

Nos. 20-35291, 20-35293 & 20-35294 (Consolidated)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WESTERN WATERSHEDS PROJECT, ET AL.,
Plaintiffs-Appellees,

v.

DAVID BERNHARDT, SECRETARY OF THE INTERIOR, ET AL.,
Federal Defendants-Appellants,

STATE OF WYOMING, AND WESTERN ENERGY ALLIANCE,
Defendants-Intervenors-Appellants.

On Appeal from the United States District Court
for the District of Idaho
No. 1:18-cv-00187-REB
Hon. Ronald E. Bush

SUPPLEMENTAL EXCERPTS OF RECORD

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

DAVID BERNHARDT,* Secretary of Interior,
et al.,

Defendants.

Case No. 1:18-cv-00187-REB

**PLAINTIFFS’ SEPARATE
STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT
(PHASE ONE)**

** Official Defendant automatically substituted
per Fed. R. Civ. P. 25(d)*

Pursuant to Fed. R. Civ. P. 56(c)(1) and Local Rule 7.1(b)(1), Plaintiffs Western Watersheds Project (WWP) and Center for Biological Diversity (CBD) submit this Separate Statement of Facts in support of their Motion for Partial Summary Judgment (Phase One):¹

¹Citations below are to the IM 2018-034 and Phase One lease sale Administrative Records filed by Federal Defendants, ECF Nos. 121 and 131.

Instruction Memorandum 2010-117

1. Before January 2018, when IM 2018-34 was adopted, BLM’s oil and gas lease review process was governed by IM 2010-117, *Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews* (May 17, 2010). BLMW450–463.

2. IM 2010-117 aimed to improve the quality and transparency of BLM’s environmental reviews and provide meaningful public involvement in the process. BLMW450 at “Purpose”. It also expressly required BLM field offices to provide for public participation in every lease sale:

Public Participation: State and field offices *will provide for public participation* as part of the review of parcels identified for potential leasing through the NEPA compliance documentation process (see section III.E). *State and field offices will identify groups and individuals with an interest in local BLM oil and gas leasing*, including surface owners of split estate lands where Federal minerals are being considered for leasing. Interested groups, individuals, and potentially affected split estate surface owners . . . *will be invited to comment during the NEPA compliance process*.

BLMW456 at § III.C.7 (emphasis added).

3. IM 2010-117 required BLM field offices to provide a 30-day public comment period for every sale, as well as a 30-day protest period after BLM’s initial analysis determined to offer proposed parcels for lease. BLMW457 at §§ III.E, III.H.

4. IM 2010-117 also directed BLM offices to extend review timeframes “as necessary, to ensure there is adequate time for the field offices to conduct comprehensive parcel reviews.” BLMW454 at § III(A).

Trump Administration “Energy Dominance” Orders and Reports

5. On March 28, 2017, President Donald Trump issued Executive Order (EO) 13783, *Promoting Energy Independence and Economic Growth*, directing federal agencies to immediately review “all existing regulations, orders, guidance documents, policies, and any

other similar agency actions . . . that potentially burden the development or use of domestically produced energy resources.” BLMW759–763.

6. On March 29, 2017, Department of Interior (DOI) Secretary Zinke issued Secretarial Order (SO) 3349, *American Energy Independence*. BLMW754–758. SO 3349 directed all Interior bureaus to prepare a report identifying “existing regulations, order, guidance documents, policies, and any other similar actions that potentially burden the development or utilization of domestically produced energy resources,” with “particular attention to oil, natural gas, coal, and nuclear resources.” BLMW754, 757.

7. On July 6, 2017, Secretary Zinke issued SO 3354, “*Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program*.” BLMW767–769. Its stated purpose was “to ensure that quarterly lease sales are consistently held and to identify other ways the Department of Interior may promote the exploration and development of Federal onshore oil and gas and solid mineral resources.” BLMW767.

8. In accordance with these directives, DOI released a report on November 1, 2017, *Final Report: Review of the Department of the Interior Actions that Potentially Burden Domestic Energy*. BLMW774–817. The report identified “harmful regulations and unnecessary policies” affecting domestic energy production. BLMW778. It specifically noted that BLM intended to revise IM 2010-117 to shorten the timeframe for NEPA reviews and public comment in the oil and gas leasing process. BLMW783–784.

Instruction Memorandum 2018-034

9. On January 31, 2019, following these Trump Administration policy directives, BLM issued IM 2018-034, *Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews*. BLMW828–832.

10. The Administrative Record contains no evidence that BLM conducted any public notice, comment, NEPA review, or publication in the Federal Register before adopting IM 2018-34. *See* BLMW1ff.

11. IM 2018-034 amended BLM’s lease sale review process for the stated purpose of “alleviat[ing] unnecessary impediments and burdens to” oil and gas leasing, “consistent with Executive Order 13783.” BLMW828 at “Purpose.” The IM superseded existing procedures under the former IM 2010-117 and “any conflicting guidance.” *Id.*

12. Under IM 2018-034, BLM offices must complete their lease sale review process in just six months, in part by limiting public participation opportunities. BLMW829.

13. Whereas IM 2010-117 stated that BLM offices “will” provide for public participation during the NEPA process, IM 2018-034 states that they “may” provide for public participation. BLMW830 at § III.B.5. IM 2018-034 also eliminated the 30-day comment period formerly required under IM 2010-117. *Id.* § III.D. IM 2018-034 shortened the deadline for administrative protests of proposed lease sales from 30 days to just 10 days. BLMW831 at § IV.B (“A 10-day public protest period will begin the day the sale notice is posted.”).

14. IM 2018-034 also eliminated the rotational lease schedule, meaning that state quarterly sales must include all parcels nominated across the state. BLMW829 at § III.A.

15. IM 2018-034 further discarded the language in IM 2010-117 stating that “there was no presumed preference for oil and gas” over other uses of public lands.

BLM Oil & Gas Lease Sales Implementing IM 2018-034 (“Phase One” sales)

June 2018 Wyoming Lease Sale

16. On October 24, 2017, BLM posted a Draft EA to its ePlanning website for a proposed June 2018 lease sale in Wyoming. WY3618–3765.

17. The proposed sale encompassed 163 parcels comprising 199,298 acres in BLM's High Desert District. WY3626. Nearly all of the parcels are located within habitat of the greater sage-grouse. WY3625.

18. BLM allowed 30 days for public comment on the Draft EA, in accordance with IM 2010-117. WY3779. The comment period closed on Thanksgiving Day. *Id.*

19. BLM failed to post maps or GIS data of the parcels until a member of the public requested this information. WY3454–3459 (“Is there somebody who I can reach out to at the state office to request this information? It is hard for the public to prepare comments or to understand what is being proposed without maps or data showing exactly where the parcels are located. The comment period is open and so we are just trying to get necessary information so that we can provide meaningful comments by the deadline.”).

20. On November 20, 2017, CBD submitted timely comments. WY5948–5982. Four other organizations, including WWP, signed on. WY5981–82. The comments notified BLM that the proposed leasing failed to comply with the 2015 Sage-Grouse Plans' directive to prioritize oil and gas leasing and development outside of sage-grouse habitats, and failed to provide useful information concerning sage-grouse impacts. WY5948–5982.

21. Two days after BLM issued IM 2018-034, Wyoming BLM staff began discussing how it would impact their lease review schedule, including their planned 30-day protest period. WY7812–7817; WY7819. This included the following exchange:

[BLM STAFFER 1:] Do we implement the 10 day protest period for the 2nd Quarter 2018 Sale Notice that we're about to post? . . . IM 2018-034 is effective. We're nearing the completion of the Sale Notice, and there is public anticipation of a February 6 posting date. NGOs will likely feel shorted, particularly since we're posting 134 days before the start of the sale. . . . You could keep the 30 day protest period for this sale, using the rationale that our late posting from the scheduled date would be possibly escape the attention of parties interested in protesting, and it would be unfair to also unexpectedly

give them one third of the normal time for submitting protests. We can commit to implementing a 10 day protest period for our next Sale Notice posting.

[BLM STAFFER 2:] I binged WO and there was some debate, but the point was made that the IM was effective immediately, so 45 day posting and 10 day protest was in effect. Based upon that, I want to use the 45 day posting and 10 appeal since I don't want WY as the first office spotlighted for not following the IM.

WY007816. A subsequent email confirmed BLM would not post the Sale Notice until the regulatory deadline (45 days before the sale) and would give the public only 10 days to protest.

WY7826; *see also* WY9624 (“We were attempting to post our Sale Notice no earlier than 45 days before the first day of our sale[,] . . . right up against the regulatory deadline.”).

22. On Friday, May 4, 2018, BLM uploaded to ePlanning another version of the EA, WY8758–8904, along with the unsigned FONSI. WY8905–8918. A press release issued that day stated that protests were due on May 14.²

23. Due to an administrative error, BLM failed to post the Notice of Competitive Lease Sale until May 7, 2018, causing BLM to move the sale date to ensure that the Notice was publicly available for the 45-days required by regulation. WY9174; WY9624. BLM was also forced to extend the protest deadline to May 17 to give the public 10 days to protest. However, notice of the extended deadline was not posted until Thursday, May 10. WY9180.

24. BLM did not make the GIS shapefiles of the lease parcels available to the public until May 9, 2018. WY9001; WY9003; WY9131.

25. On May 16, 2018, Plaintiffs filed a timely protest objecting to BLM’s failure to adequately respond to their comments and provided additional information about impacts to big game migration corridors in Wyoming’s Red Desert. WY9682–9767.

² See [https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/144180/177736/2QSaleListPosting_PR_\(1\).pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/85072/144180/177736/2QSaleListPosting_PR_(1).pdf).

26. On or about June 22, 2018, BLM dismissed all protests. WY13210–3239.

27. On or around June 26–27, 2018, BLM completed the lease sale auction for these parcels, of which 158 parcels received competitive bids. WY14059.

June 2018 Nevada Lease Sale

28. On January 16, 2018, BLM released a Draft EA for its proposed June 2018 Nevada lease sale, encompassing 166 parcels totaling 313,715 acres. NV2Q8832³- NV2Q8832; NV2Q169–323. Because the Draft EA was released before IM 2018-034, BLM allowed 30 days for public comment under IM 2010-117. CBD and WWP submitted timely public comments on February 14, 2018. NV2Q1850–1923.

29. BLM initially planned a 30-day protest period for the June lease sale. NV2Q4661, NV2Q4702. BLM later adjusted its sale schedule to comply with IM 2018-034, allowing only a 10-day protest period. NV2Q1774–1775. Staff also discussed how the IM would “sharply reduce” the timeframe for its internal review. NV2Q8360.

30. On April 27, 2018, BLM posted its Lease Sale Notice, triggering a 10-day protest period. NV2Q3097–3176. Plaintiffs timely protested on May 7, 2018. NV2Q2039–2104.

31. BLM conducted the lease sale auction on June 12, 2018. NV2Q3178.

32. On July 31, 2018, BLM dismissed all protests. NV2Q2106–2123.

September 2018 Nevada Lease Sale

33. On July 27, 2018, Nevada BLM issued a Notice of Competitive Lease Sale for its September 2018 lease sale, encompassing 144 parcels and 295,174 acres, including 74 parcels in

³ To distinguish between the Bates numbers for two Nevada sales, we append a 4-character preface indicating the state (NV) and sale (2Q or 3Q).

greater sage-grouse habitat. NV3Q1659–1668. The Notice triggered a 10-day protest period, in compliance with IM 2018-034. *Id.*

34. BLM prepared two Determinations of NEPA Adequacy (DNAs), rather than an EA or EIS. NV3Q880–935 (Ely); NV3Q1914–1937 (Elko). The DNAs were six- and seven-page documents, with long attachments including the list of parcels and stipulations. *Id.*

35. BLM provided no opportunity for public review or comment on these DNAs and did not disclose them to the public until July 27, 2018, the start of the 10-day protest period.

36. On August 6, 2018, Plaintiffs filed a timely protest of the proposed sale, challenging the legality of issuing the leases under DNAs among other issues. NV3Q1310–1359. BLM dismissed the protest on October 31, 2018. NV3Q8823.

37. BLM conducted the sale on September 11, 2018. None of the acres received bids during the auction, NV3Q1679, but 12 were sold noncompetitively. NV3Q1720.

September 2018 Utah Lease Sale

38. On March 30, 2018, BLM commenced a 15-day comment and scoping period for its proposed September 2018 Utah oil and gas lease sale, encompassing 109 parcels and 204,172 acres across the state of Utah. UT36657. BLM sought comments on two Draft EAs for BLM Utah’s Fillmore and Salt Lake Field Offices. UT2723–2799 (FFO); UT22840–22995 (SLFO). For the parcels in the remaining field offices, BLM simply posted a proposed parcel list and sought “scoping comments”; a Draft EA for these lease parcels was never issued for public comment. UT7503–7518.

39. Most of the Salt Lake Field Office parcels are in sage-grouse priority habitat management areas (PHMA) and include habitat for the Emma Park population that is already at risk due to anthropogenic disturbance. UT22870–2871.

40. Plaintiffs submitted timely comments on April 16, 2018. UT23003–23022.

41. On July 26, 2018, BLM issued a Notice of Competitive Lease Sale for the September sale. UT40173, UT36668. This initiated a 10-day protest period, pursuant to IM 2018-034. *Id.* Plaintiffs submitted a timely protest on August 6, 2018. UT40255–40298.

42. BLM dismissed all protests on October 23, 2018. UT46138–46159. BLM conducted the lease sale on September 11, 2018. UT46540.

September 2018 Wyoming Lease Sale

43. Between January and May 2018, BLM issued three Draft EAs collectively proposing to offer 350 lease parcels spanning 355,819 acres across Wyoming. WY18791–18867 (High Plains Draft EA), WY18642–18696 (Wind River/Bighorn Basin Draft EA); WY24013–24236 (“Double Up” EA).

44. The two Draft EAs supporting the first set of parcels were posted on January 23, 2018, before IM 2018-034 issued, for a 30-day comment period. WY19262–19263 (High Plains); WY19264–19265 (Wind River/Bighorn Basin). These included 102 parcels in BLM’s High Plains District and 22 parcels in the Wind River/Bighorn Basin District. *Id.*

45. On February 21, 2018, Plaintiffs submitted comments on the second (High Plains District) set of 102 parcels. WY19401.

46. After the issuance of IM 2018-034, BLM began compiling a second batch of parcels nominated after its prior cut-off date—what it called a “double up”—in order to comply with the nomination processing deadlines in IM 2018-034. WY20689; WY20522.

47. This second batch included 256 parcels scattered across the entire state, spanning all but two of BLM’s Wyoming field offices. WY19154. The majority are in greater sage-grouse habitat. *Id.* In its EA for these parcels BLM stated: “We are analyzing the parcels for this sale in

two sets because new policy regarding lease sales was issued after we had originally begun the review process for this sale, and to comply with the policy's requirement to offer lands statewide at the quarterly sales and to meet the policy's review timeframes." WY18972.

48. BLM staff discussed by email how the shorter timeframe would impact their internal review schedule for this second batch and whether they would be issued under a DNA or EA. *See* WY21336 ("there's going to be a lot of people who don't want to wait until 45 days before the sale to find out what's being considered for sale"); WY21425–21426; WY21605–21606; WY21725–21727; WY21912–21915 (IM 2018-034 "requires a 6-month review timeframe from the close of the nomination period to the date the sale is held. This will require substantially shorter parcel review periods for WGFD and BLM personnel.").

49. On May 24, 2018, BLM posted the Draft EA for the second batch of parcels for a 14-day comment period. WY24270. A technical problem with BLM's public comment portal timed users out as they were trying to submit comments. WY24416, WY24435, WY24437, WY24506, WY24733–24735, WY24760, WY24795.

50. CBD, WWP, and other groups jointly submitted timely comments on the Draft EA on June 6, 2018, alerting BLM to the serious unexamined impacts to wildlife, including sage-grouse, pronghorn, and mule deer. WY28124–WY28160.

51. On August 13, 2018, Plaintiffs submitted a timely protest of all third-quarter Wyoming proposed lease parcels. WY28356–WY28417.

Dated: April 26, 2019

Respectfully submitted.

/s/ Sarah K. Stellberg
Sarah Stellberg (ISB #10538)
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Attorneys for Plaintiffs

2. I am the Nevada-Oregon Director for Western Watersheds Project (WWP), a position that I have held since April 2018. Prior to that, I worked for WWP as a staff attorney beginning in November 2013.

3. I graduated from Lewis and Clark Law School with a certificate in environmental and natural resources law. I moved to Portland in 2010 to attend law school and lived in Oregon until May 2017, when I moved to Nevada.

4. I am a current member of WWP and I have been a member since 2009 when I began volunteering with the organization by visiting public lands to document the impacts of domestic livestock. As a volunteer for WWP, I traveled to Arizona, Nevada, and Idaho to observe grazing areas on state and federal lands.

5. My duties as WWP's Nevada-Oregon Director continue to include visiting public lands and documenting grazing and other land use impacts. I regularly visit locations throughout Oregon and Nevada, and also frequently travel to California to inspect areas, photograph the effects of grazing and development on native plants and animals, and comment to agencies about my observations.

6. The existence of wild public landscapes with healthy populations of native plant and animal species, and proper ecological function, are immensely important to me personally. I have always spent much of my free time in the outdoors, recreating, relaxing, and enjoying and experiencing nature. I spend dozens of days and nights each year hiking and camping, fishing, hunting, birding, and taking pictures on public lands.

7. I grew up in southern Idaho and my family made frequent trips to northern Nevada to camp, hike, and explore public lands in Elko County, as well as in the Ely area.

8. Nevada is a spectacular state, and one of my favorite things about it is how wild, remote, and unspoiled it is. I love looking down a long valley and seeing minimal or no human incursions, no sprawl or development—just landforms and vegetation. I always assumed that most of these valleys would remain undeveloped because of their federal ownership, but the recent oil and gas leasing frenzy made me realize that I took these places for granted.

9. I also appreciate the unique and varied wildlife of Nevada's sagebrush steppe. I love seeing pronghorn, mule deer, elk, and bighorn sheep. I saw a kit fox for the first time after moving to Nevada. In areas of deep soils, generally marked by Basin big sagebrush, I look for pygmy rabbit burrows, and have found many but have only seen 3 or 4 pygmy rabbits themselves. One of my goals has been to become proficient at identifying the common sagebrush steppe birds: sage thrasher; Brewer's, black-throated, sagebrush, and vesper sparrow; green tailed towhee, and others. When I travel to for work or for my own recreation, I always have a pair of binoculars handy for birding and glassing for other wildlife.

10. I think that juniper and pinyon woodlands are very valuable areas. These areas provide excellent habitat for a number of migratory bird species, as well as thermal and escape cover for deer and elk. One of the species I have enjoyed seeing in central Nevada is the Pinyon jay. Pinyon jays look like small gray crows, and are social birds, traveling in noisy flocks. They are highly reliant on pinyon-juniper woodlands, and their populations have decreased because of loss of these habitats. Development that has the potential to degrade or remove these woodlands harms my interest in viewing and enjoying birds and wildlife in that habitat type.

11. Another species that I enjoy seeing is sage-grouse. It is amazing to see them up close because to me, no other bird is as well camouflaged for its surroundings. I remember the first time I saw sage-grouse displaying on a lek in the Shoshone Basin in southern Idaho when I

was in grade school. Since then, I have watched lekking grouse many times in various areas. For the past two years, I have monitored a complex of sage-grouse leks in the Vya Population Management Unit in northwest Nevada for Nevada Department of Wildlife (NDOW).

12. One thing I have noticed about the arid basin and range is that because it is a relatively stark landscape, wildlife seems to have large ranges, occur in low densities, and move between areas seasonally. As a result, habitat needs to be protected on a landscape scale to ensure that various species have access to the seasonal areas they need.

13. Since I have lived in Nevada, I have had the opportunity to travel frequently throughout the state to enjoy scenic public wildlands in a number of areas. In doing so, I have spent time in several areas that are threatened by oil and gas development, which would be ruined in my view by BLM's leases.

14. I visited the Monitor Valley on September 11–12, 2018. While I was there, I went to two interesting hot springs areas, Potts Ranch and Diana's Punch Bowl, and soaked in a hot creek at Potts Ranch. The lush meadows there were an obvious attraction for wildlife and I saw several pronghorn bucks as well as a number of different bird species while I sat in the hot creek. Although I did not see any sage-grouse while I was there, I am sure that they use these wet meadows during brood rearing season in summer.

15. I am concerned that oil and gas exploration or production only several miles to the south would impact groundwater systems in the valley and cause the springs to dry up, which would be a shame for people like me who enjoy the hot springs, and also very detrimental to the wildlife that rely on the water and meadow complexes. I also think that development on the lease sites themselves could displace species that use the valley bottoms there including kit fox,

migratory birds, pygmy rabbits, and sage-grouse, and diminish my chances of seeing these animals I enjoy when I return.

16. I camped at Pine Creek campground that night and hiked up Pine Creek the following morning to about 10,000 feet at the foot of Mount Jefferson. I saw quite a few trout in Pine Creek along the trail. The aspens were in gorgeous fall colors and I could also look across Monitor Valley and see extensive orange and yellow aspen groves on Table Mountain. I intend to return to this area in late May or early June of this year to fish in Pine Creek, visit the hot springs again, and hike in Table Mountain wilderness.

17. Monitor Valley is a dramatic and beautiful area, and development is nearly absent. Development of oil and gas here would irreparably change the character of the area, diminish its natural beauty, wildness, and value as habitat.

18. I have also visited the lease sale areas in the Reveille and Hot Creek Valley east of Warm Springs. These areas are part of the BLM “Reveille” grazing allotment, managed by the Tonopah Field Office. I have documented conditions on the allotment along SR 375 and SR 6, in the Reveille Range, along Twin Springs Slough, in in the southern Railroad Valley. Sadly, these are some of the most degraded rangelands I have ever seen. The valley bottom in the Reveille Valley is in many places so overgrazed that it is nearly devoid of any vegetation except scattered invasive halogeton, and vast expanses are just dirt and cowpies. Livestock hug the creek that flows out of Warm Springs closely because it provides a thin sliver of vegetation, though the vegetation along it is also mostly grazed away.

19. The cumulative impacts of oil and gas development in this area, combined with the highly degraded condition due to grazing, would, in my opinion, virtually eliminate any remaining value of the area for wildlife, including sage-grouse.

20. On one occasion, in June 2017, I saw a herd of bighorn sheep in the Hot Creek Range just south of Warm Springs. Some of the proposed lease sales are directly adjacent to this area, and I believe that disturbance associated with exploration or development of oil and gas there would cause bighorn sheep to avoid the area.

21. Twin Springs Slough, though it is currently in poor condition due to livestock, has the potential to serve as high value wildlife habitat because it is a fairly high volume spring fed creek in an otherwise very arid area. Again, I am concerned about the potential hydrologic impacts from oil and gas wells that could disrupt spring flow there.

22. Despite the deplorable rangeland conditions, which seriously undermine my use and enjoyment of the area, I intend to return there this year in late May or early June and will again visit Twin Springs Slough, the Reveille Range and Valley, and the Hot Creek Range to document conditions.

23. In 2017, I passed through Railroad Valley on my way to the Quinn Canyon wilderness, and I drove through northern Railroad Valley in September 2018. I stopped to take a walk and bird at a small area of state land at Lockes Ranch, which had a spring complex and willows, cottonwoods, and other riparian vegetation.

24. Railroad Valley is an area where oil and gas development has occurred over past decades, and it presents a stark contrast to valleys that largely remain their naturalness like the Monitor Valley. The landscape there is pocked with wells, and junky sprawl so I consider it an example of what oil and gas fields would look like in other areas of Nevada in the lease sales at issue in this case.

25. I will return to Railroad Valley this year, specifically to Deep Creek, which flows off the west side of the Quinn Canyon Range. It has Ponderosa Pines, which are uncommon in

south-central Nevada, as well as a conservation population of Bonneville cutthroat trout that was established by Nevada Department of Wildlife.

26. I would also like to visit the Grant Range in the future to hike, view wildlife, and climb to the high elevations where there are bristlecone pines. New, additional development of oil and gas leases in Railroad valley along the Grant Range would likely impact winter range for deer and elk and other wildlife there, as well as diminish the view of Railroad Valley from the Grant Range.

27. I have been through Diamond Valley and Huntington Valley in the vicinity of, and through, the lease sales there. On July 11, 2018, I drove through the Sulphur Spring Mountains from Highway 278 into Diamond Valley. I stopped and walked in several areas in Bruffey Canyon to observe livestock impacts, then continued on to Diamond Valley where I headed south, crossed the valley on the Pony Express Route, and then headed back northward. I camped that night up Lindsay Creek near the Humboldt-Toiyabe National Forest Boundary.

28. I am aware that elk have recently begun to recolonize the areas to the north and west of Diamond Valley, and I believe that oil and gas development has to the potential to destroy or degrade elk winter habitat.

