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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMIGOS BRAVOS, COMMON GROUND)
UNITED, NATURAL RESOURCES)
DEFENSE COUNCIL, OIL AND GAS)
ACCOUNTABILITY PROJECT, a project)
of EARTHWORKS, SAN JUAN)
CITIZENS ALLIANCE, and SOUTHWEST)
ENVIRONMENTAL CENTER,)

Plaintiffs,)

v.)

UNITED STATES BUREAU OF LAND)
MANAGEMENT, an agency within the)
United States Department of the Interior,)
and LINDA S.C. RUNDELL, in her official)
capacity as State Director of the Bureau of)
Land Management in New Mexico, and)
DIRK KEMPTHORNE, in his official)
capacity as Secretary of the United States)
Department of the Interior,)

Defendants.)

Case No. 09-37

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. AMIGOS BRAVOS *et al.* (hereinafter “Citizen Groups”) bring this civil action for declaratory and injunctive relief against the above-named Federal Defendants (hereinafter “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 Act (“FLPMA”), 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 two consecutive federal quarterly oil and gas lease sales for federal mineral resources located within the State of New Mexico – the first on April 16, 2008 and the second on July 16, 2008 – and 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. 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 to the atmosphere, is used as a valuable commercial product to heat homes, businesses, and schools. In violation of federal law, BLM’s planning and decisionmaking process for the April 16, 2008 and July 16, 2008 oil and gas lease sales failed to address GHG pollution by quantifying and reducing GHG pollution and has thereby facilitated the waste of oil and gas resources.

4. Oil and gas development and global warming impacts the environment. In violation of federal law, BLM's planning and decisionmaking process for the April 16, 2008 and July 16, 2008 oil and gas lease sales failed to address these impacts.

5. This action also challenges BLM's failure to provide for public involvement in the preparation of NEPA analyses for the April 16, 2008 and July 16, 2008 lease sales. BLM failed to provide the public with sufficient environmental information regarding the lease sales and lease sale EAs 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 to thereby inform BLM's April 16, 2008 and July 16, 2008 lease sales.

II. JURISDICTION & VENUE

6. 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.

7. This action reflects an actual, present, and justiciable controversy between the Citizen Groups and BLM; the Citizen Groups' interests in BLM public lands and New Mexico's environment 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.

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

9. 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 the regulations and policies promulgated pursuant to these federal statutes and the secretarial order.

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

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

12. 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 the this case occurred in BLM offices located in New Mexico, and this case involves public lands and environmental interests located in New Mexico.

III. PARTIES

13. Plaintiff AMIGOS BRAVOS is a 501(c)(3) nonprofit organization which seeks to preserve and restore water quality and natural waterways in New Mexico's rivers and the Río Grande watershed; preserve and restore native riparian and riverine biodiversity; support environmentally sound and sustainable traditional ways of life of indigenous cultures; and ensure that environmental justice and social justice go hand-in-hand. Global warming's accelerating effects underscores Amigos Bravos' effort to ameliorate intertwined water quantity and quality concerns in New Mexico. For example, as New Mexico's rivers get smaller and warmer, native species will suffer and our many uses of our rivers, from irrigating using traditional practices to wildlife habitat, will be impaired. To address global warming, it thus becomes all the more critical for government agencies operating in New Mexico to preserve and protect our headwater streams and reduce our carbon footprint from fossil fuel extraction and use. Amigos Bravos' members use and plan to continue to use lands affected by the challenged BLM actions. Amigos Bravos brings this action on its own behalf and on behalf of its adversely affected members.

14. Plaintiff COMMON GROUND UNITED is a community-based alliance dedicated to providing a platform to allow diverse organizations, from local to national, to express a united voice concerning the protection of our water, cultural, ecological, and economic resources and the health and safety of our citizens from the adverse impacts of all extractive resource developments. Common Ground United's governing principles include collaboration, and ensuring that local citizens must have a meaningful role in developing extractive resource development policies and the determining voice in their communities. With roots in New Mexico, Common Ground United understands that climate change is an interconnected global, national, regional, and local scale problem. Common Ground United members use and plan to continue to use lands affected by the challenged BLM actions. Common Ground United brings this action on its own behalf and on behalf of its adversely affected members.

15. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL is a nonprofit organization of scientists, lawyers, and environmental specialists with members and online activists throughout the United States dedicated to protecting public health and the environment. Natural Resources Defense Council's mission is to safeguard the Earth: its people, its plants and animals, and the natural systems upon which all life depends. To achieve this mission, Natural Resources Defense Council is intensively involved in efforts to curb global warming and climate change, minimize the societal costs of the energy services that a healthy economy requires, and obtain a clean, secure energy future for America by reducing our dependence on fossil fuels. Natural Resources Defense Council members use and plan to continue to use lands affected by the challenged BLM actions. Natural Resources Defense Council brings this action on its own behalf and on behalf of its adversely affected members.

16. 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. Oil and Gas Accountability Project works with community groups, landowners, organizations, and individuals to protect our environment, public health, and communities. Oil and Gas Accountability Project provides technical, policy, and organizing assistance, and serves as a clearinghouse of information for organizations and individuals concerned with oil and gas development in New Mexico 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, Oil and Gas Accountability Project'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. Oil and Gas Accountability Project members use and plan to continue to use lands affected by the challenged BLM actions. Oil and Gas Accountability Project brings this action on its own behalf and on behalf of its adversely affected members.

17. Plaintiff SAN JUAN CITIZENS ALLIANCE is a grassroots organization dedicated to social, economic, and environmental justice in the San Juan Basin. San Juan Citizens Alliance organizes San Juan Basin residents to protect our water and air, our public lands, our rural character, and our unique quality of life while embracing the diversity of our region's people, economy, and ecology. With longstanding efforts to address the impacts of oil and gas development to these interests, San Juan Citizens Alliance is deeply concerned that global warming and climate change will place unacceptable stress on the San Juan Basin. San Juan Citizens Alliance members use and plan to continue to use lands affected by the challenged

BLM actions. San Juan Citizens Alliance brings this action on its own behalf and on behalf of its adversely affected members.

18. Plaintiff SOUTHWEST ENVIRONMENTAL CENTER is a New Mexico nonprofit organization established in 1991 that works to reverse the accelerating loss of plant and animal species worldwide by protecting and restoring native wildlife and their habitats in the Southwestern borderlands. Southwest Environmental Center has more than 2,000 members who use and enjoy public lands for many purposes. Southwest Environmental Center and its members are concerned that global climate disruption will adversely affect native wildlife species and their habitats in the region, potentially driving some species to extinction. Southwest Environmental Center members use and plan to continue to use lands affected by the challenged BLM actions. Southwest Environmental Center brings this action on its own behalf and on behalf of its adversely affected members.

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

20. The Citizen Groups and its members 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 16, 2008 and July 16, 2008 oil and gas leases, and BLM's attendant duty to substantiate its decisions in the record for these lease sales.

21. The aesthetic, recreational, scientific, educational, religious, and procedural interests of the Citizens Groups and its members have been adversely affected and irreparably injured by the process by which BLM conducted the April 16, 2008 and July 16, 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. The injuries would be redressed by the relief sought.

22. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT is an agency within the United States Department of the Interior and is responsible for managing the public lands and resources in New Mexico and, in that capacity, is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

23. Defendant LINDA S.C. RUNDELL is State Director of the Bureau of Land Management in New Mexico and is responsible for managing the public lands and resources in New Mexico and, in that official capacity, is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

24. Defendant DIRK KEMPTHORNE, in the Secretary of the United States Department of the Interior and is responsible for managing the public lands and resources in New Mexico and, in that official capacity, is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

IV. OPERATIVE FACTS

A. Global Warming

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

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 water and food 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 State of New Mexico prepared a 2005 Report entitled *Potential Effects of Climate Change on New Mexico*. The 2005 Report identifies substantial and specific impacts from climate change to New Mexico’s: (a) water resources; (b) infrastructure; (c) agriculture; (d) natural systems; (e) outdoor recreation and related tourism; (f) environmental quality and health; and (g) environmental justice and native peoples.

33. “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.

