPA)**

146. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

147. BLM violated NEPA and NEPA's implementing regulations because BLM failed to supplement the land use plan-level NEPA analyses used to justify the April 8th, June 17th, August 26th, and November 4th lease sales. Supplemental NEPA analyses were necessary because these land use plan-level NEPA analyses do not address global warming, do not address GHG

emissions from oil and gas operations, and do not quantify or consider measures to improve the efficiency and thereby reduce the waste of oil and gas resources.

148. BLM must supplement existing NEPA analyses if: “There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

149. BLM “[m]ay also prepare supplements when the agency determines that the purposes of [NEPA] will be furthered by doing so.” 40 C.F.R. § 1502.9(c)(2).

150. There are significant new circumstances and information regarding global warming, GHG emissions, and the inefficient production and waste of oil and gas resources relevant to environmental concerns and bearing on BLM’s April 8th, June 17th, August 26th, and November 4th lease sales.

151. BLM’s actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM failed to supplement the land use plan-level NEPA analyses used to justify the April 8th, June 17th, August 26th, and November 4th oil and gas lease sales. 5 U.S.C. §§ 706(2)(A), (C), (D).

G. BLM FAILED TO PREVENT UNNECESSARY OR UNDUE DEGRADATION AND FAILED TO MINIMIZE IMPACTS TO THE ENVIRONMENT

(Violation of FLPMA)

152. The Citizen Groups hereby incorporate by this reference all preceding paragraphs.

153. BLM violated FLPMA because BLM failed to prevent unnecessary or undue degradation and failed to minimize adverse impacts to the public lands and environment of Montana.

154. FLPMA requires that:

[T]he public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

43 U.S.C. § 1701(a)(8).

155. FLPMA obligates BLM to “take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b).

156. FLPMA obligates BLM to “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. § 1732(d)(2)(A).

157. The waste of methane, carbon dioxide, and other commercial resources/greenhouse gases may cause “undue” degradation. 43 U.S.C. § 1732(b).

158. The avoidable waste of methane, carbon dioxide, and other commercial resources/greenhouse gases is “unnecessary” degradation. 43 U.S.C. § 1732(b).

159. Global warming, in particular in conjunction with oil and gas development, causes impacts to public lands and resources which BLM must prevent and minimize.

160. BLM’s actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM violated FLPMA. 5 U.S.C. §§ 706(2)(A), (C), (D).

**H. BLM FAILED TO PREVENT WASTE OF OIL AND GAS RESOURCES
(Violation of FLPMA/MLA)**

161. Plaintiffs hereby incorporate by this reference all preceding paragraphs.

162. Oil and gas development may result in the waste of mineral resources. Such waste results in the emission of GHGs, such as methane and carbon dioxide.

163. BLM failed to consider appropriate plans and measures to address the waste of mineral resources prior to the April 8th, June 17th, August 26th, and November 4th sale of contractually-enforceable leases.

164. Reducing waste helps BLM satisfy its obligations to prevent “unnecessary or undue degradation” and to “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §§ 1732(b), (d)(2)(A).

165. The Mineral Leasing Act, pursuant to its implementing regulations, requires BLM and oil and gas operators to protect natural resources and environmental quality, minimize waste, and minimize the adverse effect on the ultimate recovery of other mineral resources. 43 C.F.R. § 3161.2; *see also* 43 C.F.R. §§ 3160.0-5, 3162.1(a), 43 C.F.R. § 3162.1, 3162.7-1(a), (d).

166. An oil and gas operator is required to:

conduct operations in such a manner as to prevent avoidable loss of oil and gas. A operator shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the operator of such lease, or due to the failure of the operator to comply with any regulation, order or citation issued pursuant to this part.

43 C.F.R. § 3162.7-1(d); *see also* Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases 3A & 4A.

167. To protect natural resources and environmental quality, minimize waste, and minimize the adverse effect on the ultimate recovery of other mineral resources, BLM must consider and, if appropriate, adopt appropriate plans and measures to improve the efficiency of

oil and gas operations and reduce if not eliminate waste before contractually-enforceable leases are sold.

168. BLM's actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in accordance with the law and procedures required by law, because BLM failed to comply with FLPMA and the Mineral Leasing Act. 5 U.S.C. §§ 706(2)(A), (C), (D).

VII. RELIEF REQUESTED

WHEREFORE, the Citizen Groups respectfully request that this Court:

- A.** Declare that BLM's actions violate FLPMA, MLA, NEPA, Secretarial Order 3226, and regulations and policies promulgated thereunder;
- B.** Set aside BLM's actions;
- C.** Void or, alternatively, suspend and enjoin the oil and gas leases pending full compliance with FLPMA, MLA, NEPA, Secretarial Order 3226, and regulations and policies promulgated thereunder;
- D.** Issue such relief as Plaintiff subsequently requests or that this Court may deem just, proper, and equitable.
- E.** Retain continuing jurisdiction of this matter until BLM fully remedies the violations of law complained of herein.
- F.** Award the Citizen Groups their fees, costs, and other expenses as provided by applicable law.

Respectfully submitted this 17th day of December, 2008,

/s/ Sarah K. McMillan

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