29. I have also been into the lease sales in Huntington Valley along the western edge of the National Forest boundary as far south as Big Wash. I visited that area on November 8, 2017 to look at units where juniper had been clearcut in an attempt to benefit sage-grouse. The lease sales in that area are likely to harm mule deer, as that area is one of the most important migration routes in the state. Further removal of juniper woodlands in the Diamond Range and Huntington Valley because of oil and gas wells, roads, pipelines, and other infrastructure would

further harm wildlife that depends on juniper for food and cover. I intend to return to that area in Fall of 2019 to look at the areas where juniper were removed, and take pictures.

30. I have visited Dixie Creek to the north of these areas a handful of times over the past two years to document conditions for threatened Lahontan cutthroat trout there, and I plan to visit Pearl Creek, which is also occupied by Lahontan cutthroats. I will continue to visit Dixie Creek so that I can report conditions to BLM and intend to do so around July 15, 2019, when cows move from the Lower Snow pasture in the El Jiggs allotment.

31. On several occasions I have spent time at Ruby Marsh, and in nearby areas. For example, I fished and camped there several times in the fall of 2017. I enjoyed birding in the riparian areas, and also saw a Northern Leopard frog there near one of the collection ditches. I camped near Harrison Pass and also south of Ruby Lake in the eastern side of the southern Ruby Mountains. I also spent a day in Ruby Valley last fall. I am concerned about the cumulative impact of leases in this area, because of the potential to affect groundwater, but also because the Ruby Valley is an important area for many different kinds of wildlife, and to the south and east, there are already mines that impact big game range and other habitat. Oil and gas leasing would add to the disturbance on a landscape scale, including further disruption to the mule deer migratory corridor there. I will continue to visit the southern Ruby Mountains, Ruby Marsh, and surrounding areas to hike, camp, fish and watch birds and wildlife, likely more than once per year as long as I continue to live in Nevada.

32. As noted, I and other WWP members and supporters enjoy and appreciate the uninterrupted sagebrush ecosystems in Nevada both because they are beautiful and because they provide habitat for hundreds of sagebrush species we enjoy viewing, including sage-grouse, pygmy rabbits, pronghorn, mule deer, songbirds, and many others. Oil and gas leasing and

development harms my use and enjoyment of these ecosystems, as well as that of many other WWP members and supporters, by disrupting their scenic qualities and also by causing habitat fragmentation that reduces their value for hundreds of species that depend upon them to survive.

33. Oil and gas leasing and development bring with them noise, roads, traffic, and a variety of other impacts that harm wildlife like sage-grouse. Once leased and developed it will take decades or longer to restore the present quality of habitat these lands provide.

34. Thus, I and WWP am harmed by June and September 2018 Nevada lease sales because they are intended to cause, and will likely cause, oil and gas development that will degrade and fragment sagebrush habitats.

35. In addition, I am aware that these leases have been offered without proper public comment and protest periods. Such public comment and protest periods are vital, however, to ensure that BLM fully considers and discloses environmental impacts and public input, as NEPA requires. By truncating public comment and protest periods, BLM has hamstrung the efforts of WWP to participate on behalf of our members and supporters who use and enjoy sagebrush habitats in Nevada. This harms our interests in agency compliance with federal laws and in agency action that is fully informed by environmental considerations that should factor in to decision-making.

36. My harms, and those of WWP, would be remedied if the Court held that BLM must provide public comment and protest periods of at least 30 days for oil and gas leasing decisions. They would further be remedied if the Court reversed and remanded the Decisions to issue these oil and gas leases and enjoined BLM from reissuing similar Decisions until it has fully considered the environmental impacts of the oil and gas leasing authorized in adequate

NEPA analyses informed by public comment that fully analyze environmental impacts and alternatives.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of April at Reno, NV.

A handwritten signature in cursive script, appearing to read "Paul", followed by a stylized flourish.

Paul Ruprecht

Laurence J. (“Laird”) Lucas (ISB # 4733)

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,
and CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,

v.

RYAN K. ZINKE, Secretary of Interior;
DAVID BERNHARDT, Deputy Secretary
of Interior; and UNITED STATES
BUREAU OF LAND MANAGEMENT,
an agency of the United States,

Defendants.

Case No. 1:18-cv-00187-REB

**DECLARATION OF PATRICK
DONNELLY**

I, Patrick Donnelly, declare as follows:

1. The following facts are personally known to me, and if called as a witness

I would and could truthfully testify to these facts.

2. I have been a member of the Center for Biological Diversity (“the Center”) since 2006.

3. I currently live in Pahrump, Nevada, where I have resided since 2018.
4. I attended the University of California, Berkeley, and I have a bachelor's of science in Conservation and Resource Studies. Desert ecosystems were my particular area of interest.
5. Since 2017, I have been the Center's Nevada State Director. My role is to advocate for the protection of wildlife, public lands and groundwater in Nevada.
6. I have visited Bureau of Land Management-managed public lands within the greater sage-grouse planning areas on numerous occasions.
7. I have visited Railroad Valley in Central Nevada numerous times, including in 2004, 2017, 2018, and 2019, to hike, camp, photograph, view federally protected endangered species, and for spiritual renewal. I have specific plans to return to Railroad Valley in summer of 2019. I dearly love the Railroad Valley, and in particular the incredible font of biodiversity at Lockes Ranch and in the Duckwater springs complex. Both locations harbor endemic species that are dear to my heart, including the federally listed threatened Railroad Valley springfish, the soon-to-be-described Railroad Valley toad, and the Railroad Valley tui chub. I have also enjoyed swimming at Big Spring in Duckwater. Below are two photographs I took during recent visits to Railroad Valley, from Lockes Ranch, and one of the Railroad Valley springfish.



8. I have visited Fish Creek Valley in central Nevada in 2017 and 2018, to view greater sage-grouse habitat, to hike, and for spiritual renewal. I have specific plans to return to Fish Creek Valley in autumn 2019. I have an interest in the valley because of the outstanding landscape values, the rich sagebrush habitat, and the presence of perennial water forming habitat for an endemic fish, the Fish Creek Springs tui chub.

9. I have visited the Huntington Valley on the west side of the Ruby Mountains in 2017 and 2018, to view greater sage-grouse habitat and to hike, photograph, and for spiritual renewal. I have specific plans to return to Huntington Valley in July 2019. I took the following photograph of Huntington Valley during one of these visits.



10. I have visited Newark Valley in May and June of 2018 to view greater sage-grouse habitat and to hike, photograph and for spiritual renewal. I especially enjoyed viewing wildflowers during my visits. I plan to return there within the next year. The following is a photograph of Newark Valley I took during that 2018 trip.



11. In each of these areas, I have derived tremendous personal pleasure and professional benefit from viewing and experiencing unbroken, undisturbed greater sage-grouse habitat. I also enjoy photographing landscapes, wildlife such as endangered fish, and water features. I am a semi-professional photographer, and have sold several prints of my Nevada photography.

12. I plan on visiting Railroad Valley to view endangered fish habitat in summer of 2019, plan to return to Huntington Valley to visit sage-grouse habitat also in summer of 2019, and plan to visit Fish Creek and Newark Valleys in autumn of 2019. These visits will be in order to observe and enjoy being with sage-grouse and other native birds and wildlife in the sagebrush-steppe ecosystem.

13. I am interested in seeing the permanent conservation of greater sage-grouse habitat because the wildlands of the Great Basin are our national natural heritage. The sagebrush ecosystem in which the greater sage-grouse thrives is home to more than 350 species which I enjoy including pygmy rabbits, rare and endemic aquatic species, mule deer, and raptors. The sagebrush ecosystem provides a vital carbon sink, and since I am worried about climate change, it is important that we maintain intact habitat for its

carbon absorbing capabilities. The sagebrush ecosystem also provides me with outstanding recreational opportunities which would be jeopardized by the same development which would threaten the greater sage-grouse.

14. If these Nevada lease parcels are developed, it would significantly disrupt with my ongoing recreational and spiritual enjoyment of these public lands as I continue to visit them throughout the foreseeable future. There is also active oil and gas leasing elsewhere in the sagebrush ecosystem of Nevada, in places including Huntington Valley, White River Valley, Spring Valley, Reese River Valley, and in the Metropolis area, among many others. In Spring Valley, energy development has already marred the landscape and potentially interfered with sage-grouse life cycles. Further oil and gas development on public lands would undermine my enjoyment of hiking, camping, viewing wildlife, outdoor photography, and experiencing spiritual renewal. Not only does oil and gas development turn undeveloped public lands into industrial landscapes and erode the aesthetic value of these places, it leads to a host of negative indirect impacts, including increased truck traffic, air pollution, and noise, all of which interfere with my enjoyment of Nevada public lands.

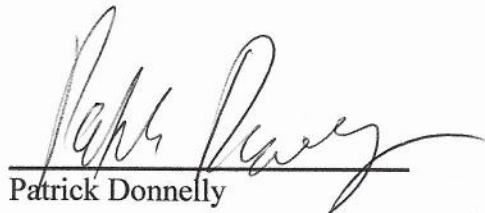
15. Oil and gas development has already caused harm to my ability to derive recreational and spiritual benefit from the public lands in question. Railroad Valley is home to significant amounts of oil and gas development, and the blight of the infrastructure there, including a small refinery, disturbs the pastoral nature of the landscape and interrupts the natural processes there which support wildlife. There is also a significant threat from accidents related to operations there. Because the springs which harbor endemic wildlife such as the Railroad Valley springfish are connected to a large

regional aquifer, it is highly possible that accidents related to drilling or fracking in the oil fields of Railroad Valley could have catastrophic effects on the groundwater aquifers which sustain those springs. Every day, drilling presents an existential threat to the wildlife from which I derive aesthetic, recreational, and spiritual benefit.

16. Oil and gas development of these lease parcels issued under IM 2018-034, without adequate public comment, will cause irreparable harm to my scientific, recreational, aesthetic, spiritual, and other interests in the persistence of sage-grouse and intact sagebrush habitats, as well as the scenic, cultural, paleontological, ecological, and other values these areas support in their undeveloped state. If afforded an adequate opportunity to comment on and/or protest these proposed lease sales, the coalition fighting oil and gas in Nevada, including Center for Biological Diversity, other conservation organizations, sportsmen's groups, and other individuals could have utilized their collective expertise—on sage-grouse, other wildlife, Nevada's landscapes, air quality, climate change, and numerous other issues—to provide BLM with information that might have caused it to defer or withdraw parcels from leasing, or provide protective stipulations. Even if BLM did not ultimately alter its decision, receiving full input from the Center for Biological Diversity and others would undoubtedly have improved the quality of BLM's analysis of the potential destruction or impoverishment of these ecologically rich and important areas—and potentially led to the introduction of more protective lease stipulations. This would mean the impacts of oil and gas development on public lands in Nevada, particularly those lands where I regularly recreate and visit for spiritual renewal and intend to return, would be less severe and impactful.

17. Vacating the relevant portions of IM 2018-034, and all leases unlawfully issued in reliance on that IM, and ordering BLM to revert back to the prior 30 day public comment and protest periods would help protect the interests of the Center for Biological Diversity, my own interests, and the public interest by providing for more timely and meaningful public notice of BLM's oil and gas leasing decisions and improving public lands decision-making.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of April, 2019, in Carson City, Nevada.


Patrick Donnelly

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WESTERN WATERSHEDS PROJECT,
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RYAN K. ZINKE, Secretary of Interior;
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of Interior; and UNITED STATES
BUREAU OF LAND MANAGEMENT,
an agency of the United States,

Defendants.

Case No. 1:18-cv-00187-REB

**DECLARATION OF JONATHAN
RATNER**

I, Jonathan Ratner, declare as follows:

1. The following facts are personally known to me, and if called as a witness

I would and could truthfully testify to these facts.

2. I am a member of Western Watersheds Project (WWP), and have been a member since 2002.

3. I presently live in Pinedale, Wyoming, where I have lived since 2003. My family has worked and lived in Wyoming for generations.

4. I am WWP's Wyoming, Utah, and Colorado Director.

5. Prior to my employment with WWP, I was a professional biologist with four years of experience providing contract services for the BLM, USDA Forest Service, Wyoming Department of Game and Fish, the University of Wyoming, and the Interagency Grizzly Bear Study Team. My research focused on large forest carnivores, including grizzly bear, wolverine, lynx, and marten.

6. As both staff and a member of WWP, I rely on the organization to represent my personal and professional interests in maintaining, protecting, and restoring the public lands and resources of the sage-steppe ecosystems across the West, including in Wyoming, Utah, and Colorado. I joined WWP and continue to support it because, of the dozens of organizations that I have worked with, WWP is by far the most effective at protecting the sagebrush-steppe ecosystem and the species that depend upon it, like the sage-grouse and the pygmy rabbit. In my opinion, the harms caused by public lands livestock grazing to soils, native habitats, streams, and fish and wildlife populations would never be addressed in any meaningful fashion were it not for WWP.

7. In my capacity as WWP's Wyoming, Colorado, and Utah Director, I oversee and implement all of WWP's conservation programs in these three states. My responsibilities include monitoring livestock grazing impacts on Forest Service, National Park Service, and BLM lands and conducting research on the impacts of land management decisions on wildlife and ecosystem function throughout the states I cover. This encompasses a variety of tasks, including monitoring the implementation of and

BLM's compliance with Allotment Management Plans, monitoring annual use limits imposed by a grazing permits terms and conditions (stubble height, utilization rates for uplands and riparian areas, willow utilization rates, stream-bank alteration, etc.), and conducting aerial surveys and photography to document watershed degradation in the form of erosion, gully, headcutting, hummocking, excessive bare ground, and vegetation alteration patterns.

8. I collect a large quantity of data each field season by conducting surveys, including sage grouse habitat surveys, range condition surveys, forage production surveys, riparian condition monitoring and assessments, and fisheries habitat surveys. Sage grouse habitat surveys include measuring habitat parameters including sagebrush cover, residual grass height, bare ground, and species composition. In the past few years I have also been doing tree-coring surveys, which is a method of extracting a small cross-section of a tree to determine its age, in order to inform agency decision making regarding pinyon-juniper removal projects.

9. In addition to monitoring grazing impacts and permit compliance, I conduct Wyoming's only state-approved, non-governmental water quality monitoring program. Specifically, I monitor water quality parameters such as e. coli contamination, dissolved oxygen, pH, turbidity, temperature, and salinity for compliance with state water quality standards. This program is particularly field-intensive because, for every site I monitor, I must collect five water samples within a 30-day period, each separated by a minimum of 24 hours. I conduct a similar monitoring program in Utah.

10. In order to perform my duties, I keep up to date with current science in the areas of range management, species conservation, water quality, fisheries biology, soils

and erosion processes, hydrology, botany and other fields. This also includes research on the impacts of land management decisions, such as oil and gas development, habitat fragmentation, road construction, logging and livestock grazing.

11. I also attend training courses regularly in order to keep up to date with changes in the protocols as well as to insure I am refreshed in the procedures. I regularly attend training courses conducted by the BLM and Forest Service in the standard monitoring protocols used by the agencies. These include:

- a. Multiple Indicators Monitoring – This quantitative methodology is used for the collection of a wide array of both short-term and long-term parameters that define riparian conditions.
- b. Proper Functioning Condition – This qualitative method is used for rapid assessments of general stream conditions.
- c. Interpreting Indicators of Rangeland Health – This method collects a wide array of quantitative and qualitative data in order to assess upland range condition.

12. In addition, I have found the use of Geographical Information System (“GIS”) analysis invaluable in carrying out my duties. GIS analyses provide important information and patterns which would not be readily available through other means. Since 2003, I have taken numerous courses sponsored by ESRI to expand my knowledge of GIS, including an 8-hour training course entitled “Creating and Analyzing Surfaces using ArcGIS Spatial Analyst” in June 2009. I use GIS as part of my work on an almost daily basis. I estimate that I have used GIS analysis to create several hundred maps.

13. Due to the vast area I cover each field season, I spend a substantial portion of my time in the field. I spend approximately 100 nights each year camped out on the public lands. I conduct a large amount of fieldwork and spend an enormous amount of time on public lands in Utah, Colorado, and Wyoming each year.

14. Through my work, as well as for personal enjoyment and recreation, I have visited many of the oil and gas lease sale parcels auctioned in the Wyoming June and September 2018 lease sales and the Utah September 2018 lease sale.

Specific Areas Of Wyoming Sage-Grouse Habitat Visited

15. I have visited the cluster of Wyoming lease parcels offered in the June and September 2018 sales and located north and northeast of Rock Springs Wyoming on the Lander, Rock Springs, and Rawlins Field Offices, at least a hundred times for work and recreation. Located from Rock Springs in the southwest to Muddy Gap in the northeast and from Rawlins in the southeast to Little Sandy in the northwest, this area contains some of the most pristine and least developed lands in Wyoming. I first visited this area in 1976 and it has been one of the primary focal areas for my work in Wyoming since 2003. Since 2003, I have collected a wide range of data documenting forage production, riparian condition, utilization, and grazing permit compliance on grazing allotments in this area. I have camped, viewed wild horses, and viewed wildlife, including sage-grouse, in this area. I last visited in October 2018, and will return in June 2019.

16. I have also extensively visited the lease parcels offered in the September 2018 Wyoming sale, south of LaBarge up to the Bridger Teton National Forest, in BLM's Pinedale Field Office. I first began working in this area in 2004, collecting upland and riparian condition data, including utilization and production data, and I have worked there extensively—both on my own and in conjunction with BLM—since then. I have viewed wildlife, including sage-grouse, in this area. My last visit to this area was April 20, 2019 and I will return in May 2019.

17. In 2007, I began visiting the area of the Pinedale Field Office lease parcels along the New Fork River upstream from its confluence with the Green River. I have visited them twice since then for personal recreation and to collect data about habitat condition. I have viewed sage-grouse and other wildlife in this area, as well as hiked and camped. I expect to return to this area in September, 2019, for personal recreation and to view and document habitat conditions.

18. I began visiting the second set of parcels half way between Lander and Casper, Wyoming, near the Gas Hills area, on the Lander Field Office, in 2003, when I began working on the Muskrat Open, Granite Mountain Common, and Split Rock grazing allotments. Since then, I have visited the allotments dozens of times to collect upland and riparian condition data with BLM and on my own. I have viewed wildlife, including sage-grouse, during my many visits to this area, and plan to return there in May, 2019.

19. I have visited the Worland Field Office parcels located northeast of the Wind River Reservation clustered around the Bighorn River many times, beginning in the fall of 2003. I have collected upland and riparian condition data with the BLM and on my own, there including utilization data and evaluating permit compliance and have seen sage-grouse and other wildlife. The area is remarkable for its unique and interesting geography, and I have viewed wildlife there, including sage-grouse. I most recently visited this area in September 2016 and plan to return in September 2019.

20. I have visited the cluster of parcels located just east of Boysen Reservoir , on the Lander Field Office many times. I began working within this group in June 2006 and have recreated and collected range condition data there. I last visited in September 2016 and I plan to return in September 2019.

Specific Areas of Utah Sage-Grouse Habitat Visited

21. I have also visited the large cluster of Utah parcels on the Richfield Field Office northwest of the confluence of the Green and Colorado Rivers and offered in the September 2018 Utah lease sale. I have worked and recreated on the parcels within this group since 2007 and I typically visit the Richfield Field Office approximately twice a year. When I visit the Field Office I frequently observe and photo document vegetation and soils conditions to discern the effects of livestock grazing. I also enjoy recreating there because it is extremely scenic. I most recently visited this area to collect data, including utilization, production, and permit compliance data, on April 15, 2019, and I plan to return there in May 2019.

Personal and Professional Interests in Sage-Grouse and Sagebrush

22. My interest in the sagebrush steppe ecosystem and the species that depend upon it is personal and spiritual as well as professional. I enjoy hiking, camping, watching wildlife, and taking photographs on the public lands of Wyoming, Utah, and throughout the American West. I am enriched and spiritually rejuvenated by the aesthetics of a healthy sagebrush ecosystem and the spiritual value of knowing that many species, including sage-grouse, elk, pronghorn antelope, grizzly and black bears, lynx, eagles, prairie dogs, raptors, fish, and other wildlife inhabit the areas I work in. I am personally and professionally interested in the survival of these species and their habitats because of the recreational, aesthetic, and spiritual benefits I have received, currently receive, and hope to receive in the future from them.

23. Healthy sagebrush ecosystems and sage-grouse populations are important to me because they signal the status of numerous other plants and animals. Sage-grouse

are considered an “umbrella species” and the well-being of the sage-grouse signals the status of hundreds of other species. If the sagebrush steppe is healthy, then sage-grouse populations are typically healthy. Because sage-grouse are a focal species, if their populations are healthy, it typically means that hundreds of other birds, mammals, amphibians, and other species that inhabit the same ecosystem are also doing well.

24. I am also interested in preserving unaltered expanses of sagebrush steppe for their own sake, because of how rare intact ecosystems are, given the level of human impact on the environment. As ecosystems become increasingly fragmented and degraded, the value of remaining intact ecosystems increases. The preciousness of these ecosystems is underscored for me because of the ecological and habitat destruction I see in my work.

Harms from Oil and Gas Leasing and Development

25. For this reason, it causes me great distress when I see previously undisturbed sagebrush habitats leased for oil and gas development. I know that oil and gas developments, along with the noise, traffic, pollution, and road networks they carry with them, fragment and degrade sagebrush habitats, and reduce their value for hundreds of wildlife species that depend upon them.

26. It is worth noting that sage-grouse and other sagebrush species have nowhere to live except for the sagebrush-steppe. They rely on healthy sagebrush ecosystems and when those ecosystems cease to exist, so do they. I and WWP value the existence of these species and the ecosystems they depend upon. We are injured by management that threatens their continued existence.

27. Moreover, I and WWP are further injured because the June and September 2018 Wyoming leases and September 2018 Utah leases were offered without adequate public review and comment. BLM provided only truncated comment and protest periods for these lease sales, which do not allow WWP and other concerned citizens to raise the full range of issues that must be considered before offering these high value sagebrush habitats for leasing and development. Because BLM shut the public out of the process around these leases, its decision to offer them for sale is not fully informed and it has not considered all relevant environmental implications of these sales. Thus, the leases will be offered without a full understanding of the environmental impacts that decision carries, contravening the purpose and intent of NEPA.

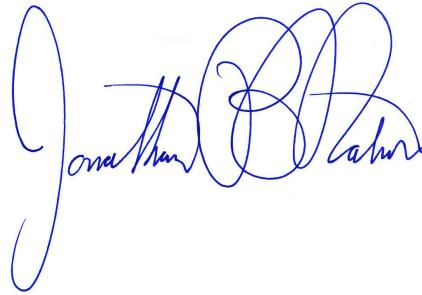
28. I and WWP have a strong interest in having the government comply with laws intended to protect the environment and insure fully informed federal action and those interests are harmed by ill-considered federal action like the leasing decisions here. If BLM had provided adequate public process and considered public comments concerning the potential environmental impacts from these lease sales, it might have decided not to offer them, or to offer them with No Surface Occupancy stipulations or other measures to protect sage-grouse and other wildlife.

29. My and WWP's harms would be remedied in part by requiring BLM to offer adequate public comment and protest periods of at least 30 days for these and all future oil and gas lease sales. They would further be remedied if the court vacated the decisions authorizing these lease sales and enjoined BLM from re-issuing them until it has complied with NEPA in an analysis that fully and fairly weighs their significant environmental impacts and considers concerns raised by the public.