34. Scientists have “demonstat[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.

35. In 2006, the New Mexico Office of the State Engineer and the Interstate Stream Commission published a report entitled *The Impact of Climate Change on New Mexico’s Water Supply and Ability to Manage Water Resources*. The 2006 report identified consensus-based findings that New Mexico will witness: (1) an increase in temperature and potentially, extreme heat waves; (2) a trend towards a higher freezing altitude and reduction in snowpack with delays

in the arrival of snow season, acceleration of spring snowmelt, a decrease in total snowfall, and rapid and earlier seasonal runoff; (3) uncertain changes to precipitation, overall, but intensified evaporative losses from temperature increases that could counteract any increase in precipitation; (4) severe droughts; and (5) an increase in flood events. The 2006 Report explained that:

Climate change needs to be added as “another pressure” along with population growth, changing demographics, existing climate variability, increasing water demand and availability challenges, land use, species protection and other ecosystem demands. Adaptive management strategies will need to be devised that are robust and flexible enough to address climate change.

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

37. 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 “[global climate change] 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.”

38. 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.

39. 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.

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

41. 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

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

43. 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).

44. According to the American Petroleum Institute ("API"), key sources of GHGs associated with upstream oil and gas exploration, production, and processing 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 also induce emission of GHGs from electricity imports.

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

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

47. 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.

48. Oil and gas development occurs in three principal regions of New Mexico: the San Juan Basin, located primarily in San Juan, McKinley, and Rio Arriba Counties in northwestern New Mexico; the Raton Basin, located in Colfax County in northeastern New

Mexico; and the Permian Basin, primarily located in Lea, Eddy, and Chavez Counties in southeastern New Mexico.

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

50. According to the State of New Mexico's November 2006 GHG inventory, oil and gas operations in New Mexico released 19.3 million metric tons of CO₂e in 2000, more than 23% of the state's total GHG emissions. Based on this data, oil and gas operations represent the second largest source of GHGs in New Mexico. This report predicted that oil and gas GHGs are, conservatively, projected to increase by 3.62% by 2020.

51. As explained in the Final New Mexico GHG Inventory and Reference Case Projections, 1990-2020:

The sheer number and wide diversity of oil and gas activities in New Mexico present a major challenge for greenhouse gas assessment. Emissions of carbon dioxide and methane occur at many stages of the production process (drilling, production, and processing/refining), and can be highly dependent upon local resource characteristics (pressure, depth, water content, etc.), technologies applied, and practices employed (such as well venting to unload liquids which may result in the release of billions of cubic feet of methane annually). With over 40,000 oil and gas wells in the State, three oil refineries, several gas processing plants, and tens of thousands of miles of gas pipelines in the State – and no regulatory requirements to track CO₂ or CH₄ emissions – there are significant uncertainties with respect to the State's GHG emissions from this sector.

52. The Final New Mexico GHG Inventory and Reference Case Projections, 1990-2020 has noted that:

Local estimates of field gas use and provided by [the New Mexico Oil & Gas Association] suggest that top-down estimates of natural gas production-related emissions provided here (based on national average emission rates) may be low. Furthermore, CO₂ emissions that may occur as the result of CO₂ mining and use for enhanced oil recovery could be significant, but have not been estimated. Further analysis of emissions from activities in all of the State's principal gas and oil basins, as well as of emissions from transmission and distribution sources could help to resolve some of these uncertainties. Given the large emission

reduction potential that may exist in these sectors, such efforts could be quite valuable.

53. Relative specifically to methane, the Final New Mexico GHG Inventory and Reference Case Projections, 1990-2020 noted that:

Production field operations account for over 95 percent of total CH₄ [methane] emissions from petroleum systems. Vented CH₄ from field operations account for approximately 83 percent of the emissions from the production sector, fugitive emissions account for six percent, combustion emissions ten percent, and process upset emissions barely one percent. The most dominant sources of vented emissions are field storage tanks, natural gas-powered pneumatic devices (low bleed, high bleed, and chemical injection pumps). These four sources alone emit 79 percent of the production field operation emissions. Emissions from storage tanks occur when the CH₄ entrained in crude oil under pressure volatilizes once the crude oil is put into storage tanks at atmospheric pressure.