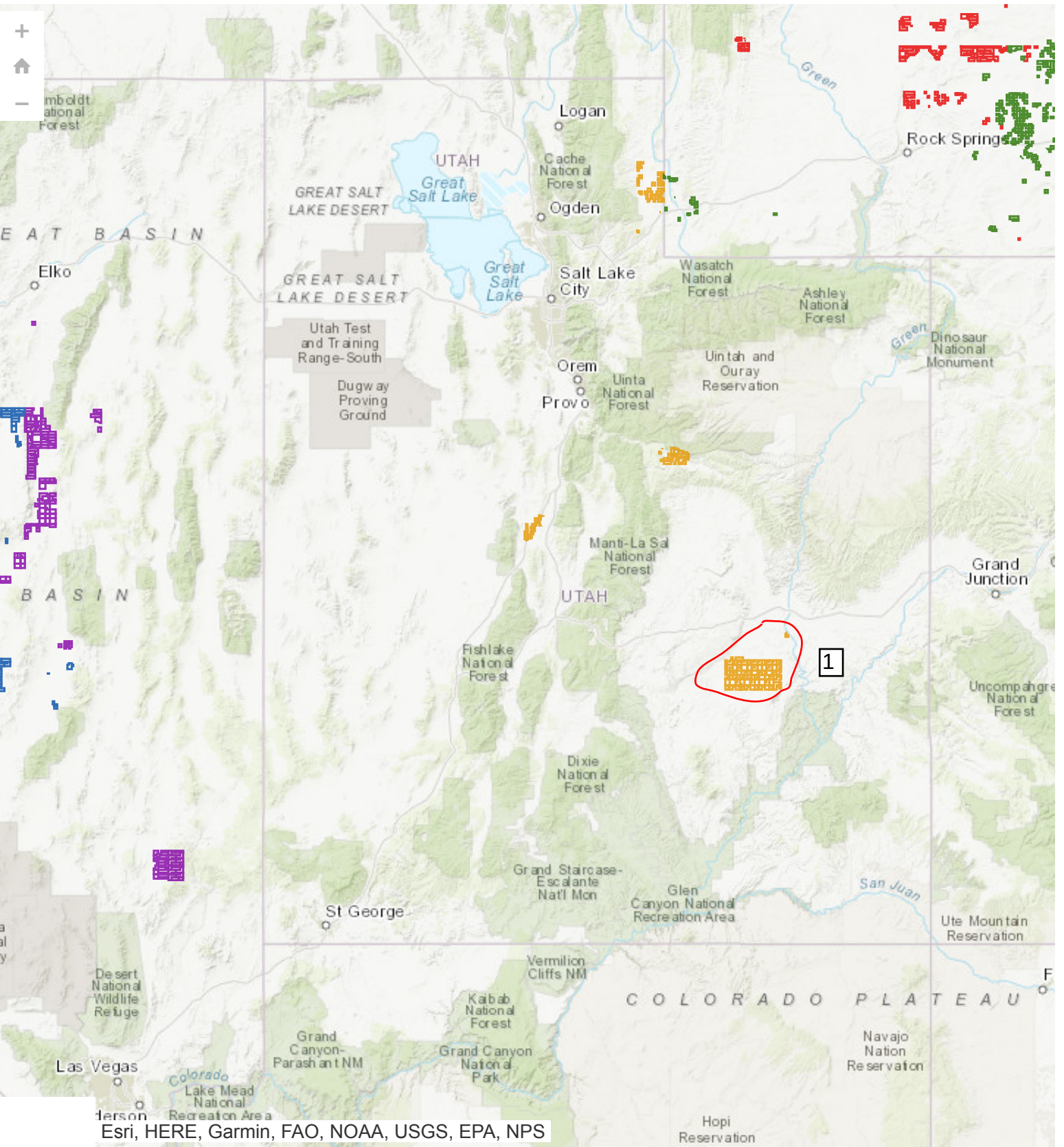
30. Attached to my declaration are screenshots of a GIS map, prepared by a GIS specialist with the Center for Biological Diversity using BLM data, of the June 2018 Wyoming lease parcels and the September 2018 Wyoming and Utah lease sale parcels. I have circled in red the areas that I have visited and intend to return, as described above.

I declare under penalty of perjury that the foregoing is true and correct.

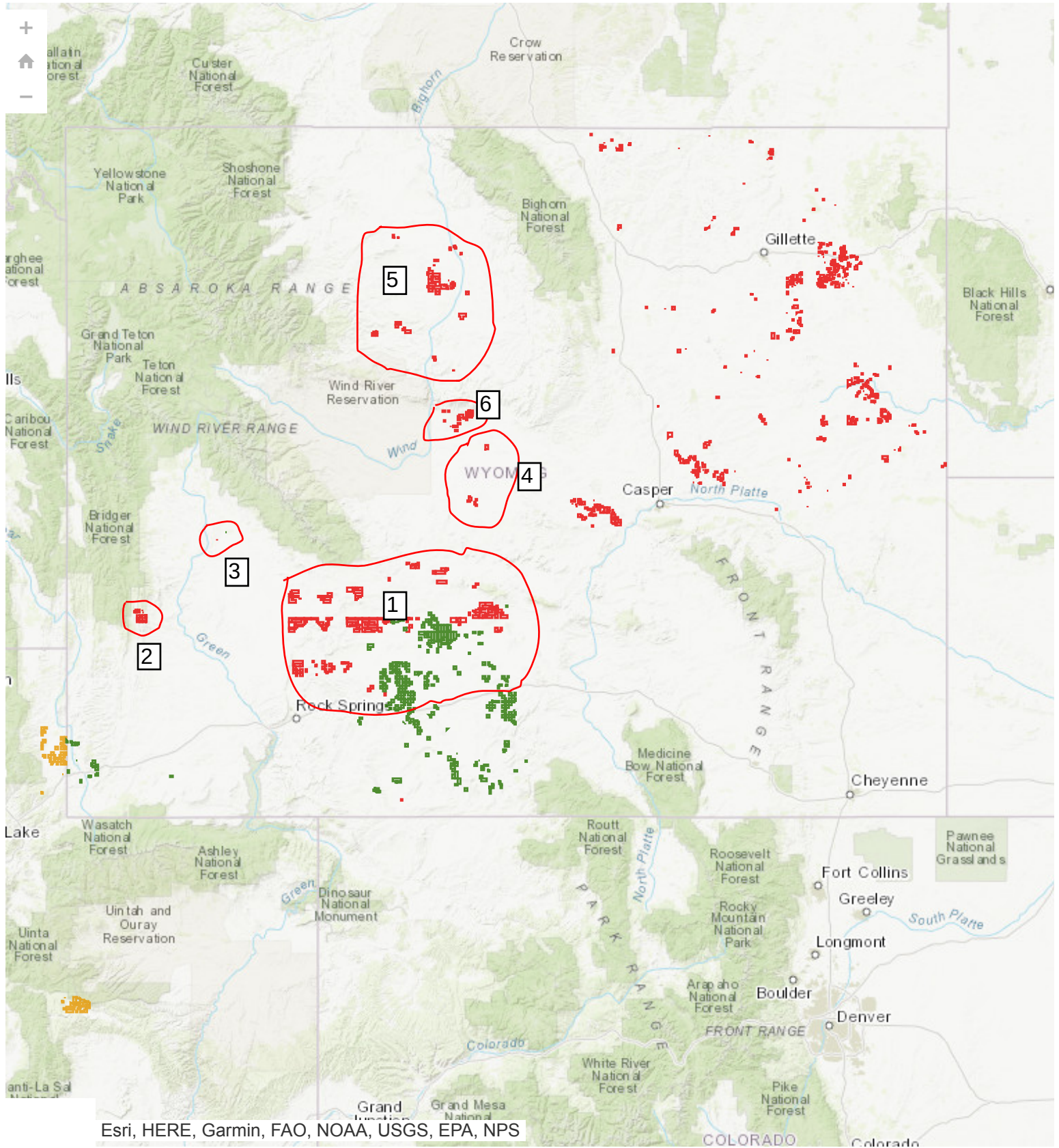
Executed this 25th day of April, 2019, in Pinedale, Wyoming



Jonathan B. Ratner



2018 Oil & Gas Lease S



Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS

SER 39

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UNITED STATES DISTRICT COURT

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WESTERN WATERSHEDS PROJECT, and
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v.

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DAVID BERNHARDT, Deputy Secretary
of Interior; and UNITED STATES
BUREAU OF LAND MANAGEMENT,
an agency of the United States,

Defendants.

Case No. 1:18-cv-00187-REB

**DECLARATION OF TAYLOR
MCKINNON**

I, Taylor McKinnon, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I submit this Declaration regarding my personal interests in BLM’s September 2018 Utah lease sale.

3. I have been a member of the Center for Biological Diversity (“the Center”) since 2007.

4. I currently live in Flagstaff, Arizona, where I have resided for most of my life.

5. From 2005 to 2007 I lived in Bluff, Utah.

6. I have a bachelor’s of arts in environmental studies from Prescott College.

7. I have worked at the Center for Biological Diversity since 2007; my title is senior public lands campaigner.

8. My personal interest in natural history and biodiversity inspired my academic and professional focus on public lands and endangered species conservation. Those interests also drive my interest in visiting public lands by bicycle, boat, and automobile. I read about, observe, and photograph plants, animals, landscapes and interesting facets of natural and human history. My personal interest in natural history and biodiversity has also led me to photography. I enjoy photographing wildlife and expansive, unindustrialized public lands scenes, and I do so on a weekly basis.

9. The September 2018 Utah BLM oil and gas lease sale includes parcels that I have visited and plan to revisit. On several occasions I have driven through parcels north of Helper along Highway 6 and near Sevier Bridge Reservoir along Interstate 15. I drove through the parcels along Highway 6 in 2017 and along I-15 in 2018. I enjoy the unobstructed and unindustrialized vistas in both areas; beautiful landscapes are one of the things I love most about public lands and driving trips through them. I plan to return to these areas in the fall of 2018 while touring the Colorado Plateau with my girlfriend.

10. I have also visited parcels between the San Rafael Swell and the Green River in 2015 in my automobile and by foot. I observed pronghorn and several species of songbirds on

and near some of those parcels. I looked for but did not see greater sage-grouse. As one of my hobbies is landscape photography, I took time to photograph landscapes in or adjacent to the western-most of those parcels. One of those photographs, looking south towards the Henry Mountains, is below. I plan to return to and photograph these areas in the fall of 2018 while on a tour of the Colorado Plateau with my girlfriend.



11. I have also boated through public lands downstream of lease parcels. In August of 2013 I took a river trip along the Colorado River through Canyonlands National Park, including along and downstream of the Colorado River's confluence with the Green River. I enjoyed the spectacular vistas throughout the trip, and observed numerous species of wildlife, including mule deer, bighorn sheep, several species of warblers, sparrows, hawks, corvids, ducks, and other water birds, like and including white-faced ibis and great blue heron. I also looked for but could not see endangered fish that occur in the Colorado River—Colorado pikeminnow and razorback sucker. I have worked for many years to protect the Colorado River's endangered fish from

federal fossil fuel development proposals. I have photographed those fish. One of those photos, of a Colorado pikeminnow, is below. I plan to return to the Colorado River below its confluence with the Green River in the fall of 2019.



12. Oil and gas development undermines my enjoyment and precludes my use of public lands. Industrialization of public lands destroys expansive, unindustrialized vistas that I enjoy viewing, photographing, and recreating in. I like to photograph beautiful landscape scenes; oil and gas industrialization is not beautiful to me. It also displaces wildlife that I like to observe and photograph. Well pads, pipelines, compressor stations, truck traffic, power lines, air pollution and noise are all things that I avoid when choosing where to hike, bike, camp, boat, photograph, view wildlife or tour by automobile.

13. Oil and gas industrialization harms wildlife and ecosystems that I care about, that I like to photograph, and that I have worked for years to protect. For example, oil and gas development fragments habitat for mule deer, pronghorn and greater sage-grouse, and can displace and reduce populations of those species. Oil spills, even miles from rivers, can harm

rivers and their wildlife. That happened on May 20, 2014, when an oil well near Labyrinth Canyon leaked an estimated 100 barrels per hour of crude oil and production water for 30 hours into a dry wash leading to the Green River. Flash floods on the night of May 22nd swept much that oil downstream into the Green River, including occupied critical habitat for endangered fish. More oil and gas development would lead to more impacts to wildlife such as these.

14. If Utah lease parcels are developed, it would interfere with my ongoing recreational enjoyment of these public lands as I visit them throughout in the future. In fact, oil and gas development could entirely preclude me from visiting those public lands. Oil and gas development on public lands invariably undermines my enjoyment of hiking, camping, touring, viewing wildlife, and photography. It would destroy habitat for wildlife that I enjoy viewing, and displace those species. It would industrialize landscapes that I would otherwise photograph, precluding my use of those public lands for photography. It would lead to development that risks more oil spills into the Green and Colorado Rivers, like the one that I described above, and more pollution of critical habitat for endangered fish.

15. Oil and gas development of these lease parcels issued under IM 2018-034, without adequate public comment, will cause irreparable harm to my recreational, aesthetic, spiritual, and other interests in the persistence of public lands their undeveloped state. Had the Center for Biological Diversity been afforded an adequate opportunity to comment on and/or protest these proposed lease sales, it and other organizations could have utilized the full force of their expertise to provide BLM with information that might have caused it to defer or withdraw parcels from leasing. That robust engagement would have improved the quality of BLM's analysis. It would have required under NEPA for BLM to undertake a more detailed environmental review of a wider range of potential impacts to values that I care about. It could

have compelled BLM to defer some or all of the parcels, or led to more protective stipulations for subsequent drilling. Any of these outcomes would have lessened or entirely eliminated future impacts to the public lands that I use and plan to revisit, impacts including destruction of wildlife habitat, displacement of wildlife, air pollution, industrialization of now unindustrialized landscapes, and spills of oil or other drilling chemicals into rivers and critical habitat for endangered fish.

16. Vacating the relevant portions of IM 2018-034, and all leases unlawfully issued in reliance on that IM, and ordering BLM to revert back to the prior 30 day public comment and protest periods would help protect the interests of Center for Biological Diversity, my own interests, and the public interest by providing for more timely and meaningful public notice of BLM's oil and gas leasing decisions and improving public lands decision-making.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of April, 2019 in Flagstaff, Arizona.



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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

RYAN K. ZINKE, Secretary of Interior;
DAVID BERNHARDT, Deputy Secretary
of Interior; and UNITED STATES
BUREAU OF LAND MANAGEMENT,
an agency of the United States,

Defendants.

Case No. 1:18-cv-00187-REB

**FIRST SUPPLEMENTAL
DECLARATION OF ERIK MOLVAR**

I, Erik Molvar, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I submit this Declaration to support and more fully elaborate on my first Declaration filed in this matter, ECF No. 30-3, regarding my personal interests in BLM's June and September 2018 Nevada lease sale and BLM's June and September 2018 Wyoming lease sales.

3. As stated in my prior Declaration, the June 2018 Nevada lease sale on the Battle Mountain District also includes parcels I have visited in my yearly sage-grouse viewing trips in March, which provide important sage-grouse habitat. I frequently travel to Nevada, including to Monitor Valley, where oil and gas leasing is proposed. I first viewed sage-grouse in the Monitor Valley in March 2015, and planned to return in 2019 but this visit was precluded by wet weather that rendered the dirt roads accessing the valley impassable. I plan to return in March 2020 or 2021. I have viewed and photographed sage-grouse on a lek (sage-grouse mating ground) in Monitor Valley that is adjacent to lease parcel 106NV-18-06-10 in years past, and plan to return there in 2019 and other future dates in hopes of viewing this iconic species. I have also enjoyed viewing pronghorn, wild horses, and Settlement Era ruins on the lease parcels in Monitor Valley on the lands encompassed by parcel 098NV-18-06-002 and the 14 parcels adjoining it, and have enjoyed photographing the scenic, undisturbed sagebrush there. Oil and gas development ruins the undisturbed aesthetic beauty of lands such as these, and based on my knowledge of sage-grouse science, oil and gas development on this lease could cause lek abandonment and I fear that once the lease parcels in this area are sold and developed, I will no longer be able to view and enjoy sage-grouse there.

4. I have also visited in the Pancake Range/Black Rock Summit area proposed to be leased in parcel 230NV-18-06-134 and adjoining parcels, initially in 2016. While in this area I hiked the Lunar Crater, a spectacular geographical marvel, and photographed the volcanic

landscape in the vicinity of Black Rock Summit, and also plants and wildlife I encountered. I have returned to this area several times over the years and plan to again return there in March 2021. While there, I will look for sage-grouse and other sagebrush species, as I always do while recreating in sagebrush habitats, and my use and enjoyment of the area will be lessened if I am no longer able to view them. My use and enjoyment of the area will be further disturbed by evidence of oil and gas development, because it is a visibly obvious human blight on the landscape that destroys habitat for hundreds of other species.

5. I have visited the Railroad Valley on my many trips through Nevada as well. Specifically, I visited in March of 2016, 2017, and 2018. While there, I photographed the ugly oil and gas development there on lands adjoining parcel NV 18-09-100 and neighboring parcels on both sides of U.S. Highway 6. The area provides wildlife habitat but for the existing oil and gas development and any residual habitat quality it provides will be decimated by development on the additional leases approved in the September 2018 Nevada lease sale. I plan to return to this area in March 2021, and my use and enjoyment of this area will be harmed by evidence of the September 2018 oil and gas leasing because it will cause additional destruction of the scenic vistas and sagebrush habitat there.

6. I visited and photographed the Delamar Valley, where lease parcel NV-18-09-113 and 39 adjacent and neighboring parcels in the Delamar Valley and Delamar Mountains are located, just this past March, 2019. While there, I was lucky to view and photograph wild horses in the desert ecosystem. I also visited the ghost town of Delamar and took photographs of its historical ruins. I intend to return in March 2021, and my use and enjoyment of the area will be damaged by evidence of oil and gas development on the landscape. Even if no oil and gas

development is present, my use and enjoyment of the area will be damaged by the knowledge that it is now leased and will soon be pocked with oil and gas wells that destroy wildlife habitat.

7. I have also driven through the valley of Huntington Creek and Newark Valley several times beginning in March 2016, where lease parcels NV-18-09-034, NV-18-09-075, NV 18-09-019, and NV-18-09-017 and 82 adjoining and neighboring parcels in the September 2018 Lease Sale are located, on my way to Ruby Valley, to the northeast. The area is extraordinarily scenic and I paused to take photographs of the Diamond Mountains on my way through. As Ruby Valley is especially dear to me, I expect to return to this area in March 2020 or 2021, and my enjoyment of the pristine landscape will be marred by evidence of oil and gas leasing, and the knowledge that the area is now leased and slated for development.

8. While driving through Nevada, I also paused near the town of Warm Springs in March 2019 to photograph the Hot Creek range. This area is where leases 124NV-18-06-028 through 198NV-18-06-102 are located. The area was scenic enough to warrant stopping to take photographs on my travels, and this quality will be destroyed with oil and gas leasing and development. I expect I will pass through this area again in March 2020 or 2021, and my use and enjoyment will be diminished by evidence of leasing and the knowledge that it is now leased.

9. I have also visited the Ruby Lake National Wildlife Refuge to hike, take photographs, view wildlife, and view wild horses over the years, most recently in March 2018. Lease parcel Nv-18-09-106 and adjoining leases from the September 2018 Lease sale are visible from that area. I intend to return to the Ruby Lake National Wildlife Refuge in March 2020 or 2021 to again enjoy its scenic qualities and my use and enjoyment will be disturbed from

reduced wildlife presence and destruction of the viewshed by oil and gas development on the nearby September 2018 leases.

10. The Wyoming June and September 2018 lease sales also included parcels in the Red Desert of southern Wyoming and the Bighorn Basin of north-central Wyoming. As I stated in my previous declaration, I visit public lands in the Red Desert and Bighorn Basin of Wyoming at least three times annually, although usually more often, and started doing so in 2000, when I first moved to Wyoming. I visit these areas to enjoy the sense of solitude and opportunities for exploration and scenic viewing that they provide, to hike and camp, to view their bountiful wildlife, to hunt for big game, and to take photographs. They harbor unique, high-value habitats for mule deer, sage-grouse, and other wildlife, and irreplaceable paleontological and cultural resources.

11. I have directly set foot on many of the leases offered for sale in June 2018 that are located in the vicinities of Soldier Creek, Battle Springs Flat, Okie Draw Road, Jack Morrow Creek, Parnell Creek, Joe Hay Rim and Big Empty, Black Rock, Adobe Town, Courthouse Butte, methane seeps in Cow Creek, Powder Rim, and Fortification Creek. I have specifically visited the following lease parcels: Parcel 219 and adjoining and neighboring parcels from the September 2018 Lease Sale; Parcel 91 and adjoining and neighboring parcels from the September 2018 Lease Sale; Parcel 187083 and adjoining and neighboring parcels from the June 2018 Lease Sale; Parcel 312 and adjoining and neighboring parcels from the September 2018 Lease Sale; 310-312 and adjoining and neighboring parcels from the September 2018 Lease Sale; 292 and adjoining and neighboring parcels from the September 2018 Lease Sale; Parcel 279; 283 from the September 2018 Lease Sale; Parcel 301 from the September 2018 Lease Sale; Parcels 187164, 187162, 187120, 187073, 187054, 187055, 187028, 187156, and 187157 from

the June 2018 Lease Sale; and parcels 267, 153 19 52, and 2 from the September 2018 Lease Sale. I intend to regularly return to recreate on public lands in the vicinity of these lease parcels at least once every two years throughout the foreseeable future.

12. Several experiences stand out:

- a. I did intensive wilderness field inventories of the Parnell Creek Area, where parcels 310-312 from the September 2018 Lease Sale are located; the Big Empty, parcel 292 and adjoining parcels from the September 2018 Lease Sale are located; and Adobe Town, Parcel 187120 from the June 2018 Lease Sale.
- b. In May of 2008, I got stuck in a rain and snowstorm for three days in Parcel 283 from the September 2018 Lease Sale, where I watched elk and camped while I waited for the weather to subside.
- c. I have often used parcels 279 and 283 from the September 2018 Lease Sale because they are on one of my favorite routes to the Honeycomb Buttes, which I often visit and enjoy.
- d. I have visited the cluster of parcels including 187073 from the June 2018 Lease Sale near Courthouse Butte to view wild horses, take photos, and gather turritella fossil rocks—some of which now reside in my garden—many, many times over the years.
- e. I hunt on private lands near parcel 186 from the September 2018 Lease Sale in northeastern Wyoming about every third year and shot a pronghorn very close to this parcel just last year.

- f. I visited the Fortification Creek Wilderness Study Area and vicinity including Parcel 52 from the September 2018 Lease Sale, and this area appears in my *Wild Wyoming* hiking book.

13. I have generally camped, hiked, taken photographs, or looked for wildlife on and in the vicinities of all of the parcels listed in Paragraph 11, above. I intend to return to all of these areas at approximately one- to three-year intervals for the foreseeable future, as they are particularly near and dear to my heart. Specifically, I intend to return to the Bighorn Basin in July 2019 on a scheduled revision of my book, *Hiking Wyoming's Cloud Peak Wilderness*. I intend to return to the Red Desert in three planned trips during May and June 2019.

14. The September 2018 lease sale also encompassed other public lands that I regularly use and enjoy. For example, this sale contains parcels within the Thunder Basin National Grassland, an area that I have visited repeatedly. I first visited the Thunder Basin National Grassland in 1999, and have taken one trip there every two years in the years that followed. I have viewed sage-grouse in this area, camped and hiked in this area, and engaged in photography of this area. I intend to return in July 2019 to recreate on public lands in the vicinity of these lease parcels.

15. If these Nevada and Wyoming lease parcels are developed, it would interfere with my ongoing recreational enjoyment of these public lands as I continue to visit them throughout the foreseeable future. As I explained extensively in my earlier declaration, oil and gas development on public lands invariably undermines my enjoyment of hiking, camping, viewing wildlife, hunting, and outdoor photography. Not only does oil and gas development turn undeveloped public lands into industrial landscapes and erode the aesthetic value of these places,

it leads to a host of negative indirect impacts, including increased truck traffic, air pollution, and noise, all of which interfere with my enjoyment of public lands in Wyoming and Nevada.

16. Oil and gas development of these lease parcels issued under IM 2018-034, without adequate public comment, will cause irreparable harm to my scientific, recreational, aesthetic, spiritual, and other interests in the persistence of sage-grouse and intact sagebrush habitats, as well as the scenic, cultural, paleontological, ecological, and other values these areas support in their undeveloped state. If afforded an adequate opportunity to comment on and/or protest these proposed lease sales, Western Watersheds Project and numerous other individuals and organizations could have utilized the full force of their expertise—on sage-grouse, other wildlife, air quality, climate change, and numerous other issues—to provide BLM with information that might have caused it to defer or withdraw parcels from leasing. Even if BLM did not ultimately alter its decision, receiving full input from Western Watersheds Project and other would undoubtedly have improved the quality of BLM's analysis of the potential destruction or impoverishment of these ecologically rich and important areas—and potentially led to the introduction of more protective lease stipulations. This would mean the impacts of oil and gas development on public lands in Wyoming, particularly those lands where I regularly recreate and intend to return, would be less severe and impactful

17. Vacating the relevant portions of IM 2018-034, and all leases unlawfully issued in reliance on that IM, and ordering BLM to revert back to the prior 30 day public comment and protest periods would help protect the interests of Western Watersheds Project, my own interests, and the public interest by providing for more timely and meaningful public notice of BLM's oil and gas leasing decisions and improving public lands decision-making.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of April, 2019 in Laramie, Wyoming.

A handwritten signature in dark ink, appearing to read "Erik Molvar", written over a horizontal line.

Erik Molvar



Above: Lava flows and extinct volcanoes near Black Rock Summit, NV. Parcel 224NV-18-06-128 shown here in middle distance.
Below: Diamond Mountains from upper Huntington Creek valley, Nevada. Photo taken on or near Parcel NV-18-09-081.





Above: Oil development in the Railroad Valley, Nevada.

Below: Wild horses, Delamar Mountains (NV), on NV-18-09-118.





Above: Hot Creek Range (NV), vicinity of Parcel 130NV-18-06-034.

Below: Along the Sand Draw Road, Bighorn Basin (WY), on or very near Parcel 269.





Above: Desert elk, rims above Parnell Creek, Wyoming's Red Desert.
Below: Black Rock, Wyoming's Red Desert, taken from Parcel 301.





Above: Adobe Town Citizens' Proposed Wilderness, designated as 'Very Rare or Uncommon' under state statute, Parcel WYW187120.

Below: Black-tailed prairie dog, Cow Creek Buttes, Thunder Basin National Grassland (WY), on or near Parcel 19.



**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT, and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

vs.

RYAN K. ZINKE, Secretary of Interior; DAVID
BERNHARDT, Deputy Secretary of Interior; and
UNITED STATES BUREAU OF LAND
MANAGEMENT, an agency of the United States,

Defendants,

and

STATE OF WYOMING; WESTERN ENGERGY
ALLIANCE

Defendant-Intervenors.

Case No.: 1:18-cv-00187-REB

CASE MANAGEMENT ORDER

In accordance with the agreements reached via the parties' October 24, 2018 Joint Proposed Litigation Plan (Docket No. 79), the October 30, 2018 telephone scheduling conference held between counsel and the Court, the parties' November 5, 2018 Stipulated Supplement to Proposed Litigation Plan (Docket No. 92), and to further the just, speedy, and inexpensive determination of this case,

IT IS ORDERED that the following deadlines and procedures will govern this litigation:

A. JOINDER OF PARTIES/AMENDMENT OF PLEADINGS: **January 30, 2019.**

B. "PHASE ONE" SUMMARY JUDGMENT

1. Administrative Record

a. Federal Defendants shall file the Administrative Record for IM 2018-034 and the administrative records for the five lease sales subject to Plaintiffs' as-applied challenge

to IM 2018-034 (the June 2018 Nevada, September 2018 Nevada, June 2018 Wyoming, September 2018 Wyoming, and September 2018 Utah lease sales), under the Fourth and Fifth Claims for Relief, on or before **January 30, 2019**.

b. The parties shall notify Federal Defendants (with a copy to all parties) of any objections to the Phase One Administrative Record by **February 25, 2019**.

c. Any supplemental administrative record that stems from the Federal Defendants' response to objections to the Phase One Administrative Record must be filed no later than **March 15, 2019**.

d. If the parties' objections to the Administrative Record are not resolved, parties shall file any motion challenging the Phase One Administrative Record by **March 11, 2019**.

e. If any motions regarding the administrative record are filed, the summary judgment briefing schedule set forth below shall be tolled pending the resolution of such motions. Assuming that no such motions are filed, the Phase One partial summary judgment briefing shall apply:

2. **Summary Judgment**

a. Plaintiffs shall file their Phase One partial summary judgment motion and opening brief by **March 22, 2019**.

b. Federal Defendants shall file their cross-motion for summary judgment on the Fourth and Fifth Claims for Relief and combined opening/response brief by **May 1, 2019**.

c. In accordance with the Court's August 21, 2018 Memorandum Decision and Order regarding now-Intervenor-Defendants then-pending Motions to Intervene, Intervenor-

Defendants shall file their joint response brief and any cross-motions for summary judgment by **May 15, 2019**.¹

- d. Plaintiffs shall file their combined response/reply brief by **June 5, 2019**.
- e. Federal Defendants shall file their reply briefing by **June 19, 2019**.
- f. Intervenor-Defendants shall file their reply briefing by **July 1, 2019**.

C. “PHASE TWO” SUMMARY JUDGMENT

1. Administrative Record

a. Federal Defendants shall produce the administrative record for IM 2018-026 on or before **March 1, 2019**.

b. Federal Defendants shall produce the administrative record for Normally Pressured Lance on or before **April 17, 2019**.

c. Federal Defendants shall produce the Interior Board of Land Appeals (IBLA) case file for Normally Pressured Lance when it is prepared.

¹ Within the August 21, 2018 Memorandum Decision and Order, the Court ordered that Intervenor-Defendants file joint briefing two weeks after Federal Defendants’ briefing. See 8/21/18 MDO, p. 7 (Docket No. 54). Since then, Defendant-Intervenors have sought a modification of such terms (*see generally* Jnt. Mot. to Mod. (Docket No. 84)) and, thus, for the purposes of the parties’ joint filings concerning deadlines moving forward, Defendant-Intervenors consent only to the briefing schedule – not the filing of joint briefs. See Jnt. Prop. Lit. Plan, p. 4 n.1 (Docket No. 79). Defendant-Intervenors Motion remains pending and will be resolved in due course.

Separately, Plaintiffs seek clarification of the August 21, 2018 Memorandum Decision and Order as to whether Defendant-Intervenors “may submit cross-motions for summary judgment, whether such motions must be limited to arguments not made by Federal Defendants to avoid unnecessary duplication, and what page limits will apply to the briefs.” Jnt. Prop. Lit. Plan, p. 4 n.2 (Docket No. 79). This question will be addressed as part of the Court’s consideration of Defendant-Intervenors’ pending Joint Motion to Modify.

d. The parties shall continue to meet and confer to identify which final actions will be litigated in Phase Two and shall propose a schedule for production of the remaining Phase Two administrative records on or before **February 5, 2019**.

D. STATUS CONFERENCE: A Telephone Status Conference in this matter is set for **February 12, 2019 at 10:00 a.m. (Mountain)**. Mr. Hajek shall initiate the call, connecting the Court at (208) 334-1495. Please make arrangements to use either a Conference-Call Operator or a Conferencing System call-in line for this conference.



DATED: December 13, 2018

A handwritten signature in black ink, appearing to read "Ronald E. Bush".

Ronald E. Bush
Chief U.S. Magistrate Judge

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

WESTERN WATERSHEDS PROJECT, et al.,

Plaintiffs,

v.

RYAN K. ZINKE, Secretary of the Interior, et al.,

Defendants,

WESTERN ENERGY ALLIANCE,

Defendant-Intervenor.

Case No. 1:18-cv-00187-REB

**DEFENDANT-INTERVENOR
WESTERN ENERGY ALLIANCE'S
MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT**

Defendant-Intervenor Western Energy Alliance (Alliance) moves to dismiss Western Watersheds Project and Center for Biological Diversity's (collectively, Plaintiffs) Seventh Claim for Relief in Plaintiffs' First Amended Complaint.

In their First Amended Complaint [Doc. 78], Plaintiffs request that the Court declare the Normally Pressured Lance Natural Gas Development Project violated Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) unlawful under the Federal Land Policy and Management Act, the National Environmental Policy Act, and/or the Administrative Procedures Act, and reverse and set aside the FEIS and ROD. Doc. 78 at 121. On November 16, 2018, Federal Defendants moved to dismiss the Seventh Claim for Relief for lack of proper venue, or in the alternative, to sever and transfer the claim to the District of Wyoming.

The Alliance hereby adopts and incorporates the arguments set forth by Federal Defendants, Defendant-Intervenor State of Wyoming, and Proposed-Defendant-Intervenor Jonah Energy LLC in their Motions to Dismiss [Docs. 96, 97, and 99].

For the reasons outlined in the above-referenced Motions to Dismiss, Defendant-Intervenor Alliance respectfully moves the Court to dismiss Plaintiffs' Seventh Claim for Relief with prejudice or, in the alternative, to transfer those claims to the District Court for the District of Wyoming, and to grant such further relief as this Court deems just and proper.

Respectfully submitted this 16th day of November 2018.

/s/ Bret Sumner

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November 2018, I served a true and correct copy of the foregoing **DEFENDANT-INTERVENOR WESTERN ENERGY ALLIANCE’S MOTION TO DISMISS AND MEMORANDUM IN SUPPORT** via the Court’s electronic case filing system which will cause the foregoing to be served upon all counsel of record.

/s/ Bret Sumner

Bret Sumner

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

WESTERN WATERSHEDS PROJECT,
et al.,

Plaintiffs,

vs.

RYAN K. ZINKE, Secretary of the Interior, *et al.*,

Defendants.

Case No. 1:18-cv-00187-REB

**DEFENDANTS' MOTION TO DISMISS
FOR IMPROPER VENUE OR, IN THE
ALTERNATIVE, TO SEVER AND
TRANSFER PLAINTIFFS' CLAIMS
CHALLENGING THE NORMALLY
PRESSURED LANCE PROJECT**

Defendants Ryan Zinke, Secretary of the Interior, *et al.* respectfully move, pursuant to Federal Rule of Civil Procedure 12(b)(3), to dismiss the Seventh Claim for Relief in Plaintiffs' First Amended Complaint (ECF No. 78) for lack of proper venue under 28 U.S.C. § 1391(e). In the alternative, Defendants move to transfer the Seventh Claim for Relief to the District of Wyoming pursuant to 28 U.S.C. § 1404(a). The grounds for this motion are set forth in the attached memorandum in support.

Respectfully submitted this 16th day of November, 2018,

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

WESTERN WATERSHEDS PROJECT,
et al.,

Plaintiffs,

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RYAN K. ZINKE, Secretary of the Interior, *et al.*,

Defendants.

Case No. 1:18-cv-00187-REB

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
FOR IMPROPER VENUE OR, IN THE
ALTERNATIVE TO SEVER AND
TRANSFER, PLAINTIFFS' CLAIMS
CHALLENGING THE NORMALLY
PRESSURED LANCE PROJECT**

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INTRODUCTION

In their First Amended Complaint (ECF No. 78), Plaintiffs Western Watersheds Project and Center for Biological Diversity (“Plaintiffs”) assert a new claim challenging the U.S. Bureau of Land Management’s (“BLM”) decision to approve the Normally Pressured Lance Natural Gas Development Project (“NPL Project”). The NPL Project is an oil and gas development project that will be conducted on federal, state, and private land in Wyoming and has no relationship to this district. The BLM officials who were involved in formulating and approving the NPL Project do not work or reside in this district. Plaintiffs allege that venue is proper because they reside in this district, but venue cannot be based solely on the plaintiffs’ residence when real property is involved. The NPL Project claim directly involves BLM’s management of real property in another district, including the development of that land for oil and gas extraction. Therefore, venue is not proper under 28 U.S.C. § 1391(e) and the case should be dismissed for improper venue. In the alternative, the case should be transferred to the U.S. District Court for the District of Wyoming, pursuant to 28 U.S.C. § 1404(a), because that is where the BLM land at issue is located and where the impacts of BLM’s decision will be felt.

BACKGROUND

In this case, Plaintiffs’ recently added Seventh Claim for Relief challenges BLM’s approval of the NPL Project on BLM land administered by its Pinedale and Rock Springs Field Offices in Wyoming. See First Am. Compl. ¶¶ 225mm-225mmm, 332-43; *see also* Normally Pressured Lance Natural Gas Development Project Record of Decision (“NPL Project ROD”) at 2, Ex. 1. The project area comprises approximately 140,000 acres of land in southwest Wyoming. NPL Project ROD at 2, 6. BLM’s record of decision allows Jonah Energy LLC to submit site-specific plans for oil and gas development within the project area. *Id.* at 3. Such

site-specific plans may include exploration plans, applications for permits to drill (“APD”), and right-of-way applications, which require further approval from BLM. *Id.* BLM anticipates that Jonah Energy may, subject to BLM’s approval, develop up to 3,500 oil and gas wells over an approximately ten-year development period. *Id.* The project will be implemented in accordance with governing resource management plans (“RMP”) for BLM Wyoming field offices—the Pinedale RMP, Green River RMP, and Greater Sage Grouse Plan Amendments for the Rocky Mountain Region issued in 2015—and any subsequent amendment or revision of those plans. *Id.*¹

Through the preparation of the environmental impact statement (“EIS”) for the project, BLM consulted with the State of Wyoming, several Wyoming counties, and the Town of Pinedale, Wyoming, which all participated as cooperating agencies. *Id.* at 34. The Wyoming State Historic Preservation Officer (“SHPO”) will be involved in the identification of cultural resources that may be adversely affected by subsequently approved ground disturbing activities. *Id.* at 34. During the National Environmental Policy Act (“NEPA”) process, BLM consulted with several tribes in the region who may be affected by the project. *Id.* at 35. BLM also conducted multiple scoping meetings in Pinedale, Marbleton, and Rock Springs, Wyoming. *Id.* at 36. After the release of the draft EIS in July 2017, BLM held public meetings at its Pinedale and Rock Springs Field Offices. *Id.* Comments were received from twelve entities within the State of Wyoming and two local government entities. *Id.* at 37. BLM’s Wyoming State Director approved the NPL Project. *Id.* at 1; Declaration of Mary Jo Rugwell (“Rugwell Decl.”) ¶ 2.

¹ The NPL Project ROD and additional documents relating to the project are available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=76405>.

ARGUMENT

I. The Case Should Be Dismissed for Improper Venue

A. Standard for Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(3)

Pursuant to Rule 12(b)(3), a complaint may be dismissed if it is brought in an improper venue, and the plaintiff bears the burden of demonstrating that venue is proper. *See Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979); *see also Koresko v. RealNetworks, Inc.*, 291 F. Supp. 2d 1157, 1160 (E.D. Cal. 2003). In deciding a Rule 12(b)(3) motion, the pleadings need not be accepted as true and the court may consider supplemental written materials and facts outside of the pleadings without transforming the motion into a motion for summary judgment. *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004); *Agueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996). If genuine contested factual issues are presented, the court draws all reasonable inferences in favor of the non-moving party. *Murphy*, 362 F.3d at 1138–40. Where venue is improper, the district court has the discretion to dismiss the case under Rule 12(b)(3) or transfer the case in the interests of justice to an appropriate jurisdiction under 28 U.S.C. § 1406(a). *See King v. Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992); *Dist. No. 1 Pac. Coast Dist. v. Alaska*, 682 F.2d 797, 799 (9th Cir. 1982).

B. Plaintiffs' Seventh Claim Should Be Dismissed Because Plaintiffs Have Not Demonstrated that Venue is Proper Under 28 U.S.C. § 1391(e)(1)

Plaintiffs' Seventh Claim for Relief challenging the NPL Project should be dismissed for lack of proper venue because it relates entirely to the authorization of oil and gas development in Wyoming, the acts and events leading to the decision took place in Wyoming, and it was approved by BLM's Wyoming State Director. The claim involves actions affecting real property and Jonah Energy's interest in that property, and therefore it involves real property for purposes of the venue statute, 28 U.S.C. § 1391(e)(1). Because this claim involves real property, the

residence of Western Watersheds Project is insufficient to establish proper venue under 28 U.S.C. § 1391(e)(1)(C), and therefore the Seventh Claim should be dismissed for improper venue.²

In actions against federal agencies or officials, venue is proper “in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.” 28 U.S.C. § 1391(e)(1). In this case, Plaintiffs have asserted that venue is proper based solely on the third basis enumerated in the statute – the residence of Western Watersheds Project and the presence of staff members of the Center for Biological Diversity. *See* First Am. Compl. ¶ 17. The other potential bases for venue are not alleged and, in any case, do not exist here. Neither the alleged actions giving rise to the NPL Project claim nor the property that is the subject of that claim are in this district. Further, the officials who were involved in approving the NPL Project do not reside in this district. *See, e.g., Reuben H. Donnelley Corp. v. FTC*, 580 F.2d 264, 266 n.3 (7th Cir. 1978) (a federal official’s residence for venue purposes is the location where he or she performs official duties). Accordingly, venue in this case hinges entirely on whether Western Watersheds’ residence in this district alone can satisfy the requirements of the federal venue

² Plaintiffs’ Seventh Claim for Relief appears to encompass all of the claims challenging the NPL Project. *See* First Am. Compl. ¶ 332-343. While the First Amended Complaint states that the claims regarding the NPL Project are in addition to the claims set forth in the First, Second, and Third Claims for relief, *id.*, ¶ 333, all of the claims challenging the NPL Project are duplicated in the Seventh Claim. *Compare id.* ¶¶ 276-307 with *id.* ¶¶ 332-343. Therefore, the dismissal of the Seventh Claim would be a dismissal of all claims relating to the NPL Project. To the extent, however, that there are additional claims relating to the NPL Project, they should also be dismissed or, in the alternative, severed and transferred as discussed in section II, *infra*.

statute.³ As explained below, it cannot because this is a case where “real property is involved in the action.” 28 U.S.C. § 1391(e)(1)(C).

Prior to the enactment of 28 U.S.C. § 1391(e), suits against federal officers and agencies could only be brought in the District of Columbia. *Donnelley*, 580 F.2d at 267. The enactment of the modern venue statute liberalized these requirements by increasing the locations in which federal officials can be sued. *Id.* The impetus for this change came, in large part, from litigants seeking review of decisions regarding the management of public lands. A letter from Deputy Attorney General Byron White at the time of enactment of the statute directly addressed this point and also raised the concern that the venue for such claims not be divorced from the locality where such claims arise:

The principal demand for this proposed legislation comes from those who wish to seek review of decisions relating to public lands, such as the awarding of oil and gas leases, consideration of land patent applications and the granting of grazing rights or other interests in the public domain. The applicants may reside in any State, or several States of the Union, and it would be unwise to have the Secretary sued in Maine with respect to an oil and gas lease in Wyoming.

S. Rep. No. 87-1992, at 6 (1962), *reprinted in* 1962 U.S.C.C.A.N. 2784, 2789 (Aug. 31, 1962).

The Senate Committee reviewing the bill agreed that the changes to the venue statute would apply specifically to management decisions on federal lands:

Frequently, these proceedings involve problems which are recurrent but peculiar to certain areas, such as water rights, grazing land permits, and mineral rights. These are problems with which judges in those areas are familiar and which they can handle expeditiously and intelligently.

³ The Center is not a resident of this district. In determining where an organization resides for venue purposes, a court should consider where the organization is headquartered and where it conducts a substantial amount of its activities. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 841-42 (9th Cir. 1986). Merely having staff members in a district is insufficient to demonstrate that the Center resides in this district for venue purposes. *See id.* Indeed, Plaintiffs do not allege that the Center resides in this district. *See* First Am. Compl. ¶ 17.

Id. at 3, 1962 U.S.C.C.A.N. at 2786. Further, the Committee considered and agreed with the comment by the Deputy Attorney General regarding the desirability of having cases heard where the land at issue was located:

The Department of Justice also expressed concern that where the plaintiff resides in a different judicial district than that in which real property involved in the action is situated, it would not be in the interest of an expeditious proceeding to have the action brought in a judicial district where the plaintiff resides. The committee considered the suggestion meritorious and approved the amendment set out to section 2 of the bill.

Id. at 4, 1962 U.S.C.C.A.N. at 2787. Section 2 of the bill that was ultimately enacted contains the provision that venue is proper where the “plaintiff resides if no real property is involved in the action.” *See* Pub. L. No. 87-748, 76 Stat. 744, 744 (1962). Thus, both the legislative history and the enacted statute clearly indicate that if the plaintiff’s residence is in a different judicial district from the location of the property at issue, venue is only proper where the property is located.

In an early decision interpreting this provision of the statute and relying on the legislative history, the Chief Judge of the District of Idaho found that venue did not properly lie in Idaho for claims regarding the cancellation of oil and gas leases in Colorado, New Mexico, and Montana. *Landis v. Watt*, 510 F. Supp. 178, 180 (D. Idaho 1981). Similarly, a later decision in the District of Nevada found that a claim challenging the rejection of applications for oil and gas leases was an action involving real property. *Ferguson v. Lieurance*, 565 F. Supp. 1013, 1015 (D. Nev. 1983). More recently, the Northern District of California held that a challenge to BLM’s plan to manage the California Desert Conservation Area involved real property for venue purposes, and therefore venue could not be based solely on the plaintiffs’ residence. *Ctr. for Biological Diversity v. BLM*, No. C-08-05646, 2009 WL 1025606, at *3 (N.D. Cal. Apr. 14, 2009). The plaintiffs in that case alleged that the plan violated NEPA and FLPMA. *Id.* at *1. The court

found that plaintiff's argument—that a challenge to BLM's plan did not involve real property—amounted to “legal sophistry.” *Id.* at *3.

In some cases, courts have found that, even though the dispute was related to a parcel of land, the claims were only peripherally related to real property and therefore the restriction on venue did not apply. *See Shell Oil Co. v. Babbitt*, 920 F. Supp. 559, 564-66 (D. Del. 1996) (holding that a case relating to oil and gas leases did not involve real property for venue purposes because the only issue in the case was the disclosure of certain documents); *Santa Fe Int'l Corp. v. Watt*, 580 F. Supp. 27, 28, 31 (D. Del. 1984) (holding that a case relating to oil and gas leases did not involve real property because the claim involved Secretary Watt's decision that citizens of Kuwait could not hold oil and gas leases); *Ashley v. Andrus*, 474 F. Supp. 495, 497 (E.D. Wis. 1979) (holding that a case relating to oil and gas leases did not involve real property because the issue in the case was whether a representative of an applicant for a leasehold was able to receive the leasehold after the applicant's death). In none of these cases was the issuance of leases or the management of those leases directly at issue.

Defendants recognize that two opinions by Chief Judge Winmill in this district have rejected the notion that challenges to BLM's management of federal lands were cases that involved real property for purposes of venue. *See W. Watersheds Project v. Salazar*, Civ. No. 08-0516-E-BLW, 2009 WL 1299626, at *2 (D. Idaho May 7, 2009); *W. Watersheds Project v. Salazar*, Civ. No. 08-435-E-BLW, 2010 WL 375003, at *2 (D. Idaho Jan. 25, 2010). Defendants argued that those cases involved real property because BLM's management of federal lands under its responsibility was directly at issue. But the Court disagreed, in part, because it determined that cases involving environmental issues were not cases involving real property for

venue purposes. *W. Watersheds Project*, 2009 WL 1299626, at *2 (citing *NRDC v. TVA*, 340 F. Supp. 400 (S.D.N.Y. 1971), *rev'd on other grounds*, 459 F.2d 2d 255 (2d Cir. 1972)).⁴

Significantly, the *NRDC* decision was vacated, albeit on other grounds, by the Second Circuit. Further, even that decision recognized that an action which “center[s] directly on the real property” involves real property for venue purposes. *NRDC*, 340 F. Supp. at 406. An action that challenges BLM’s planning and implementation decisions regarding the land that it administers, particularly if it contains a claim that BLM has violated FLPMA, is an action that directly centers on real property. *See Ctr. for Biological Diversity*, 2009 WL 1025606, at *3; *see also Ctr. for Envtl. Law and Policy v. U.S. Bureau of Reclamation*, No. C 08-1730 RAJ, 2009 WL 10668581, at *2-6 (W.D. Wash. May 12, 2009) (ECF No. 18) (finding that a NEPA challenge to the Bureau’s decision to draw down water from a reservoir did not involve real property because, unlike *Center for Biological Diversity*, no FLPMA claim was at issue, but granting motion to transfer because the land and water at issue were located elsewhere).

But even if the Court were to find the reasoning of the prior *Western Watersheds Project* decisions persuasive, the circumstances in this case are different. The claims challenging the resource management plans involved “BLM management of millions of acres of public lands” across several management areas in different states on similar grounds. *W. Watersheds Project*, 2009 WL 1299626, at *2-3. In contrast, the claim challenging the NPL Project involves only BLM’s approval of a discrete oil and gas development project in Wyoming. First Am. Compl. ¶¶ 225nn, 225oo, 332-43; NPL Project ROD at 2, 6.

⁴ In a subsequent case regarding a watershed restoration plan in Nevada, Judge Lodge declined to rule on the improper venue issue and instead transferred the case to the District of Nevada. *See W. Watersheds Project v. Schneider*, No. 1:13-cv-261-EJL, 2014 WL 12788740, at *2-6 (D. Idaho Mar. 13, 2014).

Further, Plaintiffs specifically challenge BLM's approval of the project because it will allow the development of up to 3,500 oil and gas wells and associated facilities that will be developed on federal, state, and private land in Wyoming. First Am. Compl. ¶ 225nn; *see also* NPL Project ROD at 2. The approval of the NPL Project grants Jonah Energy the right to seek site-specific approvals for oil and gas drilling within the project area in Wyoming. NPL Project ROD at 3; *see also* Rugwell Decl. ¶ 9. Jonah Energy has made substantial investments to purchase the leases in the NPL Project area in Wyoming. *See* Declaration of Paul Ulrich in Support of Proposed Intervenor-Defendant Jonah Energy LLC's Motion to Intervene ¶ 9 (ECF No. 85-2). In addition, under the Federal Oil and Gas Royalty Management Act of 1982, the State of Wyoming and Wyoming counties where the project is located receive a significant portion of the royalties for produced federal minerals from the project. *See* 30 U.S.C. § 1701 *et seq.* Thus, under any standard, the NPL Project claims center on real property and venue is not proper in Idaho under the federal venue statute. *See* 28 U.S.C. § 1391(e).

Accordingly, the Seventh Claim for Relief should be dismissed for improper venue pursuant Fed. R. Civ. P. 12(b)(3) or transferred pursuant to 28 U.S.C. § 1406(a).

II. In the Alternative, the Claim Regarding the NPL Project Should be Severed and Transferred to the U.S. District Court for the District of Wyoming

If the Court does not dismiss the NPL Project claim for improper venue, it should sever and transfer those claims to the District of Wyoming, pursuant to 28 U.S.C. § 1404(a), because that is where the land at issue is located and where a share of the royalties associated with the production from the project will be disbursed. The local cooperating agencies and citizens in the project area most affected by BLM's approval of the NPL Project also have a strong interest in having disputes regarding BLM's approval of the Project resolved in Wyoming.