54. The Final New Mexico GHG Inventory and Reference Case Projections, 1990-2020, specifically identified methane leaks and escapes from field production operations in New Mexico as a source of GHG pollution, stating:

In this initial stage, wells are used to withdraw raw gas from underground formations. Emissions arise from the wells themselves, gathering pipelines, and well-site gas treatment facilities such as dehydrators and separators. Fugitive emissions and emissions from pneumatic devices account for the majority of emissions. Emissions from field production accounted for approximately 34 percent of CH₄ emissions from natural gas systems in 2003.

55. New Mexico is not alone in demonstrating our capability to address global warming through the quantification and analysis of GHGs from oil and gas operations; Colorado, Montana, and Wyoming have also prepared GHG inventories which forecast future GHG pollution increases of 10-20% and, in the case of Colorado, 80%, by 2020.

56. 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.

57. 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 concluded that the Compendium is accurate and reliable.

58. 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 focused 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.

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

60. 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 [GHG] and clean energy source.” See www.epa.gov/gasstar/.

61. 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.

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

63. EPA’s Natural Gas STAR program reported on its website that its partners have 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.”

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

65. Companies producing oil and gas in New Mexico have reported success in utilizing a number of methane reduction measures including BP America, ConocoPhillips, Devon, Occidental, and Williams Production.

66. The State of New Mexico, through its Climate Change Advisory Group, has identified measures to reduce carbon dioxide emissions from oil and gas development, including: (a) installing new efficient compressors; (b) replacing compressor driver engines; (c) optimizing gas flow to improve compressor efficiency; (d) improving performance of compressor cylinder ends; (e) capturing compressor waste heat; and (f) utilizing waste heat recovery boilers.

67. In New Mexico, the Governor, through Executive Order, has established GHG emission targets for the State at 2000 levels by 2012, 10% below 2000 levels by 2020, and 75% below 2000 levels by 2050. To meet these targets, the Governor, through Executive Order, established a sweeping set of policies, many of which focused on oil and gas development. In particular, the Governor called for a 20% reduction in methane emissions from oil and gas processes by 2020, and CO₂ reductions from oil and gas combustion processes.

68. BLM has yet to follow the lead of EPA, the State of New Mexico, and private industry by addressing global warming and its nexus with responsible energy development.

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

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

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

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

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

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

74. Relative to oil and gas development, at the RMP phase, BLM determines what areas are available for leasing.

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

76. 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.

77. The leaseholds offered for sale are nominated by oil and gas companies through the submission of an "Expression of Interest." 43 C.F.R. § 3120.3. BLM proceeds by preparing a list of oil and gas lease parcels to be offered for actual sale.

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

79. 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.

80. 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.

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

82. 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. In addition, the lessee or lessee's operator must include details in the APD about access to, and development of, proposed well sites.

D. BLM's April 16, 2008 and July 16, 2008 Oil and Gas Lease Sales

83. On February 28, 2008, BLM provided notice that it would hold a competitive oil and gas lease sale on April 16, 2008 lease sale for federal mineral resources located within the State of New Mexico.

84. On March 31, 2008, Amigos Bravos, the Natural Resources Defense Council, New Mexico Wilderness Alliance, Oil and Gas Accountability Project, Rocky Mountain Clean Air Action, and San Juan Citizens Alliance protested BLM's April 16, 2008 lease sale.

85. On April 16, 2008, BLM sold 43 lease parcels located within the State of New Mexico in BLM's Carlsbad, Farmington, Socorro, and Roswell Field Offices. These 43 lease parcels totaled 28,729.51 acres of federal mineral resources.

86. On June 24, 2008, Amigos Bravos, the Natural Resources Defense Council, New Mexico Wilderness Alliance, Oil and Gas Accountability Project, Rocky Mountain Clean Air Action, and San Juan Citizens Alliance submitted a letter to BLM. The letter provided BLM with additional exhibits pertinent to their March 31, 2008 protest, raised concerns with BLM's NEPA process for the April 16, 2008 lease sale, and asked BLM to provide for public review and comment of the environmental analyses before they were completed.

87. On July 11, 2008, BLM dismissed the Citizen Group's March 31, 2008 protest of the April 16, 2008 lease sale.

88. BLM's July 11, 2008 Protest Decision indicated that BLM "asked each office to prepare a new EA to analyze the potential impacts from lease exploration and development, and account for potential GHGs during exploration, development and transportation."