A. The Court Should Sever the Claim Regarding the NPL Project

The Court should sever the Seventh Claim for Relief regarding the NPL Project to enable the transfer of that claim to the District of Wyoming. Under Rule 21, a court may “sever any claim against a party.” Fed. R. Civ. P. 21. Courts have broad discretion in determining whether to sever claims under Rule 21. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1297 (9th Cir. 2000); 4-21 Moore’s Federal Practice Civil § 21.05 (2010) (stating that courts have “great discretion under Rule 21 to restructure an action to promote the efficient administration of justice”); 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1689 (3d ed. 2001) (“Questions of severance are addressed to the broad discretion of the district court.”). A complaint that advances one or two legal theories applied to multiple, unique factual situations will be treated as pleading multiple claims that may be severed under Rule 21. *Coughlin v. Rogers*, 130 F.3d 1348, 1350–51 (9th Cir. 1997).

Rule 21 “authorizes the severance of any claim, even without a finding of improper joinder, where there are sufficient other reasons . . . [such as where] they arise from different factual situations.” *Khanna v. State Bar of Cal.*, No. C-07-2587 EMC, 2007 WL 2288116, at *2 (N.D. Cal. Aug. 7, 2007); *see also Wyndham Assocs. v. Bintliff*, 398 F.2d 614, 618 (2d Cir. 1968). Rule 21 can also be used “to sever claims of parties, otherwise permissibly joined, for purposes of convenience, to avoid prejudice, or to promote the expeditious resolution of the litigation.” *Ferger v. C.H. Robinson Worldwide, Inc.*, No. C06-174RSL, 2006 WL 2091015, at *1 (W.D. Wash. July 25, 2006). Severance is appropriate where there are “legal and factual differences” between the various claims. *Delce v. Amtrak & Rescoe Holdings, Inc.*, 180 F.R.D. 316, 319 (E.D. Tex. 1998). Further, “where claims are more properly tried in another forum, severance is the judicial tool of choice.” *Id.*

Severance of the NPL Project claim is appropriate because that claim relates specifically to a discrete oil and gas project in Wyoming and therefore is factually and legally distinct from Plaintiffs' other claims challenging Instruction Memorandum ("IM") 2018-026 and IM 2018-034 and the oil and gas lease sales at issue in the case. Unlike the other claims, the NPL Project claim is a challenge to a distinct project based on specific allegations regarding the planning and NEPA process for that project. In that claim, Plaintiffs make factual and legal assertions that are relevant only to the NPL Project and not Plaintiffs' other claims. Plaintiffs allege, for example, that BLM's approval of the NPL Project violated FLPMA by failing to comply with the governing land use plans and specific management objectives in those plans and violated NEPA, among other reasons, by failing to consider an adequate range of alternatives, failing to analyze an adequate baseline, failing to disclose site-specific impacts, and failing to analyze cumulative impacts. All of those allegations are specific to the claims challenging the NPL Project and can be severed from Plaintiffs' remaining claims. Severance is appropriate to enable the transfer of the claim to a more appropriate forum. See *W. Watersheds Project*, 2010 WL 375003, at *3 (severing and transferring challenges to grazing permits regarding lands in Nevada to the District of Nevada).

Accordingly, Plaintiffs' Seventh Claim for Relief challenging the NPL Project should be severed.

B. The NPL Project Claim Should Be Transferred to the District of Wyoming

The NPL Project Claim should be transferred to the District of Wyoming where the project is located and where the BLM officials who approved the project are located.

1. Standard for Transfer Under 28 U.S.C. § 1404(a)

This Court has broad discretion under 28 U.S.C. § 1404(a) to transfer claims to another judicial district based on considerations of convenience and fairness. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29-30 (1988); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). Section 1404(a) provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). In determining whether an action should be transferred under section 1404(a), courts employ a two-step analysis. First, a court considers whether the action could have originally been brought in those districts to which the transfer is sought. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985); *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006). Second, a court undertakes an individualized, case-by-case consideration of convenience and fairness, taking into account the convenience of the parties and the interests of justice. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000).

In the Ninth Circuit, the “convenience” factor typically requires that a court consider a number of *private* interests, including: (1) the relative ease of access to sources of proof; (2) the cost of obtaining witnesses; (3) the availability of compulsory process for attendance of unwilling non-party witnesses; and (4) the possibility of a view of the premises, if a view would be appropriate to the action. *See Decker*, 805 F.2d at 843 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). The “interest of justice” factor requires the consideration of several *public* interests, including (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized controversies decided at home; (3) the interest in having a case heard in the state that is most familiar with the governing law; (4) the relevant public policy

of the forum state; (5) the desire to avoid multiple litigation from a single transaction and to promote consistency among court rulings that affect the development of the case; and (6) the relative intensity in the two jurisdictions of any local interests that the litigation might implicate. *See id.* (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)).

As discussed below, the Court should transfer the case, pursuant to 28 U.S.C. § 1404(a), to the U.S. District Court for the District of Wyoming because venue would be proper in that district and the interest of justice and convenience of the parties and the court both weigh in favor of a transfer.

2. The District of Wyoming is a Proper Venue

Under 28 U.S.C. § 1391(e), Plaintiffs could have brought challenged the NPL Project in district court in Wyoming or the District of Columbia. Wyoming is a proper venue because the events or omissions giving rise to the NPL Project claim occurred in Wyoming. *See* 28 U.S.C. § 1391(e)(1)(B). The NPL Project is located in BLM's Pinedale and Rock Springs Field Offices in Wyoming. First Am. Compl. ¶¶ 225nn, 225oo. The approval process involved consultation with the State of Wyoming, several Wyoming counties, and the Town of Pinedale, Wyoming, which participated as cooperating agencies during the NEPA process. NPL Project ROD at 34. The NEPA process also involved consultation with several tribes in the region. *Id.* at 35. BLM also conducted multiple scoping meetings in Pinedale, Marbleton, and Rock Springs, Wyoming and also held multiple public meetings on the draft EIS in the Pinedale and Rock Springs Field Offices. *Id.* at 36. State and local officials were actively engaged in the process, as evidence by the comments they submitted during the NEPA process. *Id.* at 37. BLM's Wyoming State Director made the decision to approve the NPL Project. *Id.* at 1; *see also* Rugwell Decl. ¶¶ 2-8. Accordingly, the events giving rise to Plaintiffs' claim challenging the NPL Project occurred in the District of Wyoming, and therefore venue in Wyoming is proper under 28 U.S.C. §

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1391(e)(1)(B). See *Nat'l Ass'n of Homebuilders v. U.S. EPA*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) (“In cases brought under the [Administrative Procedure Act (“APA”)], courts generally focus on where the decisionmaking process occurred to determine where the claims arose.”).

Venue in Wyoming is also proper under 28 U.S.C. § 1391(e)(1)(A) because the BLM official who approved the NPL Project—the BLM Wyoming State Director—resides in Wyoming. See *Dehaemers v. Wynne*, 522 F. Supp. 2d 240, 248 (D.D.C. 2007) (finding that an agency head may have multiple residences for venue purposes depending upon where the agency head conducts a “significant amount” of their duties); *California v. Bureau of Land Mgmt.*, Nos. 18-cv-521-HSG, 18-cv-524-HSG, 2018 WL 3439453, at *3 (N.D. Cal. 2018) (finding that venue in Wyoming would be proper because BLM has an office in the state, manages a substantial amount of public land in the state, and manages land subject to the regulation challenged in the case). Accordingly, this case could have been brought in the District of Wyoming.

3. The Interest of Justice Favors Transfer to Wyoming

Courts generally place the greatest weight on the interest of justice factor in determining whether transfer is appropriate. *Gerin v. Aegon USA, Inc.*, No. C06-5407 SBA, 2007 WL 1033472, at *6 (N.D. Cal. Apr. 4, 2007) (“The ‘interests of justice’ consideration is the most important factor a court must consider, and may be decisive in a transfer motion even when all other factors points the other way.”) (quoting *London and Hull Mar. Ins. Co. v. Eagle Pac. Ins. Co.*, No. C 96-01512 CW, 1996 WL 479013, at *3 (N.D. Cal. Aug. 14, 1996)); see *Anderson v. Thompson*, 634 F. Supp. 1201, 1204 (D. Mont. 1986) (“As a general proposition, it may be said that the convenience of the parties and witnesses is subordinate to the interests of justice factor.”). This factor strongly favors transferring this case to the District of Wyoming.

In environmental suits brought pursuant to the Administrative Procedure Act (“APA”), such as this one, many of the interest of justice factors will be inapplicable or neutral, and therefore the most salient factor in determining the appropriate venue is the interest in resolving controversies in the regions that will be most immediately affected by the litigation. *See Ctr. for Biological Diversity v. Kempthorne*, No. C-07-0894 EDL, 2007 WL 2023515, at *5 (N.D. Cal. July 12, 2007). Here, the State of Wyoming, Wyoming counties and local governments, and residents of Wyoming—where the BLM land at issue is located—have a compelling interest in seeing that the claims regarding the NPL Project are decided locally. *See id.* at *5-6; *see also Sierra Club v. U.S. Dep’t of State*, No. C 09-4086 SI, 2009 WL 3112102, at *4 (N.D. Cal. Sept. 23, 2009) (transferring an environmental challenge to an oil pipeline that would be constructed primarily in Minnesota); *Backcountry Against Dumps v. Abbot*, No. Civ. S -10-394 FCD/KJN, 2010 WL 2349194, at *4 (S.D. Cal. June 8, 2010) (transferring a case, in part, because “all land and real property related to” the challenged plan lay outside the district).

The interest of justice is promoted when a localized controversy is decided in the region it impacts. *See Piper*, 454 U.S. at 241 n.6; *Decker*, 805 F.2d at 843. “In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only.” *Gulf Oil Corp.* 330 U.S. at 509; *see also Hawksbill Sea Turtle v. FEMA*, 939 F. Supp. 1, 3 n.5 (D.D.C. 1996) (“The Court . . . notes the importance of allowing local citizens to attend and observe the proceedings of this case.”). In matters of environmental law and land use decisions such as those involved here, disputes “that are of great importance in the State . . . should be resolved in the forum where the people ‘whose rights and interests are in fact most vitally affected by the suit’” are located. *Trout Unlimited v. U.S. Dep’t of Agric.*, 944 F. Supp. 13, 19-20 (D.D.C. 1996) (quoting *Adams v.*

Bell, 711 F.2d 161, 167 n.34 (D.C. Cir. 1983)); *see also* *S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) (“Land is a localized interest because its management directly touches local citizens.”); *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 70 (D.D.C. 2003). The District of Idaho is not a convenient forum for those individuals with the greatest interest in viewing the proceedings.

In this case, the NPL Project will be implemented in the Pinedale and Rock Springs Field Offices in Wyoming. A court decision regarding the project will have the most immediate impact on the State of Wyoming, counties and local governments, and the residents of Wyoming. Demonstrating the local interest in the plan, the State of Wyoming, several Wyoming counties, and the Town of Pinedale were cooperating agencies in the NEPA process, and twelve entities within the State of Wyoming government and two counties submitted comments on the draft EIS. NPL Project ROD at 34, 36; *see also* Rugwell Decl. ¶¶ 6-8. Therefore, transfer to the District of Wyoming is appropriate. *See, e.g., S. Utah Wilderness All.*, 315 F. Supp. 2d at 88 (transferring claims involving oil and gas leases in Utah to district court in Utah and explaining that “[t]he controversy is localized in the sense that it involves Utah lands” and “hence there is a strong local interest in having this case heard in Utah”); *WildEarth Guardians v. U.S. Office of Surface Mining Reclamation Enft*, No. 1:13-cv-518, 2014 WL 503635, at *1 (D. Colo. Feb. 7, 2014) (transferring surface mining claims to Wyoming, New Mexico and Montana and noting that the “value in having environmental claims litigated where their impacts resonate most deeply eclipses any alleged judicial economy in lumping together in one suit and one venue various locally charged claims”); *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 922 F .

Supp. 2d 51 (D.D.C. 2013) (transferring claims challenging the “Wright Area” leasing decisions in Wyoming to Wyoming).⁵

Plaintiffs may attempt to rely on Judge Winmill’s 2009 opinion regarding Western Watersheds’ claims challenging RMPs, but that decision does not support venue in Idaho for the NPL Project claim. In that case, the court found that the interest in having localized controversies decided locally was not sufficient to justify transfer in that instance because the claims involved broad management issues stretching across geographic boundaries. *W. Watersheds Project*, 2009 WL 1299626, at *3. The same is not true with respect to Plaintiffs’ Seventh Claim for relief, which addresses a single oil and gas development project in Wyoming.

In sum, the interest in resolving controversies locally is the overriding factor in this case and it weighs heavily in favor of transfer to Wyoming. *See W. Watersheds Project*, 2014 WL 12788740, at *5-6 (finding that the interest of justice favored transferring claims involving a watershed restoration plan to the District of Nevada because the “impact from [the plan] and the resolution of this matter will be felt most in Nevada”).

4. The Convenience of the Parties and the Court Favors Transfer

The convenience of the parties and the Court also favors transfer of the case to Wyoming. The NPL Project was approved by the BLM Wyoming State Director and the planning process was conducted in BLM’s Pinedale and Rock Springs Field Offices. *See* NPL Project ROD at 1, 36; Rugwell Decl. ¶¶ 2, 5. Accordingly, the BLM staff members who were involved in the

⁵ *See also WildEarth Guardians v. Jewell*, No. 1:15-CV-2026-WJM, 2016 WL 8577508, at *6–7 (D. Colo. June 17, 2016) (transferring surface mining claims to the District of New Mexico and the District of Wyoming); *WildEarth Guardians v. Jewell*, No. 15-cv-01984-REB, 2016 WL 796189, at *3 (D. Colo. Mar. 1, 2016) (transferring surface mining claims to the District of Utah); *WildEarth Guardians v. U.S. Forest Serv.*, No. 1:11-cv-03171-AP, 2012 WL 1415378, at *4 (D. Colo. Apr. 24, 2012) (transferring claims challenging leasing decisions in Wyoming to Wyoming).

planning process are located in Wyoming, as are most of the documents that relate to the preparation of the plan; other documents may be located at BLM's headquarters in Washington, D.C. Because this is an APA case, it is unlikely that there will be a need to conduct discovery and gather evidence. Nevertheless, there are some instances in APA cases in which discovery or evidentiary hearings occur. In the case involving BLM's RMPs, the Court conducted an evidentiary hearing and heard evidence from witnesses regarding the appropriate remedy. See *W. Watersheds Project v. Salazar*, No. 4:08-CV-516-BLW, 2012 WL 5880658, at *2-9 (D. Idaho Nov. 20, 2012). If a need for an evidentiary hearing were to arise in this case, it would be more convenient for the parties and witnesses if the case were litigated in Wyoming, where the relevant witnesses are likely to be located.

In addition, in environmental cases, a judge may conduct a site visit of the area affected by the litigation to gain a better understanding of the issues in the case. Indeed, in a prior case brought by Western Watersheds, Chief Judge Winmill conducted a site visit of grazing allotments and found it to be helpful. See *W. Watersheds Project v. U.S. Forest Serv.*, No. CV-05-189-E-BLW, 2007 WL 129038, at *1 (D. Idaho Jan. 12, 2007). It would be less convenient for the parties and the court to conduct a site visit in an area far away in another state. Accordingly, Wyoming would be a more convenient venue.

Moreover, Wyoming would not be significantly less convenient for Plaintiffs. While Western Watersheds' headquarters are in Idaho, its members and supporters are located in various locations throughout the west. As indicated in the complaint, "Western Watersheds Project is headquartered in Hailey, Idaho, and has additional staff and offices in Boise, as well as Wyoming, Montana, Nevada, Arizona, Utah, and Oregon." First Am. Compl. ¶ 19.A. The Center for Biological Diversity likewise states that it advocates "for increased protections for

greater sage-grouse and other sagebrush obligates in Idaho, Montana, Nevada, Wyoming, and elsewhere.” *Id.* ¶ 19.B. Accordingly, litigating the case in Wyoming would not be more inconvenient for the Plaintiffs.

Further, even if it were more convenient for Plaintiffs’ attorneys to litigate the case in this district than elsewhere, that is not a factor that the Court should consider in determining which venue is the most appropriate. *See Ctr. for Biological Diversity v. Rural Utilities Serv.*, No. C-08-1240 MMC, 2008 WL 2622868, at *1 (N.D. Cal. June 27, 2008) (holding “the convenience of counsel is not a recognized factor” to be considered); *In re Horseshoe Entm’t*, 337 F.3d 429, 434 (5th Cir. 2003) (“The factor of ‘location of counsel’ is irrelevant and improper for consideration in determining the question of transfer of venue”); *Solomon v. Cont’l Am. Life Ins. Co.*, 472 F.2d 1043, 1047 (3d Cir. 1973) (“The convenience of counsel is not a factor to be considered”); *Sierra Club*, 276 F. Supp. 2d at 69 (“Because this action involves an administrative review that the court is likely to determine on the papers, the location of counsel — already given little, if any, weight in transfer determinations — makes no difference here.”) (quotation marks and citation omitted). Therefore, the location of Plaintiffs’ attorneys should be given no weight.

5. Plaintiffs’ Choice of Forum Is Entitled to No Weight

Plaintiffs’ decision to challenge the NPL Project in this district is entitled to no weight. While, as a general rule, some deference should be given to a plaintiff’s choice of forum, no such deference is appropriate here because the events giving rise to Plaintiffs’ Seventh Claim for Relief regarding the NPL Project occurred totally outside of this district. *See Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968) (“If the operative facts have not occurred within the forum of original selection and that forum has no particular interest in the

parties or the subject matter, the plaintiff's choice is entitled only to minimal consideration."); *see also Ironworkers Local Union No. 68 v. Amgen*, No. CV 07-5157 PSG (AGRx), 2008 WL 312309, at *4 (C.D. Cal. Jan. 22, 2008); *Amazon.com v. Cendant Corp.*, 404 F. Supp. 2d 1256, 1260 (W.D. Wash. 2005). In cases such as this, where a plaintiff's choice of forum has "no meaningful ties to the controversy and no particular interest in the parties or subject matter," that choice is no longer afforded deference. *Trout Unlimited*, 944 F. Supp. at 17 (citation omitted); *see also Sierra Club v. U.S. Def. Energy Support Ctr.*, No. C 10-2673 JSW, 2011 WL 89644, at *2 (N.D. Cal. 2011) (transferring the case and noting that "Plaintiff's choice of forum is given little weight" because the action had no connection to the forum); *Shalaby v. Newell Rubbermaid, Inc.*, No. C06-07026 MJJ, 2007 WL 3144357, at *6 (N.D. Oct. 24, Cal. 2007). Because none of the operative facts giving rise to Plaintiffs' NPL Project claim occurred in this district, the fact that Plaintiffs chose to file suit in this district should be given no weight.

CONCLUSION

As demonstrated above, the real property that is at issue in this lawsuit is located outside of this district and the actions giving rise to Plaintiffs' Seventh Claim for Relief regarding the NPL Project occurred entirely outside of this district. Accordingly, venue for that claim is improper and the Seventh Claim for Relief should either be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) or transferred to the District of Wyoming pursuant to 28 U.S.C. § 1406(a). In the alternative, the case should be transferred to the District of Wyoming in the interest of justice and for the convenience of the parties and the court pursuant to 28 U.S.C. § 1404(a).

Respectfully submitted this 16th day of November, 2018,

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

WESTERN WATERSHEDS PROJECT, and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

RYAN ZINKE, Secretary of Interior; DAVID
BERNHARDT, Deputy Secretary of Interior;
and UNITED STATES BUREAU OF LAND
MANAGEMENT, an agency of the United
States,

Defendants,

STATE OF WYOMING, and WESTERN
ENERGY ALLIANCE,

Intervenor-Defendants.

Case No. 1:18-cv-00187-REB

**STATE OF WYOMING'S MOTION
TO DISMISS OR IN THE
ALTERNATIVE TO TRANSFER**

Pursuant to Federal Rule of Civil Procedure 12(b)(3), the State of Wyoming hereby moves to dismiss all claims in the First Amended Complaint (Dkt. No. 78) challenging the Normally

Pressured Lance Natural Gas Project. In the alternative, Wyoming moves for transfer of those claims to the District Court for the District of Wyoming under 28 U.S.C. § 1404(a). In support of these motions, Wyoming offers the attached Memorandum in Support and the Declaration of Bob Budd.

The State of Wyoming respectfully requests that this Court grant the State's motion to dismiss, or in the alternative, the motion to transfer.

Dated this 16th day of November, 2018.

THE STATE OF WYOMING

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

WESTERN WATERSHEDS PROJECT, and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

RYAN ZINKE, Secretary of Interior; DAVID
BERNHARDT, Deputy Secretary of Interior;
and UNITED STATES BUREAU OF LAND
MANAGEMENT, an agency of the United
States,

Defendants,

STATE OF WYOMING, and WESTERN
ENERGY ALLIANCE,

Intervenor-Defendants.

Case No. 1:18-cv-00187-REB

**STATE OF WYOMING'S
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS OR IN THE
ALTERNATIVE TO TRANSFER**

INTRODUCTION

On April 30, 2018, Plaintiffs Western Watersheds Project and the Center for Biological Diversity (collectively, the Interest Groups) brought suit challenging eight Bureau of Land Management (BLM) oil and gas lease sales and two Department of the Interior Instruction Memoranda. (Dkt. No. 1). On October 17, 2018, the Interest Groups filed a First Amended Complaint challenging five additional lease sales from June and September, 2018. (Dkt. No. 78). The Interest Groups also added a new claim unrelated to any of the other oil and gas lease sales. Specifically, the Interest Groups now challenge BLM's approval of the Normally Pressured Lance Natural Gas Project (NPL Project). (*Id.* at 74-83). This represents a drastic change in the scope of this case. It also introduces a project that has no connection to Idaho or the other lease sales.

This Court has denied a motion to sever and transfer the oil and gas lease sales. (Dkt. No. 66). However, the NPL Project is qualitatively different than the oil and gas lease sales. First, the oil and gas lease sales were only for the exclusive opportunity to develop the leased lands. By contrast, the NPL Project is a plan to develop natural gas and condensate resources in a specific field under leases held by Jonah Energy. Second, the oil and gas lease sales were subject to the disputed instruction memoranda, but BLM did not apply those memoranda to the NPL Project. Next, the oil and gas leases were not considered as discrete actions but as “the cumulative impact of environmental factors acting in a widespread area stretching beyond RMP boundaries.” (Dkt. No. 66). But the NPL Project is a discrete action covered by two Wyoming-specific RMPs that apply only to lands within Sublette County, Wyoming. The RMPs that govern the NPL Project include provisions developed by the State of Wyoming and only applicable within the State. Finally, the NPL Project was part of an extraordinary collaboration among interested stakeholders, including Wyoming, federal agencies, environmental advocacy groups, sportsmen's organizations,

private individuals, and others. The NPL Project was entirely the product of work done in Wyoming. In short, the NPL Project is so differently situated than the oil and gas leases that different pragmatic and legal considerations apply. Those considerations – the current right by Jonah Energy to develop the field, the applicability of distinct RMPs tied to specific real property governed by conservation requirements that exist only in Wyoming – mean that the venue for any legal review for the NPL Project is properly the District Court for the District of Wyoming.

The federal Defendants and proposed Intervenor-Defendant Jonah Energy's arguments for dismissal are comprehensive and compelling. Accordingly, Wyoming will not repeat them but rather will adopt and incorporate them into this memorandum. Wyoming will focus its argument on why, if the motions to dismiss are denied, the Court should sever and transfer the Interest Groups' claims challenging the NPL Project to the District Court for the District of Wyoming.

BACKGROUND

I. The NPL Project.

Development of the NPL Project is subject to, and implemented in accordance with, approved land use plans for the Pinedale Resource Management Plan (RMP) and the Green River RMP, as amended by the 2015 conservation plans adopted for the protection of the greater-sage grouse and its habitat (2015 Plans). (ROD at 3) (Dkt. No. 78 at 75). The 2015 Plans adopt and incorporate the Wyoming Core Area strategy developed by Wyoming, which prioritizes conservation management of the greater-sage grouse in those geographic areas containing core populations of the species.

On August 27, 2018, BLM's Wyoming State Director approved the NPL Project. (ROD at 1). Located in Sublette County, Wyoming, the NPL Project consists of roughly 140,859 acres covering lands and minerals administered by BLM (96.3 percent of the area), the State of

Wyoming (3.6 percent), and private land owners (0.06 percent). See Record of Decision, United States Department of the Interior, Bureau of Land Management, Normally Pressured Lance Natural Gas Development Project (August 2018) (ROD) at 2.¹

Jonah Energy LLC anticipates developing up to 3,500 directionally drilled wells over a ten-year period. (*Id.* at 2-3). The project has an expected life of 40 years. (*Id.*). Jonah Energy estimates the NPL Project will produce up to 7 trillion cubic feet of gas and between 17.5 and 140 million barrels of oil. BLM Press Release, *BLM Releases Record of Decision for Normally Pressured Lance Natural Gas Project* (Aug. 28, 2018).² The NPL Project will generate approximately \$17.85 billion in revenue for Jonah Energy. *Id.* In addition to tax revenues, Wyoming expects to receive over a \$1 billion in royalties alone. *Id.*

The ROD details development in greater sage-grouse habitat and mandates that development be in accordance with the Wyoming Sage-Grouse RMP amendments. (ROD at 8). Jonah Energy commits to applying the greater sage-grouse protection measures and management set forth in the Wyoming Sage-Grouse RMP amendments on leases that pre-date those amendments. (*Id.*). The State of Wyoming has concurrent jurisdiction to review the development proposals proposed as part of the project to ensure compliance with Wyoming Executive Order 2015-4, *Greater Sage-Grouse Core Area Protection* (July 29, 2015).³ The NPL Project must comply with the density and disturbance, timing and distance, noise, infrastructure and mitigation

¹ Available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=76405>

² Available at: <https://www.blm.gov/press-release/blm-releases-record-decision-normally-pressured-lance-natural-gas-project>.