89. On July 9, 2008, BLM's Carlsbad Field Office began revisions to the Environmental Assessment ("EA") prepared for the April 16, 2008 lease sale. BLM subsequently completed the EA, signing, on a presently unknown date, a Finding of No Significant Impact and Decision Record ("FONSI/DR").

90. On July 9, 2008, BLM's Roswell Field Office completed an EA for the April 16, 2008 lease sale by signing a FONSI/DR.

91. On July 10, 2008, BLM's Socorro Field Office completed an EA for the April 16, 2008 lease sale by signing a FONSI/DR.

92. On June 30, 2008, BLM's Farmington Field Office placed an entry in its NEPA log that it was preparing a "revised" EA for the April 16, 2008 lease sale. BLM subsequently completed the EA by signing a FONSI/DR on July 9, 2008.

93. On May 30, 2008, BLM provided notice that it would hold a competitive oil and gas lease sale on July 16, 2008 lease sale for federal mineral resources located within the State of New Mexico.

94. On June 30, 2008, Amigos Bravos; Albuquerque Wildlife Federation; Arroyo Hondo Land Trust; Back Country Horsemen of New Mexico – Lower Rio Grand Chapter; Backcountry Horsemen – Middle Rio Grande Chapter; Susan Bell, Bell Fine Jewelry in the Tradition of the Colonial Andes; Larry T Caudill, Caudill Enterprises/Caudill Custom Stocks; Johnny Micou and Common Ground United; Defenders of Wildlife; EcoFlight; Environment New Mexico; J. J. Archuleta, Masonry Structures, Inc.; New Mexico Trout; New Mexico Wilderness Alliance; New Mexico Wildlife Federation; Oil and Gas Accountability Project, a program of EARTHWORKS; Amy Tremper, Rancho Cerro Pelon; Marc Choyt, Reflective Images, Inc.; Rio Grande Return; Rocky Mountain Clean Air Action; San Juan Citizens Alliance; Southwest Environmental Center; Upper Gila Watershed Alliance; Don and Jane Schreiber, Viva Rio Arriba Ranch protested BLM’s July 16, 2008 oil and gas lease sale.

95. On July 9, 2008, BLM’s Carlsbad Field Office began preparing an EA to justify the July 16, 2008 lease sale. BLM subsequently completed the EA by signing, on a date unknown to the Citizen Groups, a FONSI/DR.

96. On July 10, 2008, BLM’s Roswell Field Office completed an EA for the July 16, 2008 lease sale by signing a FONSI/DR.

97. On July 10, 2008, BLM’s Socorro Field Office completed an EA for the July 16, 2008 lease sale by signing a FONSI/DR.

98. On July 14, 2008, BLM’s Farmington Field Office completed an EA for the July 16, 2008 lease sale by signing a FONSI/DR.

99. On July 16, 2008, BLM sold 49 lease parcels located within the State of New Mexico in BLM's Carlsbad, Farmington, Socorro, and Roswell Field Offices. These 49 leases totaled 39,946.72 acres of federal mineral resources.

100. On October 31, 2008, BLM dismissed the June 30, 2008 protest of the July 16, 2008 lease sale filed by the identified Citizen Groups.

101. The sale and issuance of the April 16, 2008 and July 16, 2008 leases conferred contractually-enforceable oil and gas development rights to the lessees.

102. BLM did not apply Secretarial Order 3226 to the April 16, 2008 lease sale or the planning and decisionmaking process used to justify that lease sale.

103. BLM did not apply or consider Secretarial Order 3226 in the July 16, 2008 lease sale or the planning and decisionmaking process used to justify that lease sale.

104. BLM did not involve the public in the preparation of the NEPA analyses prepared and completed by the Carlsbad, Farmington, Socorro, and Roswell Field Offices for the April 16, 2008 and July 16, 2008 lease sales. BLM did not conduct public scoping, did not provide draft analyses for public review and comment, and did not otherwise meaningfully involve the public.

105. For purposes of NEPA, the Citizen Groups' protests are not comments, in particular because BLM did not provide the Citizen Groups with any information regarding the scope and content of EAs and their purported analysis of global warming and GHG pollution.

106. BLM signed the FONSI/DRs for the April 16, 2008 and July 16, 2008 lease sales after the applicable BLM-imposed protest deadlines. In fact, BLM signed the FONSI/DRs for the April 16, 2008 lease sale *after* holding the April 16, 2008 lease sale.

107. In analyzing and approving the April 16, 2008 and July 16, 2008 lease sales, BLM did not properly consider global warming impacts to the environment, did not properly

quantify GHG emissions from oil and gas operations and those emissions' contribution to global warming, and did not properly consider plans and measures to reduce GHG emissions and thereby improve the efficiency of and reduce waste from BLM-authorized oil and gas operations.

108. BLM's Resource Management Plans ("RMPs") for the Field Offices implicated by the April 16, 2008 and July 16, 2008 lease sales – the Farmington RMP (2003), Carlsbad RMP (1988), Socorro RMP (1989), and Roswell RMP (1997) – do not: quantify GHG emissions from oil and gas operations and those emissions' consequences to global warming; consider measures to reduce GHG emissions and thereby improve the efficiency of and reduce waste from oil and gas operations; or address global warming impacts to the environment.

109. On August 14, 2008, Rocky Mountain Clean Air Action submitted a Freedom of Information Act ("FOIA") Request to BLM's Washington and New Mexico State Office seeking information regarding the Citizen Groups' protests of the April 16, 2008 and July 16, 2008 lease sales, and BLM's July 11, 2008 protest decision. BLM responded to the FOIA request on October 10, 2008, and BLM's response has been shared with the Citizen Groups.

110. BLM, in its October 10, 2008 response to a FOIA request, stated that: "For documentation addressing the efficacy of [GHG] mitigation measures on federal leaseholds, [BLM] does not have any records in response to this portion of [the] request."

111. BLM, in its October 10, 2008 response to a FOIA request, explained that it did not locate any records "addressing the magnitude of GHG emissions from the venting of methane gas during drilling and well testing," or any records pertaining to the "deployment and effectiveness of best management practices used to reduce methane."

112. BLM, in its October 10, 2008 response to a FOIA request, explained that it did not locate any records "supporting BLM's contention that existing lease stipulations and APD-

level conditions of approval and operational best management practices will help reduce GHG emissions.”

113. BLM, in its October 10, 2008 response to a FOIA request, explained that it did not locate any records “pertaining to BLM’s coordination and participation with the Environmental Protection Agency’s Natural Gas STAR program.”

114. 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, 28 U.S.C. § 2412(d).

V. CLAIMS FOR RELIEF

A. BLM FAILED TO CONSIDER AND ANALYZE GLOBAL WARMING AND CLIMATE CHANGE IMPACTS

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

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

116. 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 16, 2008 and July 16, 2008 oil and gas lease sales.

117. 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.

118. 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.

119. 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.”

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

121. Secretarial Order 3226 remains in effect.

122. 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)**

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

124. BLM violated NEPA and NEPA’s implementing regulations promulgated by the Council on Environmental Quality (“CEQ”) because BLM failed to provide for public involvement in the preparation of the lease sale EAs and 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 16, 2008 and July 16, 2008 lease sales and lease sale EAs regarding global warming and the responsible development of our public oil and gas resources.

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

126. 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.

127. 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).

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

129. 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).

130. 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).

131. 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.*

132. 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 provide for public involvement in the lease sale EAs and 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 16, 2008 and July 16, 2008 lease sales and lease sale EAs 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)

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

134. 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 16, 2008 and July 16, 2008 sale of oil and gas leases located within New Mexico.

135. 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 16, 2008 and July 16, 2008 sale of oil and gas leases located within New Mexico.

136. BLM failed to disclose baseline conditions relevant to an analysis of direct, indirect, and cumulative impacts implicated by the April 16, 2008 and July 16, 2008 sale of oil and gas leases located within New Mexico.

137. 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.

138. BLM's NEPA 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.

139. 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.

140. Direct, indirect, and cumulative impacts include the inefficient production and waste of public oil and gas resources.