³ Available at: https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/Sage%20Grouse/SG_Executive_Order.pdf

requirements and restrictions as set forth in the Wyoming Sage-Grouse RMP amendments for areas within and outside primary habitat management areas. (*Id.* at 8-10). Importantly, BLM will undertake mitigation efforts to avoid and minimize impacts within the Core Areas consistent with the Wyoming Executive Order 2015-4. (*Id.* at 10); Wyoming Executive Order 2015-4, Attachment H at 1; State of Wyoming Revised Greater Sage-Grouse – Compensatory Mitigation Framework (July 10, 2017).⁴

BLM allows limited development in greater sage-grouse winter concentration areas within the NPL Project if permitted under the Core Area strategy. (*Id.* at 10). A seasonal development and density limitation applies to winter concentration areas that prohibits surface or other disruptive activities from December 1 through March 14. (ROD at 11). There is limited knowledge about the greater sage-grouse's use of the winter concentration areas within the NPL Project area. United States Department of the Interior, Bureau of Land Management, Normally Pressured Lance Natural Gas Development Project, Final Environmental Impact Statement (FEIS) at 2-12, 4-341 (May 2018). Jonah Energy will voluntarily fund a study that will look at the potential impacts of oil and gas development on winter concentration areas. (FEIS, Jonah Energy Comments at 6-7). "A study will be conducted concurrently with limited development activities to better understand the impacts of development in Winter Concentration Areas. The results of the study, current information, and current guidance at the time of site-specific permitting will inform BLM understanding of impacts and subsequent development in Winter Concentration Areas, and analysis during subsequent site-specific NEPA reviews." (ROD at 10). Wyoming and the Sage-Grouse Implementation Team (SGIT) will use the information obtained from the study as part of

⁴ Available at: <https://wgfd.wyo.gov/WGFD/media/content/Habitat/20170710-Revised-Habitat-Mitigation-Framework.pdf>

the ongoing efforts to conserve the greater sage-grouse. *See* Wyo. Stat. Ann. § 9-19-101 (creating SGIT).

In its First, Second, Third and Seventh Claims for Relief in their First Amended Complaint, the Interest Groups challenge BLM's approval of the NPL Project. (Dkt. No. 78 at 100-08, 116-20). The Interest Groups argue that the NPL Project violates three federal laws, the Administrative Procedure Act, the National Environmental Policy Act (NEPA), and the Federal Land Policy and Management Act. (*Id.*). In summary, the Interest Groups contend that the NPL Project is inconsistent with the 2015 Plans because, among other things, it does not prioritize oil and gas development outside of sage-grouse habitats and ensure effective conservation of winter habitat. (*Id.* at 118-19). Further, the Interest Groups claim the NPL Project will negatively impact certain pronghorn antelope and BLM failed to adequately include mitigation measures for those impacts. (*Id.* at 119-20). Finally, the Interest Groups argue the NPL Project is in violation of NEPA because BLM failed to consider reasonable alternative actions and did not consider the direct, indirect, and cumulative impacts of alternatives on greater sage-grouse and pronghorn. (*Id.*).

In asserting venue in Idaho, the Interest Groups ignore the fundamental differences between the NPL Project and the oil and gas leases it challenges in its other claims. The NPL Project did not implicate the disputed regional or national policies; rather, RMPs specific to real property located entirely within the State of Wyoming govern the Project and development under the Project is subject to conservation management developed in Wyoming applying only to Wyoming sage-grouse habitat.

II. Wyoming's Core Area strategy for conservation of the greater sage-grouse.

One of the key considerations for determining whether the interest of justice favor transfer of an action is "the local interest in the controversy." To assist the Court in understanding the

interest of Wyoming in the NPL Project, the development of Wyoming's unique process for the conservation of the greater sage-grouse and its habitat is set forth in some detail.

The greater sage-grouse is a sagebrush dependent bird species native to western areas of the United States. See U.S. Fish and Wildlife Service, *The Greater Sage-grouse: Facts, Figures and Discussion* (July 15, 2015) at 1.⁵ Since the greater sage-grouse is not a threatened or endangered species, Wyoming has regulatory authority over the species. *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976); see Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59858, 59882-83 (Oct. 2, 2015). Approximately 37% of the total population of the greater sage-grouse resides in Wyoming, more than twice as much as the next closest state. *The Greater Sage-grouse: Facts, Figures and Discussion* at 1; 80 Fed. Reg. at 59882. Wyoming and the federal government have designated approximately 8.6 million acres as priority areas of conservation. See *id* at 2. The federal government owns or controls roughly 56% of that land. *Id*.

For more than a decade, the State of Wyoming, other western states, private land owners, and the federal government have undertaken one of the largest, multi-state conservation efforts in recent history to protect the greater sage-grouse population. See Department of Interior, Office of the Secretary, *Historic Conservation Campaign Protects Greater Sage-Grouse* (Sept. 9, 2015).⁶ In 2010, the United States Fish and Wildlife Service found that the greater sage-grouse warranted

⁵ Available at: https://www.fws.gov/greatersagegrouse/factsheets/GreaterSageGrouseCanon_FINAL.pdf.

⁶ Available at: <http://www.fws.gov/news/ShowNews.cfm?ID=F5B7455D-0824-997C-47667F8ABBFFBA86>

listing under the Endangered Species Act but that such listing was precluded by pending proposals to list and delist other species. *See* Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 75 Fed. Reg. 13910 (March 23, 2010); 16 U.S.C. § 1533(b)(3)(B).

Wyoming has also undertaken efforts to maintain and improve sage-grouse habitat while striking a proper balance between protecting species and supporting the state's economy. Wyoming Executive Order 2015-4 at 1. Wyoming's conservation efforts to protect the greater sage-grouse are critical to the State because the listing of the greater sage-grouse would greatly impact the state's economy. In Wyoming, commodity production from sage-grouse habitat generates approximately \$18.4 billion in revenues, which represents nearly one-quarter of the total economic output of the state's economy. Temple Stoellinger and David Taylor, *A Report on the Economic Impact to Wyoming's Economy from a Potential Listing of the Sage Grouse*, 17 Wyo. L. Rev 79, 96 (2016).⁷

In light of the potential economic impact of a listing, Wyoming has undertaken substantial conservation efforts in order to preserve the greater sage-grouse and its habitat. Wyoming's sage-grouse conservation strategy focuses on creating, protecting, and managing greater sage-grouse Core Areas. Wyoming Executive Order 2015-4 at 3. Under this strategy, a top priority for management of the greater-sage grouse are those geographic areas containing core populations of the species. *Id.* The "Core Area" strategy is the cornerstone of Wyoming's greater sage-grouse conservation effort. *Id.* at 3-6. The Core Area incorporates high-density population areas containing the habitats that support the life cycle of the species. *Id.* at 3-5. Core Areas "encompass

⁷ Available at: <https://repository.uwyo.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1372&context=wlr>

approximately 83 percent of the breeding population of sage-grouse in Wyoming on approximately 24 percent of the total land surface of the State.” 80 Fed. Reg. at 59882; Wyoming Executive Order 2015-4 at 5. The 2015 Plans incorporate the Wyoming Core Area concept. 80 Fed. Reg. at 59882. “Core habitats designated by [Wyoming] have been identified as [priority habitat management areas] on BLM and [United States Forest Service (USFS)] lands, while non-core habitats are designated as [general habitat management areas]” ... though “BLM and USFS have adopted the more precise disturbance measurements developed by [Wyoming]. 80 Fed. Reg. at 59883. In addition, the 2015 Plans adopted more stringent protections for fluid and non-energy leasable mineral programs for lands in Wyoming. *Id.* Wyoming also includes natural disturbances, such as wildfires, in its disturbance measures, which no other state does. *Id.* at 59882-83. NPL must comply with the Core Area strategy when developing within the 48,034 acres of the Project that are within sage-grouse Primary Habitat Management Area (PHMA). (ROD at 4-5); *See* 80 Fed. Reg. at 59883 (“Core habitats designated by [Wyoming] have been identified as PHMA on BLM and USFS lands[.]”).

On December 29, 2009, BLM’s State Office in Wyoming issued an instruction memorandum recognizing the state’s expertise in implementing the core area strategy and directing BLM field offices in Wyoming to manage greater sage-grouse habitat consistent with the state’s core area strategy. Wyoming Bureau of Land Management Instruction Memorandum No. WY-2012-012, *Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands including the Federal Mineral Estate* at 1-2 (Dec. 29, 2009).⁸ Because of the implementation of the Wyoming’s core area strategy conservation effort, BLM exempted

⁸ Available at: <http://www.blm.gov/style/medialib/blm/wy/resources/efoia/IMs/2012.Par.56874.File.dat/wy2012-019.pdf>

its field offices in Wyoming from the BLM's national standards regarding the management of the greater sage-grouse. Bureau of Land Management National Instructional Memorandum No. 2012-043, *Greater Sage-Grouse Interim Management Policies and Procedures* (Dec. 22, 2011).⁹ Within Wyoming, BLM and the State work together to manage the species and its habitats based upon Wyoming's Core Area strategy.

Through four Records of Decision issued in September of 2015, and an earlier Record of Decision for the BLM's Lander Field Office, the Bureau and the Forest Service amended 98 BLM Resource Management Plans (ARMPAs) and Forest Service Land and Resource Management Plans (LMPAs) addressing the management of sage-grouse habitats, including the Wyoming Plans. See, e.g., Wyoming Bureau of Land Management, *Approved Resource Management Plan for Greater Sage-Grouse* (Sep. 15, 2015).¹⁰ The Wyoming Plans proposed various alternatives, but each adopted a similar alternative. *Id.* These alternatives aligned BLM's approach with Wyoming's Core Area strategy for managing and conserving the greater sage-grouse. *Id.* Thus, the Wyoming Plans provide for "consistent [greater sage-grouse] habitat across the range ... and [focus] on a landscape-scale approach to conserving [greater sage-grouse] habitat." *Id.*¹¹

Conservation of the greater sage-grouse is not a static undertaking. SGIT is a collaborative body composed of state and federal agencies, industry, and non-governmental organizations such

⁹ Available at: http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-043.html

¹⁰ Available at: https://eplanning.blm.gov/epl-front-office/projects/lup/9153/63189/68431/002_Wyoming_ARMPA_Main-Body.pdf

¹¹ The Interest Groups previously challenged the 2015 ARMPAs and LMPAs in this Court. See *W. Watersheds Proj. v. MacGregor*, 1:16-cv-00083-BLW. The Court stayed the case pending proposed amendments to those plans. (See Dkt. No. 113 in that case). The Interest Groups do not challenge the 2015 ARMPAs or LMPAs in this proceeding. (Dkt. No. 78 at 22).

as conservation and sportsmen's groups. See Wyo. Stat. Ann. § 9-19-101. The Wyoming Legislature has tasked the SGIT to "review data and make recommendations to the governor regarding actions and funding" and "regulatory actions necessary to maintain and enhance sage grouse populations and sage grouse habitats in Wyoming." *Id.* In 2017, Wyoming entered into a Memorandum of Understanding (MOU) with BLM, the Forest Service, the Fish and Wildlife Service, and the Natural Resources Conservation Service to "develop intergovernmental communication and mechanisms to provide a cohesive and consistent conservation strategy for the Greater sage-grouse and its habitat in Wyoming. See Memorandum of Understanding, To Promote a Cohesive and Consistent Conservation Strategy for the Greater Sage-Grouse and its Habitat in Wyoming at 1 (March 1, 2017).¹² Under the MOU, the parties "agree to work collaboratively and put forth a good faith effort to achieve mutually acceptable outcomes consistent with the goals of [Wyoming Executive Order] 2015-4 and the respective federal plans." *Id.* at 5. The MOU establishes a framework to achieve "a no net loss or net conservation gain through compensatory mitigation for projects in Greater sage-grouse habitat." *Id.* at 1, 5-7. The NPL Project must comply with the compensatory mitigation requirements set forth in Wyoming Executive Order 2015-4 for disturbances in PHMAs and winter concentration areas. (ROD at 25-27); See Wyoming Executive Order, Attachment H at 1.

The Core Area strategy has been extremely successful not only in preserving greater sage-grouse habitat but in reducing disturbances. Wyoming has 15.8 million acres of Core Area greater sage-grouse habitat located on private, state, and federal lands. (Attachment A, Budd Declaration at 3). Since implementation of the Core Area strategy, the number of Core Areas subject to

¹² Available at: https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd534481.pdf

disturbance has decreased by 246,405 acres. *Id.* The percent of all 15.8 million Core Area acreage in disturbance has declined from 7.7 percent to 6.2 percent since 2008. *Id.*

The significant and on-going efforts by Wyoming over the last decade have not come cheap. Since 2006, Wyoming has allocated over \$50 million to implement the Core Area conservation strategy, as well as other conservation efforts aimed towards protecting the greater sage-grouse. Stoellinger and Taylor, at 9. “The state has also approved funding for over 70 conservation easements totaling \$100 million in long-term sage-grouse conservations efforts.” *Id.* at 92. Wyoming expended substantial resources in time, money, and the dedication of its citizens and lawmakers to ensure successful implementation of the Core Area strategy. The application of the Core Area strategy in the NPL Project reflects those efforts.

LEGAL STANDARD

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(b). The transfer inquiry is a two-step process. Initially, the court must determine whether the action “might have been brought” in the transferee court, and the court must make an “individualized, case-by-case consideration of convenience and fairness.” *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006) (citing *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985) and *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)). The second step requires the court to consider three factors: (1) convenience of the parties; (2) convenience of the witnesses; and (3) interests of justice. *Meijer, Inc. v. Abbott Labs*, 544 F. Supp. 2d 995, 999 (N.D. Cal. 2008). In evaluating the “interests of justice” factor, the Ninth Circuit looks to the following considerations:

(1) plaintiff's choice of forum, (2) convenience of the parties, (3) convenience of the witnesses, (4) ease of access to the evidence, (5) familiarity of each forum with the applicable law, (6) feasibility of consolidation with other claims, (7) any local interest in the controversy, and (8) the relative court congestion and time to trial in each forum.

Papasan v. Dometic Corp., 2018 WL 1367341, at *2 (N.D. Cal. March 16, 2018). "The list is non-exclusive, and courts may consider other factors, or only those factors which are pertinent to the case at hand." *Papasan*, 2018 WL 1367341, at *2 (quoting *Martin v. Glob. Tel*Link Corp.*, 2015 WL 2124379, at *2 (N.D. Cal. May 6, 2015)).

ARGUMENT

As the federal Defendants and proposed Intervenor-Defendant Jonah Energy have already shown, this Court should dismiss the claims related to the NPL Project because the Interest Groups have improperly asserted venue based on their residence in the District of Idaho. (Dkt. No. 78 at 8). An action against an agency of the United States or any officer, director, or employee thereof may be brought in the judicial district where the plaintiff resides "if no real property is involved in the action." 28 U.S.C. § 1391(e)(1)(C). This case unequivocally involves real property located exclusively in Wyoming. Therefore, as the federal Defendants and proposed Intervenor-Defendant Jonah Energy compellingly demonstrate in their motions to dismiss, this Court should dismiss all claims challenging the NPL Project. Wyoming adopts and incorporates these arguments by reference. Wyoming focuses its argument on the reasons why this Court, if it denies the motions to dismiss, should, in the alternative, sever the claims related to the NPL Project and transfer them to the District Court for the District of Wyoming.

This Court should sever and transfer the NPL Project because the RMPs that govern the NPL Project incorporate a conservation scheme for the greater sage-grouse and its habitat that is unique to Wyoming. That scheme, the Core Area strategy, provides more comprehensive

protections to the greater sage-grouse and its habitat than found in Idaho or any other state. The Core Area strategy focuses on management of the geographic areas containing the core population of the species. The strategy tracks all forms of disturbance, not only including those caused by humans but also disturbances that are the consequence of natural phenomena such as wildfires. (Attachment A, Budd Declaration at 3). Permits for development within Core Areas are limited to a five percent surface disturbance and, if exceeded, compensatory mitigation is required. *Id.* No other state has similar conservation requirements or invested the time and energy Wyoming did to develop its unique strategy. Because of its distinct conservation scheme, Wyoming's "local interest in the controversy" particularly weighs in favor of transfer.

Further, the sovereign interests of Wyoming in the management of wildlife and in the development of natural resources within its borders favors granting the federal Defendants and Jonah Energy's motions to transfer. This is particularly true with respect to the NPL Project, where the Interest Groups are not challenging any agency action that occurred in Idaho. (Dkt. No. 78 at 74-83). Indeed, the agency action concerns real property located entirely within the borders of Wyoming, and, the Interest Groups have alleged a violation of a resource management plan for the conservation of the greater sage-grouse that contains provisions unique to Wyoming. Because the greater sage-grouse is not an endangered or threatened species, management of the species resides exclusively with Wyoming. The Interest Groups' claims against the NPL Project impact interests within Wyoming and *only* within Wyoming. In contrast, Idaho has no property or economic interests at stake and will suffer no impacts, environmental or financial, if the Interest Groups prevail on their claims. Accordingly, the interests of Wyoming, as set forth below, carry considerable weight in favor granting the motion to transfer venue to the District of Wyoming.

I. The “local interest in having local controversies decided at home” weighs in favor of transferring the Interest Groups’ claims regarding the NPL Project to the District of Wyoming.

In weighing a motion to transfer venue, this Court must consider “the local interest in having local controversies decided at home.” *See Decker Coal Co. v. Commonwealth Edison Co.*, 834 F.2d 730, 843 (9th Cir. 1987). “[C]ourts have observed that environmental cases often have a particularly strong basis for finding a localized interest in the region touched by the challenged action.” *Sierra Club v. United States Dep’t of State*, 2009 WL 3112102 *3 (N.D. Cal. 2009). With regard to the NPL Project, the local interests of Wyoming far outweigh any local interests the Interest Groups attribute to Idaho.

II. Wyoming’s sovereign authority to regulate wildlife within the State weighs heavily in favor of transfer.

Wyoming has an interest in actions that may affect its sovereign authority over the wildlife within its borders. A state has broad trustee and police powers over wild animals within its jurisdiction. *Kleppe*, at 545. Wyoming has “the power and duty to protect, preserve, and nurture the wild game” living within its borders. *O’Brien v. State*, 711 P.2d 1144, 1149 (Wyo. 1986). Wyoming’s interest over wildlife within its borders is substantial. *See Baldwin v. Fish & Game Comm’n of Mont.*, 436 U.S. 371, 390 (1978).

The Wyoming legislature has enacted a comprehensive regulatory scheme to conserve, manage and protect the wildlife living in Wyoming. *See* Wyo. Stat. Ann. §§ 23-1-101 through 23-6-304. The Wyoming Game and Fish Commission and the Wyoming Game and Fish Department provide for the enforcement and administration of these laws. *See* Wyo. Stat. Ann. §§ 23-1-302(xvi), 23-1-401. Wyoming law empowers the state to “provide an adequate and flexible system for control, propagation, management, protection and regulation of *all* Wyoming wildlife.” Wyo. Stat. Ann. § 23-1-103 (emphasis added). “Wildlife” is defined to include “all wild mammals, birds,

fish, amphibians, reptiles, crustaceans and mollusks, and wild bison designated by the Wyoming game and fish commission and the Wyoming livestock board within Wyoming.” Wyo. Stat. Ann. § 23-1-101(a)(xiii). The greater sage-grouse is an upland game bird in the state, and is therefore managed by the state. See Wyo. Stat. Ann. § 23-1-103; Wyoming Game and Fish Comm’n Regs., Ch. 11, § 3.

Unquestionably, Wyoming has substantial interests in continuing its greater sage-grouse conservation management strategy. The 2015 Plans, which the Interest Groups claim the NPL Project violates, incorporated Wyoming’s Core Area strategy for managing and conserving the greater sage-grouse. 80 Fed. Reg. at 59882-83. This is not a situation where there are RMPs that apply across state lines and there are allegations of violations that affect sage-grouse on a broad basis. *Cf. W. Watersheds Proj. v. Salazar*, 2009 WL 1299626 (D. Idaho 2009). The NPL Project is subject to two Wyoming-specific RMPs: the Pinedale RMP and the Green River RMP. (ROD at 3). Earlier in these proceedings, this Court denied a motion by the defendants to sever and transfer the various oil and gas lease sales to courts in the states where the sales took place. (Dkt. No. 66). In support of that decision, this Court found that venue in Idaho was appropriate because the resolution of the Interest Groups’ claims required consideration of the “impact of environmental factors acting in a widespread area stretching beyond RMP boundaries.” (Dkt. No. 66 at 12) (*quoting Salazar*, 2009 WL 1299626 at *3). That is not the case here. The Interest Groups’ claims challenging the NPL Project do not “stretch beyond RMP boundaries.” Rather, the RMPs that govern the Interest Groups claims apply only to lands located entirely within Wyoming. More specifically, those RMPs incorporate Wyoming’s Core Area strategy for greater sage-grouse conservation. Therefore, the challenge to the NPL Project is completely different from what this Court considered in the motion to transfer the oil and gas leases because there is no “broad”

environmental issue that crosses RMP or state boundaries. Resolution of the Interest Groups' challenge to the NPL Project will require the application and analysis of standards that do not apply in any other state but Wyoming.

The development of Wyoming's conservation strategy has spanned over a decade and involved a collaborative effort that included diverse stakeholders, including multiple federal agencies, private industry, conservation organizations, sportsmen's groups, citizens and lawmakers. The resulting Core Area strategy is the cornerstone of Wyoming's conservation efforts for the greater sage-grouse. This Court has already recognized the efficacy of the Core Area strategy: "The [Core Area strategy] is a serious and coordinated effort by stake holders in Wyoming to counter the effects of drilling." *W. Watersheds Proj. v. Salazar*, 2012 WL 5880658 *7 (D. Idaho Nov. 20, 2012).

In addition to the years of work and resources put into developing the 2015 Plans, Wyoming has, since 2006, allocated over \$50 million to implement the Core Area strategy, as well as other conservation efforts aimed towards protecting the greater sage-grouse, including over 70 conservation easements totaling \$100 million in long-term sage-grouse conservation efforts. *See* Stoellinger and Taylor, at 91-92. Wyoming has expended substantial resources in time, money, and the dedication of its citizens and lawmakers to ensure successful implementation of the Core Area strategy.

At its core, the Interest Groups claims against the NPL Project are a challenge to Wyoming's Core Area strategy. The intent of the Core Area strategy is to preserve and conserve the greater sage-grouse and its habitat as it exists in Wyoming. The Wyoming-specific RMPs incorporated the regulatory framework established by the Core Area as part of the 2015 Plan amendments. This strategy does not apply to sage-grouse conservation plans applicable in Idaho

or in any other state. The NPL Project concerns natural gas development exclusively within Sublette County, Wyoming. Only Wyoming will feel impacts, whether financial or environmental, from the NPL Project. Only Wyoming's regulatory scheme is at issue under the Interest Groups' challenge. In contrast, Idaho has no interests whatsoever at stake in this proceeding. Accordingly, Wyoming's interest in the controversy easily outweighs any other state's interest and the Court should recognize that interest by transferring the Interest Groups' claims against the NPL Project to the District of Wyoming.

III. Wyoming's fiscal interest also weighs heavily in favor of transfer.

In addition, Wyoming has substantial financial resources at stake. Oil and Gas development, particularly on federal land, is a critical part of Wyoming's economy. For example, in 2015 on lands administered by the BLM, 14,747 leases produced over 1.22 trillion cubic feet of natural gas and 44.6 billion barrels of oil. Bureau of Land Management, *Wyoming Oil and Gas Lease Sales*.¹³ The revenue the NPL Project would generate for Wyoming is substantial. If Jonah Energy realizes its projected \$17.85 billion return from the NPL Project, Wyoming would receive around \$1.1 billion in royalties. BLM Press Release, *BLM Releases Record of Decision for Normally Pressured Lance Natural Gas Project* (Aug. 28, 2018).¹⁴ On top of that, Wyoming will receive severance and ad valorem taxes on production. Wyo. Stat. Ann. § 39-13-102(m).