141. 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 16, 2008 and July 16, 2008 oil and gas lease sales.

142. 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)**

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

144. 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.

145. 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).

146. 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).

147. 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.

148. 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.

149. 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.

150. 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 on leases sold through the April 16, 2008 and July 16, 2008 oil and gas lease sales;
- 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 16, 2008 and July 16, 2008 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 consider reasonable alternatives. 5 U.S.C. §§ 706(2)(A), (C), (D).

E. BLM FAILED TO PREPARE ENVIRONMENTAL IMPACT STATEMENTS

(Violation of NEPA)

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

153. BLM violated NEPA and NEPA’s implementing regulations because BLM failed to supply a convincing statement of reasons justifying its FONSIIs.

154. BLM violated NEPA and NEPA's implementing regulations because BLM failed to prepare EIS(s).

155. 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).

156. 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.

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

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

159. In evaluating the significance of impacts, BLM failed to properly consider "context and intensity." 40 C.F.R. § 1508.27.

160. The April 16, 2008 and July 16, 2008 lease sales are major federal actions.

161. The April 16, 2008 and July 16, 2008 lease sales are major federal actions distinct from BLM's RMP-phase leasing availability actions.

162. The April 16, 2008 and July 16, 2008 lease sales raise substantial questions whether BLM's actions may significantly impact the environment.

163. 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 supply a convincing statement of reasons in support of its FONSI and failed to prepare an EIS(s). 5 U.S.C. §§ 706(2)(A), (C), (D).

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

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

165. BLM violated NEPA and NEPA's implementing regulations because BLM failed to supplement the RMP-level NEPA analyses tiered to and incorporated by reference in BLM's EAs prepared for the April 16, 2008 and July 16, 2008 lease sales. Supplemental NEPA analyses were necessary because these RMP-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 of and thereby reduce the waste from oil and gas production.

166. 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).

167. 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).

168. 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 16, 2008 and July 16, 2008 lease sales.

169. BLM was required to supplement the Farmington RMP (2003), Carlsbad RMP (1988), Socorro RMP (1989), and Roswell RMP (1997) before tiering to and incorporating them by reference for purposes of satisfying BLM's April 16, 2008 and July 16, 2008 lease sale relative to global warming, GHG emissions, and the inefficient production and waste of oil and gas resources.

170. 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 RMP-level NEPA analyses used to justify the April 16, 2008 and July 16, 2008 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)

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

172. BLM failed to prevent unnecessary or undue degradation and failed to minimize adverse impacts to the public lands and environment of New Mexico.

173. 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).

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

175. 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).

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

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

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

179. 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)**

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

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

182. BLM failed to consider appropriate plans and measures to address the waste of mineral resources prior to the April 16, 2008 and July 16, 2008 sale of leases.

183. 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).

184. 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).

185. 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.

186. 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.

187. 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).

I. BLM FAILED TO PROVIDE FOR COMPLIANCE WITH NEW MEXICO GHG GOALS AND PROHIBITIONS AGAINST THE WASTE OF OIL AND GAS RESOURCES

(Violation of FLPMA)

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

189. FLPMA provides that BLM is required to “provide for compliance with applicable pollution control laws including State...pollution standards[.]” 43 USC § 1712(c)(8), (c)(9); 43 C.F.R. § 2920.7(b)(3).

190. New Mexico law prohibits the waste of oil and gas, including evaporation, seepage, leakage or fire of oil and gas from exploration, production, and transmission processes. N.M. Stat. Ann. §§ 70-2-2, 70-2-3; N.M. Admin. Code § 19.15.1.13.

191. New Mexico Governor Richardson signed Executive Order 2006-69 which provides, in Section III(1)(d), for the development of mechanisms to be applied to oil and gas processes which “shall reduce methane emissions by 20% by 2020 and carbon dioxide from fuel combustion.”

192. BLM's actions fail to ensure compliance with New Mexico laws prohibiting the waste of oil and gas and calling for reductions of methane and carbon dioxide emissions. N.M. Stat. Ann. §§ 70-2-2, 70-2-3; N.M. Admin. Code § 19.15.1.13; Executive Order 2006-69.

193. 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. 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 14th day of January, 2009,

/s/

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/s/

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