The NPL Project would also provide substantial economic benefits to the surrounding local

¹³ Available at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/wyoming>

¹⁴ Available at: <https://www.blm.gov/press-release/blm-releases-record-decision-normally-pressured-lance-natural-gas-project>

communities and counties. FEIS, Appx. H at H-8, H-9.¹⁵ Indeed, the economic impact on the local economy from the high paying jobs directly created by the NPL Project and the secondary jobs created in response is hard to overstate.

The NPL Project would create a considerable number of direct and indirect jobs. In the development phase, the NPL Project would employ approximately 726 workers. *Id.* at H-4. The development workers would average \$90,361 in salary and benefits. *Id.* at H-6. When in production, the NPL Project would employ roughly 228 workers. *Id.* at H-4. Production workers would average \$157,828 in salary and benefits. *Id.* at H-8. Further, each worker on the NPL Project would generate an estimated 5.5 secondary jobs in the regional economy. *Id.* at H-8. The NPL Project would employ workers at wage and benefit levels considerably greater than the local median income thus benefiting not only the individual employee but the local economy in general. United States Census Bureau, Quick Facts, Sublette County, Wyoming (median income for 2012-16 in Sublette County is \$76,004.).¹⁶

All of this activity occurs exclusively in Wyoming. The development of the Core Area strategy and its incorporation into 2015 Plans for the management and conservation of the sage-grouse occurred in Wyoming and developed through the dedicated work of this State's citizens, scientists, policymakers and governmental agencies. The NPL Project while largely on federally-owned or controlled lands, also encompasses almost 6,000 acres of State-owned or private land within Wyoming. The revenues generated from those leases support critical programs benefiting Wyoming residents. Wyoming has a significant interest in the NPL Project, fiscally and in the

¹⁵ Available at: [https://eplanning.blm.gov/epl-front-office/projects/nepa/57654/148585/182441/Appendix H: Economic Modeling Report.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/57654/148585/182441/Appendix%20H%20Economic%20Modeling%20Report.pdf)

¹⁶ Available at: <https://www.census.gov/quickfacts/sublettecountywyoming>

management of its natural resources, including conservation of the greater sage-grouse. The State of Idaho has no commensurate interest. Consequently, the interests of justice favor transferring the claims challenging the NPL Project to the District Court for the District of Wyoming.

CONCLUSION

The NPL Project is materially different from the other claims in this case. The NPL Project is not a lease sale; it is the adoption of a plan by the Wyoming BLM office for the development of field entirely within Sublette County, Wyoming. The NPL Project is intrinsically tied to real property located exclusively in Wyoming. Two, discrete RMPs, that only apply to lands within Wyoming, govern the NPL Project. The RMPs incorporate a conservation measure, the Core Area strategy, developed by the State of Wyoming. The Core Area Strategy imposes conditions on development, particularly with respect to development density and mitigation, which are unique to Wyoming. The NPL Project is, therefore, fundamentally different on a factual and legal basis than the oil and gas lease claims. Those differences, including the Wyoming-specific greater sage-grouse conservation scheme, emphasize the local nature of the issues raised by the claims against the NPL Project when compared with the oil and gas leases.

This Court should grant the federal Defendants and the proposed Intervenor-Defendant Jonah Energy's motions to dismiss for the reasons expressed in therein. In the alternative, this Court should recognize the distinctive Wyoming-centered nature of the NPL Project and, in the interests of justice, transfer of the claims challenging the NPL Project to the District of Wyoming.

Dated this 16th day of November, 2018.

THE STATE OF WYOMING

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

WESTERN WATERSHEDS PROJECT,
and CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,

v.

RYAN K. ZINKE, Secretary of Interior;
DAVID BERNHARDT, Deputy Secretary of
Interior; and UNITED STATES BUREAU OF
LAND MANAGEMENT, an agency of the
United States,

Defendants.

Case No. 1:18-cv-00187-REB

**PROPOSED
INTERVENOR-
DEFENDANT JONAH
ENERGY LLC'S
[PROPOSED] MOTION TO
DISMISS UNDER RULE
12(b)(3) OR IN THE
ALTERNATIVE TO
TRANSFER UNDER 28
U.S.C. § 1404(a)**

In its pending Motion to Intervene [ECF No. 85], Proposed Intervenor-Defendant Jonah Energy LLC ("Jonah Energy") agreed to comply with the Joint Proposed Litigation Plan [ECF No. 79]. Because that Litigation Plan set a deadline of November 16 for responses to the

Plaintiffs’ First Amended Complaint [ECF No. 78] (“FAC”), Jonah Energy now files this [Proposed] Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(3) or in the Alternative to Transfer under 28 U.S.C. § 1404(a) (the “Motion”). See Joint Proposed Litigation Plan [ECF No. 79] at 3.

Jonah Energy is the proponent of the Normally Pressured Lance Natural Gas Development Project (“NPL Project”), which is the only subject of Plaintiffs’ Seventh Claim for Relief added by the FAC. Plaintiffs also added the NPL Project to the list of Final Actions challenged in their First, Second and Third Claims for Relief.¹ Other than the NPL Project, that list consists of multiple Bureau of Land Management (“BLM”) oil and gas lease sales in 2017 and 2018 in Montana, Utah, North Dakota, Nevada, and Wyoming. See FAC, ¶¶ 150-225lll. The allegations of the Seventh Claim overlap with and duplicate the NPL Project allegations in the First, Second and Third Claims. Compare FAC, ¶¶ 282-83 with ¶¶ 336-337 (allegations re prioritization, data collection, best available science, conservation, siting); ¶ 291 with ¶ 337D (allegations re best available science); and ¶ 305 with ¶ 341 (inadequate analysis allegations). As relief, Plaintiffs seek an order overturning BLM actions approving the NPL Project.

For several reasons, venue for the claims against the NPL Project is not proper in the District of Idaho, or, in the alternative, transfer of those claims to the District of Wyoming is appropriate. First, the NPL Project is located entirely within the District of Wyoming on a combination of federal and state oil and gas leases. The BLM actions for the NPL Project that Plaintiffs challenge, including the Final Environmental Impact Statement and the Record of Decision for the NPL Project, all occurred within the District of Wyoming.

¹ Jonah Energy does not plan to take a position regarding the Fourth, Fifth and Sixth Claims because they do not appear to concern matters in which Jonah Energy has a direct legal or financial interest.

Second, the Plaintiffs’ challenges to the NPL Project directly implicate the State of Wyoming’s management of greater sage-grouse, over which the state has primacy within its borders. The State of Wyoming manages greater sage-grouse through a robust regulatory program known as the Core Population Area strategy. This strategy was developed by the Sage-grouse Implementation Team (“SGIT”) appointed in 2007 by Wyoming Governor Dave Freudenthal and further refined and adopted in a series of Executive Orders issued by Governor Freudenthal and his successor Governor Matt Mead between 2008 and 2015. In 2010, the Wyoming state legislature enacted a resolution that approved SGIT and these efforts. That same year, the United States Fish and Wildlife Service endorsed the Core Population Area strategy. *See* 12-Month Findings for Petitions to List the Greater Sage-Grouse as Threatened or Endangered, 75 Fed. Reg. 13910, 13974-75 (Mar. 23, 2010), and 80 Fed. Reg. 59858, 59882-84, 59939 (Oct. 2, 2015).

The Core Population Area strategy is the foundation for BLM-Wyoming’s greater sage-grouse measures in its Approved Resource Management Plan Amendment issued in 2015. *See* BLM’s Approved Resource Management Plan Amendment for Greater Sage-grouse (Sept. 2015) (Ex. 12) at 20-21. The Core Population Area strategy also was presented to this Court in 2012 in connection with the evidentiary hearing on remedies in *Western Watershed Project v. Salazar*, No. 4:08-CV-516-BLW, 2012 WL 5880658 (Nov. 20, 2012). As this Court found, the Core Population Area strategy is “a serious and coordinated effort by stake holders in Wyoming to counter the effects of drilling.” *Id.* at *7. When approving the NPL Project, BLM coordinated with the State of Wyoming and reviewed and applied the Core Population Area strategy as well as additional greater sage-grouse protective measures. *See, e.g.*, BLM Record of Decision for Normally Pressured Lance Natural Gas Development Project (Ex. 3) at 5, 10, 26, 29, 34,

Appendix A (August 27, 2018); BLM Final EIS for Normally Pressured Lance Natural Gas Development Project (Ex. 2) at ES-4, ES-5, ES-6, ES-48.

Third, the claims against the NPL Project are distinct from the other claims in the Amended Complaint and do not implicate BLM's national policies. Instruction Memorandum 2018-034 challenged by Plaintiffs does not apply to BLM decisions to authorize development of existing oil and gas leases, such as the NPL Project. Further, BLM did not rely on, or even cite to, either of the Instruction Memoranda (2018-034 or 2018-026) challenged by Plaintiffs when approving the NPL Project.

Fourth, several of Plaintiffs' specific allegations challenging the NPL Project are unique to actions and conditions in the District of Wyoming. Specifically, they allege that the NPL Project area includes a pronghorn migration route that is entirely within the District of Wyoming and that the BLM did not adequately consider that route. *See* FAC, ¶¶ 225rr, 225zz, 225jjj, 225lll, 340A, 341D, 341E, 341G. These pronghorn allegations are asserted only with respect to the NPL Project. Like greater sage-grouse, Wyoming has primacy over pronghorn within the state.

As described in more detail in the Memorandum of Points and Authorities, the Declaration of Paul Ulrich and its exhibits that are being filed with this Motion, venue for the Plaintiffs' challenges to the NPL Project is not proper in this court. Venue would be proper in the District of Wyoming under 28 U.S.C. § 1391(e)(1)(B) because "a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated" in the District of Wyoming. Alternatively, 28 U.S.C. § 1404(a) authorizes transfer of the claims challenging the NPL Project to the District of Wyoming.

Kathleen C. Schroder, one of the undersigned counsel for Jonah Energy, has advised

counsel for the existing parties to this litigation of Jonah Energy's intention to file this Proposed Motion.

Accordingly, Jonah Energy requests that the Court grant its [Proposed] Motion and transfer the claims challenging the NPL Project to the District of Wyoming.

Respectfully submitted this 16th day of November, 2018.

/s/ Kathleen C. Schroder

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

WESTERN WATERSHEDS PROJECT,
et al.,

Plaintiffs,

vs.

RYAN K. ZINKE, Secretary of the Interior, *et al.*,

Defendants.

Case No. 1:18-cv-00187-REB

**DEFENDANTS' NOTICE OF
COMPLIANCE WITH THE COURT'S
PRELIMINARY INJUNCTION [ECF NO.
74]**

Defendants Ryan Zinke, Secretary of the Interior, *et al.* (collectively, “Federal Defendants”) hereby provide notice to the Court and the parties regarding compliance with the Court’s September 21, 2018 Memorandum Decision and Order and Preliminary Injunction (“Prelim. Inj. Order”) (ECF No. 74). Defendants provide this notice because the preliminary injunction applies to several lease sales across several states and the Plaintiffs have requested information as to when the Bureau of Land Management (“BLM”) intends to provide additional opportunities for public comment for the lease sales subject to the Court’s order. In order to provide that information in one place and to clarify how BLM intends to comply with the Court’s order, Defendants are offering the Declaration of Jamie Sellar-Baker, BLM’s Acting Division Chief for the Division of Fluid Minerals. *See* Sellar-Baker Decl., attached hereto.

The Court’s preliminary injunction applies to oil and gas lease sales in greater sage grouse habitat management areas identified in BLM’s 2015 Sage Grouse Plan Amendments. *See* Prelim. Inj. Order at 3, 50-51, 56. In light of this ruling, BLM has segregated parcels in sage grouse habitat from parcels outside of sage grouse habitat for upcoming oil and gas lease sales. For parcels outside of sage grouse habitat, BLM will proceed on its originally planned schedule and offer those parcels at lease sales in December. *See* Sellar-Baker Decl. ¶ 3 and ¶¶ 3.a.-3.e. Sales of parcels in sage grouse habitat will be delayed until February or March following additional public comment periods on BLM’s National Environmental Policy Act (“NEPA”) documentation. BLM will also allow 30-day protest periods for lease sales involving sage grouse habitat, per the Court’s order.

Defendants will provide updated information regarding the March 2019 lease sales and June 2019 lease sales when the planning for those lease sales is farther along.

Respectfully submitted this 26th day of October, 2018,

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Counsel for Defendants

new facts and circumstances about BLM's implementation of IM 2018-034 have emerged that will be useful to the Court.

3. Under IM 2018-034, BLM no longer consistently allows public comment on Draft Environmental Assessments (EAs) for oil and gas sales, when it prepares them at all. Where BLM does allow the public to comment on Draft EAs, it now typically provides only 15 days, which is extraordinarily brief. In other sales, BLM has replaced public comment on draft EAs with an early "scoping" stage, also typically 15-days, and the EA is not provided for comment until the 10-day protest period.

4. For example, in the New Mexico 3rd Quarter sale, BLM did not provide its environmental analysis for public review until the 10-day protest period. Based on current BLM webpages, it appears that BLM will do that again during the New Mexico-Oklahoma 4th Quarter lease sale. Similarly, in the upcoming Utah 4th Quarter oil and gas lease sale, BLM told me it will not provide any NEPA document for the public's review until the beginning of the 10-day protest period.

5. This approach to public involvement reduces the public's ability to contribute substantive information to the agency's analysis, for several reasons. First, during the scoping period, BLM only provides the public with proposed parcel lists, proposed lease stipulations, and simple maps. BLM scoping maps do not show where the parcels lie with reference to other resources of concern, such as important species habitats. To see whether the lease parcels are in those areas, you must create your own maps by layering BLM GIS files with GIS data you have gotten from another source, such as state wildlife agency GIS files for sage-grouse Priority Habitat Management Areas. Most members of the public are not able to do this, but even for groups with in-house GIS mapping capabilities, this is challenging because BLM does not

consistently post GIS files for the parcels online. Second, the public must develop comments based only on the parcel lists, BLM's incomplete maps, and whatever information they can gather themselves, also a difficult task. Third, where BLM does not publish its draft EA for public comment, it typically publishes the EA simultaneously with the start of the 10-day protest period. This means that the public must review BLM's EA for the first time *and* articulate other grounds for protesting the lease sale, all within the 10-day protest period. My experience is that, despite previous scoping, these EAs commonly omit information that the public would need to fairly evaluate the environmental impacts of the action. Consequently, protesting the lease sale involves identifying and gathering new information that BLM failed to consider in its EA and presenting it to the agency during the protest period. This is an incredibly difficult task to complete in a 10-day period, and even large groups with significant resources have been unable to submit their own scoping comments or protests on lease sales of concern.

6. BLM is also increasingly relying on Determinations of NEPA Adequacy (DNAs) rather than EAs for its lease sales. DNAs are particularly time-consuming and difficult to protest because they forcibly rely on past NEPA analyses. The public must locate these prior NEPA documents and determine whether they actually discuss impacts of leasing the parcels at issue. In the case of the Nevada 3rd Quarter oil and gas lease sale, for instance, BLM relied on past NEPA lease sale analyses that didn't actually encompass the areas where the parcels were located. The practice of relying on DNAs is especially problematic because it limits public participation to the protest process. In the Utah 4th Quarter lease sale, for instance, BLM is proposing to lease parcels near Moab, Utah—one of the most popular areas for mountain biking and other outdoor recreation in the country—under a DNA. Because the sale is being done under a DNA, the public will be limited to participating via a formal protest, which is difficult

for the average layperson to write unless they receive skilled help. Protests must conform to heightened substantive, format, signature, and delivery requirements. If the public gets that format wrong, BLM will summarily reject their protest without considering its content.

7. Participating is particularly difficult because of overlapping comment and/or protest periods. For example, between July 30th and August 13th this year (a 14-day period), I worked on four separate protests for 3rd Quarter lease sales, as well as scoping comments for a 4th Quarter lease sale. This difficulty intensifies when BLM releases multiple EAs and DNAs for a single lease sale. For instance, in the case of the 4th Quarter Utah sale, I understand BLM intends to issue four EAs and two DNAs, divided by Field Office, at the start of the protest period. The public will have to evaluate all six documents in just 10 days in Utah alone.

8. These changes directly result from IM 2018-034. In telephone calls on July 30, 2018 and August 14, 2018 I inquired of Utah BLM why they were no longer releasing draft EAs for public comment. The employee I spoke to during those calls told me that IM 2018-034's expedited timeframe for NEPA analysis means they can only involve the public once, or, at most, twice. That employee believed that by allowing the public to weigh in at scoping and then protest when the EA is released, it gets them the most "bang for their buck." They stated that their office is receiving a lot of complaints from NGOs about this process. However, they claimed that the process is meant to allow BLM to comply with aggressive deadlines, not to stymie public participation. They also told me that different states are implementing the IM in different ways and the different BLM state offices will confer to try to determine what works best.

9. In a telephone call on August 15, 2018, an employee of Nevada BLM also told me that the decision of how long to allow for EA comment periods is now made at the field

office level under the current IM, whereas the previous IM required a 30-day comment period. That employee told me that under IM 2018-034, field offices and district offices that formerly wrote one or two lease sale EAs a year are now writing up to four. The employee would not tell me whether BLM has been given more resources to do this. Nevada BLM also said because of the shortened processing times, their field offices now give other agencies less time to comment on proposed lease parcels than in the past. This includes Nevada's state wildlife agency, but I could not tell from what I was told whether it also includes tribes.

10. In a telephone call on August 16, 2018, an employee of the Montana-Dakotas BLM told me that they had shortened EA comment periods for lease sale to 15 days from 30 because "everyone was crunched" by the new policy and it was the best they could come up with. In addition, that employee stated that Montana-Dakotas BLM field offices and district offices would not be writing multiple lease sale EAs a year and instead would rely on a new bureau-wide streamlining process. No new staff were being provided; they simply had to absorb extra work.

11. The condensed timeframes under IM 2018-034 also require interested parties to more carefully track upcoming sales so deadlines aren't missed. This process is time-intensive. Because BLM state offices do not post information in a uniform location or format, there is often confusion about where the public can locate lease sale documents. For instance, I have had to call each BLM State office to learn where BLM posts information about upcoming sales in that state. In California, BLM told me to look on BLM's National Fluid Lease System website for lease sale information. In Idaho, BLM staff advised me to look at both the ePlanning website and BLM's Idaho lease sale web page. Utah BLM said they are posting notices on the BLM's

State lease sale webpage. Montana-Dakotas BLM directed me to both the National Fluid Lease System website and BLM's ePlanning website.

12. Even if you succeed at locating the correct web pages, it still can be difficult to understand exactly what is happening because BLM now issues numerous EAs and DNAs for a single quarterly sale. For Wyoming's 3rd Quarter lease sale, I, despite having more than 10 years of experience tracking and evaluating BLM NEPA documents, thought that there were only two EAs, when there were actually three. It wasn't until another group notified me that there was a third EA that I recognized my own error.

13. The expanded geographic scope of sales also substantially increases the workload for every sale, even if roughly the same number of parcels are offered. Under the former rotating system, parcels were generally clustered in a discrete area. Now, under IM 2018-034, parcels are scattered across the entire state. This means that the sales now occur in a number of different BLM Field Offices, each governed by its own Resource Management Plan (RMP). To understand whether the sale is lawful, you must review each RMP and its supporting EIS, especially since the sales often tier to the EIS supporting the RMP. For the 3rd Quarter Wyoming lease sale's 10-day protest period, I reviewed nine RMPs and their EISs. For the 4th Quarter Montana-Dakotas 15-day EA comment period, I have seven RMPs and their EISs to review.

14. Tracking down and reviewing these old RMPs and EISs is time consuming. Some date back to the 80s and are not available online. For instance, the 4th Quarter Montana sale EA references a 1987 EIS supporting an RMP. Most of the 31-year-old EIS is available online, but not Chapters 3 and 4, which are the most important from an RMP discussion perspective. When, as in the case of the Montana sale, the RMP and supporting EIS are not easily publicly available,

you have to request the documents from BLM and hope that you receive them within the time for public participation. In this instance, BLM initially told me they were online, then realized they weren't and emailed them to me. Tracking the documents down took two days of the 15-day comment period. In the meantime, another 15-day EA comment period started in Nevada.

15. The sage-grouse context provides a useful illustration of why access to the information in old EISs is often critical for adequate public participation. Many EAs for upcoming lease sales in sage-grouse habitat tier to EISs for BLM's 2015 sage-grouse plans. But when you look closely at those documents, you see that the sage-grouse population data in them is older than their publication dates, and in some cases, BLM simply copied and pasted text from old field office EISs. This population data is often out of date, sometimes by over a decade. Tiering to the old data introduces errors into the analysis, and the difficulties locating the old RMPs and EISs makes it even harder to track these errors. This is especially frustrating because BLM works with state fish and game departments and has access to updated sage-grouse population data, but with rare exceptions, they are not using that information in preparing their lease sale analyses. It falls upon the public to point out the errors. This matters because most local sage-grouse populations are declining, in some places rapidly. If BLM doesn't inform itself with current grouse information when making leasing decisions in sage-grouse habitat, it pushes the bird closer to extinction.

16. The overall effect of these circumstances—difficulty locating lease sale documents, tightened comment deadlines, substitution of scoping for comment periods, increased reliance on DNAs, and truncated protest periods—is chaos. Staff who work on these issues with environmental organizations are getting exhausted by the short deadlines, and that creates a greater possibility of errors, or of letting a sale that could seriously damage sensitive

resources that are important to our members slip through the cracks. Even large environmental organizations with whom I collaborate are being overwhelmed by the demands of IM 2018-034. The interested public, whether intentionally or unintentionally, is largely being cut out of the process due to difficulties figuring out what is going on and how to participate. When groups or local community members cannot independently contribute to scoping comments or protests on proposed lease sales, it means their expertise and perspectives are not brought to light.

17. The demands of the new leasing procedures have taken a toll in unrelated programs, as well. Staff who work on these issues must focus exclusively on oil and gas leasing decisions during the comment and protest period intervals to meet the 10- and 15-day deadlines. Typically, a round of simultaneous 10-day protests is now immediately followed by two weeks of simultaneous EA comment periods. In my case, this has diverted my attention completely away from the other focus of my position—mining—for up to a month at a time. I have consequently been unable to weigh in on several mining projects and have missed mining oversight meetings that I would have attended if BLM had not shortened the oil and gas lease sale protest and comment periods.

18. This list includes one mine in which WWP has invested significant organizational resources in opposing and which will set regulatory precedent in its state. In addition, the 10-day 3rd Quarter protest periods coincided with the deadline for comments on the Forest Service's proposed changes to sage-grouse plans in five states. I have developed significant expertise in sage-grouse issues that is specific to each state that would have been valuable to our comments, but the input that I could provide was severely limited because of the 10-day protest periods for these oil and gas lease sales that were happening at the same time.

19. The diversion of my time from competing projects has lingering impacts because of administrative exhaustion requirements. By failing to submit comments on a mining project, for example, or even failing to raise particular issues in our comments, WWP may forfeit its right to challenge that project in court.

20. In sum, BLM is not posting lease sale documentation in any one consistent centralized location. It is increasingly relying on DNAs. Where BLM does prepare EAs, it is sometimes relying on IM 2018-034 to only allow for public comment at scoping and during the protest period, and not on the draft EA. All comment and protest periods have been seriously abbreviated under IM 2018-034. The difficulties associated with providing meaningful input in the extremely short periods is straining the resources of nonprofit groups and individuals. This causes us to work at an exhausting pace and it diverts us from other work that is important to our members and the natural resources they care about.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this August 23, 2018 in Depoe Bay, Oregon.



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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

RYAN K. ZINKE, Secretary of Interior;
DAVID BERNHARDT, Deputy Secretary of
Interior; and UNITED STATES BUREAU
OF LAND MANAGEMENT, an agency of
the United States,

Defendants.

Case No. 1:18-cv-00187-REB

**FIRST SUPPLEMENTAL
DECLARATION OF MICHAEL SAUL**

I, Michael A. Saul, hereby declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I submit this Declaration to support and more fully elaborate on my first Declaration filed in this matter, ECF No. 30-2. Since the time when I submitted that Declaration, new facts and circumstances about BLM's implementation of IM 2018-034 have emerged that will be useful to the Court.

3. Since the BLM has begun implementing the provisions of Instruction Memorandum 2018-034, the task of providing accurate and informed public comment on proposed oil and gas leasing decisions affecting public lands and wildlife has become substantially more difficult, and imposed substantial and unnecessary burdens on the work of the Center for Biological Diversity's staff.

4. As discussed in detail below, BLM's public disclosure, environmental analysis, and public comment processes, as implemented with regard to its third and fourth quarter 2018 competitive oil and gas lease sales, pose seven substantial difficulties for the public: (a) extremely large lease offerings covering hundreds of thousands of acres across multiple geographic and management areas; (b) minimal or non-existent disclosure of wildlife and other resources affected by proposed leasing actions; (c) shortened or non-existent public comment periods; (d) shortened protest periods; (e) overlapping protest periods for multiple states; (e) outdated and cumbersome submission requirements; (f) unreliable online comment portals.

5. Based on information provided by my colleagues, the BLM's use of DNAs for third-quarter 2018 lease sales under IM 2018-034 has imposed unique burdens on the Center and the public in attempting to understand potential impacts of leasing and subsequent development that would otherwise be disclosed in an environmental assessment. Specifically, those burdens include:

- a) Researching environmental values and endangered species associated with lease parcels that may be impacted by leasing and development;
- b) Fielding dozens of phone calls and emails from the public and elected officials who are attempting to understand environmental impacts that would otherwise be made available to them in an environmental assessment;
- c) Fielding dozens of phone calls and emails from the public and elected officials who are attempting to understanding the IM itself, and why public and environmental review under NEPA is no longer available for lease sale decisions;
- d) Fielding phone calls and emails from media attempting to understanding environmental values and endangered species associated with lease parcels, and who are attempting to understanding the IM itself, and why public and environmental review under NEPA is no longer available for lease sale decisions;
- e) Translating research about environmental values associated with lease parcels into administrative protests of lease sale notices that entirely lack any associated assessment of the potential impacts of leasing and subsequent development.

6. Navigating an entire state's lease sales for one quarter, especially when there are 4-6 simultaneous NEPA processes going on at the same time, has been extremely difficult. The BLM's online systems for comment submission appear are unable to process the demands of multiple comment periods. One colleague has been timed out of at least three different online comment portals on the due dates for fourth quarter 2018 scoping comments. This is a unique burden that we have never encountered with prior to the implementation of the IM.

7. Under IM 2018-034, BLM proposed leasing, relying on two DNAs, DOI-BLM-AZ-G010-2018-0027-DNA and DOI-BLM-AZ-G010-2018-0024-DNA, of three parcels, totaling

approximately 4200 acres, in northern Arizona, near Petrified Forest National Park. BLM conducted no new environmental disclosure or analysis for these parcels, despite that the Resource Management Plan relied upon dates to 1988 and contains no analysis of impacts of oil and gas development. Because BLM provided no information regarding potential impacts of the proposed lease sale on endangered species, water quality and availability, air quality and climate, cultural resources, or affected local communities, the Center and other individuals and organizations were required to investigate such potential impacts independently. Despite reliance on an outdated RMP, significant community opposition, and substantial questions about issues including potential helium fracking, BLM provided the public with only nine business days (July 23 through August 2, 2018) to protest the proposed parcels.

8. Under IM 2018-034, for its third quarter Nevada oil and gas competitive lease sale, BLM has relied on two DNAs - DOI-BLM-NV-E000-2018-0007-DNA, DOI-BLM-NV-L000-2018-0001-DNA, and DOI-BLM-NV-L000-2018-0001-FONSI - for 144 parcels containing 295,174.30 acres of federal public lands and split estate mineral rights administered by BLM in Nevada. BLM provided no opportunity for public comment whatsoever on these DNAs, and did not disclose them to the public until the issuance of a Lease Sale Notice and commencement of a 10-day protest period on July 27, 2018. This provided the public with only seven business days and two cursory six-page documents in order to attempt to evaluate the potential consequences of leasing and development of nearly 300,000 acres of Nevada lands across hundreds of square miles, including 74 parcels containing designated greater sage-grouse habitat. This protest period also coincided with a simultaneous protest period for a BLM Utah third-quarter lease sale involving an additional approximately 26,000 acres of greater sage-grouse habitat.

9. Specifically citing the requirements of IM 2018-034, BLM proposed 350 parcels totaling approximately 355,819 acres for third-quarter 2018 leasing in Wyoming, including approximately 210,000 acres of greater sage-grouse Core Areas. BLM in February 2018 issued two discrete Environmental Assessments, under its pre-2018 procedures, for 124 parcels the High Plains and Wind River/Bighorn Basin Regions. Subsequently, stating that “[t]o comply with IM 2018-034’s parcel review timeframes, the WSO is processing two sets of parcels for the Third-Quarter 2018 sale,” in May 2018 it issued a second, additional Environmental Assessment for an additional approximately 287,000 acres scattered across the entire State of Wyoming. BLM provided the public with only ten days – from August 2 through August 13 – to map and evaluate resource values and proposed stipulations for over 350,000 acres of public land in greater sage-grouse, mule deer, and pronghorn habitat across multiple regions of Wyoming, from the Red Desert to the Powder River Basin.

10. BLM Lease Sale notices generally provide that “You may file a protest either by mail in hardcopy form or by telefax,” although the New Mexico State Office’s Final Sale notice for the third quarter New Mexico, Oklahoma, and Texas sale also prohibits protests by fax (“All protests sent any way other than by mail or hand-delivery will be summarily dismissed.”) The BLM’s insistence on prohibiting electronic filing of protests effectively shortens the protest period further by requiring submission of hard-copy protests within nine days (absent hand-delivery to BLM offices).

11. As a result of these large lease sales, minimal or non-existent comment periods, increased use of DNAs, restrictive filing methods, and shortened and overlapping comment periods, the Center has been required to divert staff resources from other priorities in order to evaluate, respond to, and inform its members, other nongovernmental organizations, and the general public regarding potential impacts from BLM oil and gas leasing actions.

12. For educational, professional and recreational purposes, I have camped, hiked, and viewed sage-grouse in Nevada's Monitor Valley, where, under the procedures established by IM 2018-034, oil and gas leases within greater sage-grouse Priority Habitat Management Areas were sold as part of BLM's June 2018 Nevada oil and gas lease sale.

13. On May 15-16, 2018, I camped in the Monitor Valley on Mosquito Creek, and had the opportunity to view and photograph over ten greater sage-grouse exhibiting dancing behavior on a lek in the Monitor Valley north of Mosquito Creek.



(Greater sage-grouse observed in Monitor Valley May 16, 2018 – photo by Patrick Donnelly)

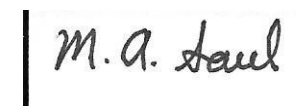
14. The Monitor Valley and Monitor Range provide extraordinary opportunities for solitude, natural beauty, and viewing of greater sage-grouse and pronghorn, and I intend to return again in the spring of 2019 to camp, hike, and attempt to observe greater sage-grouse.

15. BLM's June 2018 Nevada oil and gas lease sale included multiple parcels within designated sage-grouse Priority Habitat Management Areas in the Monitor Valley. BLM denied CBD and WWP protests of the proposed sale. According to my review of BLM lease sale records, four parcels – Nevada June lease sale parcels 3, 4, 5, and 10 – located within PHMA in the Monitor Valley sold, either competitively or noncompetitively, at the June 2018 Nevada lease sale.

16. The Monitor Valley is currently undisturbed by oil and gas exploration or development. Potential oil and gas exploration, development, and/or infrastructure authorized by BLM leasing activity will adversely affect the recreational and aesthetic qualities of the area, and has the potential to limit opportunities for continued greater sage-grouse viewing on the (currently-undisturbed) leks in the Valley.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed in Denver, Colorado on August 24, 2018.

Signed,

A handwritten signature in black ink, appearing to read "M. A. Saul", is written over a horizontal line.

Michael A. Saul

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,)
and CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiffs,)

v.)

RYAN K. ZINKE, Secretary of Interior;)
DAVID BERNHARDT, Deputy Secretary)
of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

No. 01:18-cv-187-REB

**MOTION FOR PRELIMINARY
INJUNCTION**

ORAL ARGUMENT REQUESTED

**Expedited Decision Requested Before
September 15, 2018**

Plaintiffs Western Watersheds Project and Center for Biological Diversity seek a preliminary injunction under Federal Rule of Civil Procedure 65, barring Federal Defendants Ryan Zinke *et al.* from restricting environmental reviews and public participation in Bureau of Land Management (BLM) oil and gas leasing decisions under recently-adopted Instruction

Memorandum (IM) 2018-034, and directing them to continue following prior BLM procedures under IM 2010-117—including by allowing at least 30-day comment and protest periods—until Plaintiffs’ challenges to IM 2018-034 can be adjudicated on the merits. (Copies of IM 2018-034 and IM 2010-117 are attached as Exhibits to the accompanying Declaration of Laird J. Lucas).

Specifically, Plaintiffs seek narrowly tailored injunctive relief that prohibits Federal Defendants from implementing the following provisions of IM 2018-34 and reinstating the corresponding provisions of IM 2010-117:

- (a) Enjoin IM 2018-034, Section III.B.5 - “Public Participation” and reinstate IM 2010-117, Section III.C.7 - “Public Participation”;
- (b) Enjoin IM 2018-034, Section III.D - “NEPA Compliance Documentation” and reinstate IM 2010-117, Section III.E - “NEPA Compliance Documentation”;
- (c) Enjoin IM 2018-034, Section IV.B - “Lease Sale Parcel Protests” and reinstate IM 2010-117, Section III.H - “Lease Sale Parcel Protests”; and
- (d) Enjoin IM 2018-034: Section III.A - “Parcel Review Timeframes” and reinstate IM 2010-117, Section III.A - “Parcel Review Timeframes.”

Plaintiffs seek entry of this preliminary injunctive relief prior to September 15, 2018, when BLM is scheduled to conduct third quarter 2018 oil and gas lease auctions based on IM 2018-034, and enjoining BLM from conducting any oil and gas lease reviews pursuant to IM 2018-034 after that date. Plaintiffs request that the injunctive relief remain in effect through December 2018, when BLM is scheduled to conduct fourth quarter 2018 oil and gas lease auctions based on IM 2018-034, and that the injunctive relief continue in effect for all subsequent BLM oil and gas lease sales until Plaintiffs’ challenges to IM 2018-034 are adjudicated on the merits.

As set forth in the accompanying brief and declarations, Plaintiffs and the public face irreparable harm of several types from BLM's implementation of IM 2018-034 to avoid or reduce environmental reviews and public notice, comment, and protests of proposed oil and gas leases, and Plaintiffs are likely to prevail in their claims challenging IM 2018-034 as violating federal laws including the Federal Lands Policy and Management Act, National Environmental Policy Act, and Administrative Procedure Act. Entry of the narrowly-tailored injunctive relief sought by Plaintiffs will not impose irreparable harms on Federal Defendants, and the balancing of harms and public interest favor the requested injunctive relief as well.

This Motion for Preliminary Injunction is supported by the Complaint on file in this matter (*Docket No. 1*); the accompanying Plaintiffs' Opening Brief In Support Of Motion For Preliminary Injunction; the accompanying Declarations of Plaintiffs' representatives Michael Saul, Erik Molvar, Kelly Fuller, and Laura Cunningham; the accompanying Declarations of non-parties Jeff Kuyper, Shaleas Harrison, Kevin Emmerich, and Linda F Baker; the accompanying Declaration of Laird J. Lucas, attaching copies of relevant BLM documents; and by such other and further matters as may be presented to the Court prior to decision on this motion.

Plaintiffs also request that the Court waive any bond requirement under Federal Rule of Civil Procedure 65(c), or impose a minimal bond not to exceed \$100, in light of the public interest nature of this proceeding and to ensure Plaintiffs' access to judicial relief. *Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985); *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).

WHEREFORE, for reasons explained in the accompanying brief and declarations, Plaintiffs respectfully request that this Court grant this motion and issue the above-requested preliminary injunction enjoining Federal Defendants from implementing IM 2018-034 with

respect to environmental reviews and public notice, comment and protest procedures over BLM proposed oil and gas lease auctions beginning with the planned third quarter 2018 lease sales and continuing through the fourth quarter 2018 and subsequent lease sales, until Plaintiffs' challenges to IM 2018-034 can be adjudicated on the merits.

Dated this 6th day of July, 2018.

Respectfully submitted,

/s/ Laurence ("Laird") J. Lucas
Laurence ("Laird") J. Lucas (ISB # 4733)
Todd C. Tucci (ISB # 6526)
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2018, I electronically filed the foregoing MOTION FOR PRELIMINARY INJUNCTION and the accompanying OPENING BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, and DECLARATIONS OF MICHAEL SAUL, ERIK MOLVAR, KELLY FULLER, LAURA CUNNINGHAM, JEFF KUYPER, SHALEAS HARRISON, KEVIN EMMERICH, LINDA F BAKER, and LAIRD J. LUCAS (and all exhibits thereto) with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing (NEF) to the following persons:

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RYAN K. ZINKE, Secretary of Interior;)
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of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

Case No. 01:18-cv-187-REB

**DECLARATION OF MICHAEL
SAUL**

I, Michael A. Saul, hereby declare as follows:

1. I am over twenty-one years of age have personal knowledge of the matters stated herein and, if called as a witness, could and would competently testify thereto.

2. I have been both a member and employee of the Center for Biological Diversity (“Center”) since 2014. I am currently employed as Senior Attorney for the Center’s Public Lands Program. In this role, I engage in administrative and legal advocacy to protect wildlife and wildlife habitat on public lands and work towards mitigating adverse impacts of public lands fossil fuel development.

3. My office is located in Denver, Colorado, and I can be contacted at msaul@biologicaldiversity.org

4. I hold a Bachelor of Arts degree from Yale College and a Juris Doctor degree from Yale Law School. I have eighteen years of experience in public lands and wildlife law. I have been involved in efforts to protect greater sage-grouse habitat on BLM lands since 2002.

5. As a Senior Attorney with the Center for Biological Diversity, my responsibilities are focused on policy, advocacy, and litigation over public lands fossil fuel development, with a particular emphasis on attempting to mitigate adverse impacts to climate and wildlife habitat from oil and gas, coal, tar sands, and oil shale extraction, development, and combustion.

6. I have worked on legal issues relating to sage-grouse conservation since 2002, and for the Center since 2014. In that capacity, I have developed familiarity with legal, policy, planning, and scientific issues relating to sage-grouse conservation and oil and gas development.

7. I also personally enjoy traveling to view sage-grouse, particularly during their spring mating displays, also known as “lekking,” and have made trips to view greater sage-grouse lekking displays on BLM public lands in Colorado, Wyoming, and Nevada, most recently in the Monitor Valley of central Nevada in May 2018. I plan to return to view greater sage-grouse again next spring in north central and northwest Colorado, and, if possible, in Nevada.

8. The Center is a membership based 501(c)(3) non-profit corporation incorporated in California and headquartered in Tucson, Arizona. In addition to our California and Arizona offices, the Center maintains offices in multiple states including Idaho, Colorado, Nevada, and Utah.

9. The Center's primary mission is to protect threatened and endangered species and their habitats in both the United States and abroad. Although we pursue these objectives nationwide, much of our work focuses on advocating for habitat protection on western public lands. The Center specifically works to protect public lands administered by the Bureau of Land Management (BLM) in multiple states from the adverse impacts of fluid mineral leasing and development, particularly impacts to greater sage-grouse, sagebrush habitat, and other sagebrush obligates.

10. The Center's members include many individuals who reside in, explore, and enjoy the native species and ecosystems of the Interior Mountain West, where the greater sage-grouse is found. The Center's staff has and continues to actively advocate for increased protections for species and habitats in the lands managed by the BLM at multiple levels including, but not limited to: comments on proposed land use and forest plans, comments on proposed leasing and development decisions and associated National Environmental Policy Act documents, administrative protests, appeals to the Interior Board of Land Appeals, litigation, public education, publication of research papers, social media advocacy, and lobbying.

11. The Center is a membership-based nonprofit that relies upon the voluntary contributions of members, supporters, and donors to support its operations. Based on review of the Center's membership database, as of August 4, 2017, the Center has over 58,500 members, and more than 1.3 million online supporters worldwide. The Center often appears before

Congress, federal agencies, and in the federal courts to represent its members and goals and to advocate for the conservation of endangered, threatened, and at-risk species and their habitat.

12. Center members, officers, and staff regularly observe, photograph, document, and study greater sage-grouse on public lands for recreational, scientific, educational, and other pursuits and intend to continue to do so in the future. The Center advocates on behalf of members interested in protecting the many native, imperiled, and sensitive sagebrush-dependent species and their habitats that may be affected by oil and gas development.

13. Based on communications with Center members, officers, and staff, I have direct knowledge that Center members, officers, and staff have observed and photographed greater sage-grouse on public land (BLM and Forest Service) in states including Idaho, Colorado, Nevada, Utah, Wyoming, and California.

14. The Center has been engaged in a campaign to research, document, and raise awareness of environmental consequences of oil and gas development and hydraulic fracturing in on BLM public lands. This campaign includes, among other efforts, publication of reports on climate and wildlife impacts of oil and gas leasing and development; a nationwide campaign to advocate for improved consideration of the climate, air, water, health, and wildlife impacts of BLM fossil fuel leasing; and regular commenting, administrative protests, administrative appeals, and litigation over Bureau of Land Management oil and gas leasing activities on western public lands.

15. The Center has been involved for over a decade in efforts to protect at-risk grouse species, including the greater sage-grouse, Bi-state sage-grouse, Gunnison sage-grouse, and lesser prairie chicken. In addition to the Center's oil and gas monitoring activities, these advocacy efforts have included litigation over the listing and protection of the Bi-state sage-

grouse, Gunnison sage-grouse, and lesser prairie chicken, as well as ongoing litigation over the BLM and Forest Service's 2015 sage-grouse land management plan amendments.

16. The Center's public lands fossil fuels team consists of three attorneys, a paralegal, a campaigner, and a researcher; and the team works with the Center's scientists, Geographic Information System specialists, and other staff to research and document the environmental consequences of proposed public lands oil and gas leasing and development. One element of the team's responsibilities includes attempting to monitor and comment on all new proposed oil and gas leases within greater sage-grouse habitat.

17. Center staff attempt to monitor all BLM proposed oil and gas activities through multiple methods, including: regular inspection of the BLM's National Environmental Policy Act register (ePlanning), queries to the National Fluid Minerals Management System for proposed Applications for Permits to Drill, Freedom of Information Act requests, calls and visits to BLM field offices, monitoring of the BLM website, monitoring of EnergyNet (the private company that administers BLM fluid mineral lease auctions), monitoring of Expressions of Interest (when posted), and monitoring of third-party mapping sites.

18. The Center maintains a spreadsheet of known ongoing BLM oil and gas planning, leasing, and development actions, and its public lands fossil fuel team conducts weekly meetings to monitor comment, protest, and appeal deadlines and allocate staff time to engaging with these decisions.

19. It is Center policy to attempt, to the maximum extent possible, to bring accurate, detailed, and site-specific scientific and other information to the attention of the BLM (and Forest Service, where applicable) in an effort to promote responsible, informed decision-making

on public land oil and gas decisions, and to promote decisions that mitigate harm to greater sage-grouse, other wildlife, and other public land resources.

20. Obtaining accurate information regarding proposed oil and gas leasing decisions, particularly when the agency provides minimal or no environmental documentation, requires considerable time and effort. At a minimum, informed analysis and comment requires obtaining and mapping geographic information, identifying appropriate databases and information sources, identifying species, habitats, populations and resources that may be affected, identifying and reaching out to appropriate area or subject matter experts, and identifying, summarizing, and compiling relevant literature.

21. Since 2017, and particularly since early 2018, BLM efforts to limit or eliminate National Environmental Policy Act analysis, reduce public disclosure and participation, and otherwise limit public involvement in oil and gas leasing decisions has greatly impaired and complicated the Center's efforts to provide detailed, accurate public comment on oil and gas leasing and development decisions, and injured our ability to achieve the Center's mission and goals with respect to protection of public lands and resources (including sage-grouse) from adverse impacts of oil and gas leasing and development.

22. In particular, the Center's efforts to provide detailed, accurate, informative, and timely comment on oil and gas leasing decisions, and the work of its staff, have been complicated and adversely affected by three major trends – a massive increase in designated sage-grouse habitat proposed for leasing, the BLM's increasing reliance on minimal or no National Environmental Policy Act documentation for leasing decisions, and series of January 2018 policy changes incorporated in the BLM's Instruction Memorandum 2018-034, which replaced prior Instruction Memorandum 2010-117.

23. Beginning in 2017, the Department of Interior and Bureau of Land Management issued a series of orders, reports, and directives reducing consideration of impacts to sage-grouse and opportunities for public involvement in the oil and gas leasing process. Among others, on December 27, 2017, without amending or revising its land use plans under FLPMA or NEPA, BLM issued Instruction Memorandum 2018-026, effectively repealing the prioritization requirement of the 2015 Sage-Grouse Plan Amendments and drastically increasing the proposed leasing of sage-grouse habitat while decreasing pre-leasing environmental analysis.

24. As of April 2018, according to Center staff and scientists' review of BLM lease parcel data and sage-grouse habitat layers obtained from the BLM, since 2017 BLM had offered and/or leased approximately 796,870 acres of Priority and General Habitat Management Areas ("PHMA" and "GHMA") for greater sage-grouse, and proposed an additional approximately 1,156,480 acres for leasing in the second, third, and fourth quarters of 2018.

25. On January 31, 2018, BLM issued Instruction Memorandum 2018-034, which adopted a series of "policy" changes instructing its Field Offices to accelerate oil and gas leasing and reduce environmental review and public comment. IM 2018-034 directs BLM offices to accelerate approval of oil and gas leases at the expense of conducting full environmental analysis, and drastically limits public involvement in leasing decisions.

26. In particular, as a result of IM 2018-034, BLM will no longer use a rotating schedule for lease sales, as described in IM No. 2010-117. Each state office will review all lands that are identified in Expressions of Interest ("EOIs") that were submitted before the EOI cutoff date for a particular quarterly lease sale and will offer all parcels determined to be eligible and available within the state office's jurisdiction. This has resulted in massive, unpredictable, and duplicative lease sale announcements with cursory documentation.

27. In one example, for the Wyoming BLM third-quarter 2018 lease sale, the agency issued, for public comment, two Environmental Assessments for two regions of the state in January 2018. Subsequently, in May 2018, the BLM unexpectedly issued a third Environmental Assessment covering 270 parcels and approximately 350,000 acres spread across eleven field offices covering virtually the entire state of Wyoming, with only fifteen days allowed for public comment. BLM stated “We are analyzing the parcels for this sale in two sets because new policy regarding lease sales was issued after we had originally begun the review process for this sale, and to comply with the policy’s requirement to offer lands statewide at the quarterly sales and to meet the policy’s review timeframes.”

28. IM 2018-034 further limits pre-leasing environmental analysis, review, and disclosure by encouraging field offices to decline preparation of Environmental Assessments or Environmental Impact Statements in favor of “Determinations of NEPA Adequacy” that provide no disclosure of site-specific impacts. A Determination of NEPA Adequacy is typically a cursory document of under ten pages that provides no information whatsoever regarding species, habitats, and resources that may be affected by a proposed oil and gas lease sale and resulting development, greatly increasing the demands on the Center and other conservation organizations to conduct independent research to determine the species, habitats, and other resources that may be affected by a proposed lease sale, sometimes encompassing tens or hundreds of thousands of acres.

29. IM 2018-034 also greatly increases the burden of providing informed comment and feedback to the BLM by (a) generally eliminating comments periods on Determinations of NEPA Adequacy, (b) limiting comment periods on Environmental Assessments, when prepared,

to fifteen days, and (c) shortening deadlines for administrative review (“protest”) of proposed lease sales from thirty to a mere ten days.

30. These multiple factors – increase in proposed leasing, decreased availability of information, shortened comment periods, and shortened protest periods – has irreparably injured and impaired the Center’s ability to effectively carry out its mission of providing detailed, accurate input on leasing decisions. It has caused our staff, due to resource limitations, to forego comment on lease sales such as the BLM’s 2018 North and South Dakota lease sale. It has also required staff to work outside normal business hours and forego vacations in order to meet abbreviated, unexpected, and frequently-overlapping comment and protest deadlines.

31. Expanded leasing, limited NEPA review, and curtailed comment and protest periods adversely affect the Center’s mission of encouraging better-informed BLM decision-making. Where the Center can provide detailed, science-based comments, BLM has been known to eliminate proposed parcels and/or add additional protective stipulations addressing wildlife impacts. These include, as just a couple examples I am familiar with, deferral of leasing in desert tortoise critical habitat in Nevada, deferral of leasing in pallid sturgeon critical habitat in Montana, and the repeated deferral of a proposed Idaho lease sale parcel near Gray’s Lake National Wildlife Refuge. When confronted with multiple large, simultaneous, and minimally-documented lease sales in multiple states, Center staff face a much more difficult task in identifying, compiling, and submitting the type of detailed, site-specific information that BLM offices have stated is required for consideration of comments and protests.

32. BLM’s series of recent policy changes aimed at increasing oil and gas leasing, decreasing environmental review, and decreasing public involvement will foreseeably have adverse and irreparable effects on multiple key elements of the Center’s organizational mission.

The most immediate harm, however, is that by increasing the amount of greater sage-grouse habitat under lease for oil and gas, particularly with no or minimal pre-leasing consideration of site-specific impacts, BLM's policies and actions will increase the human-caused threats to that species' survival and recovery, and will irrevocably forego, for at least ten years, the ability to adopt science-based protections for those sage-grouse habitats.

33. If BLM leasing policies, including IM 2018-034, continue to be applied to future lease sales, including the third and fourth quarter lease sales for 2018 (to be conducted in September and December, 2018, respectively), the Center will continue to suffer harm, both in the increased difficulty of providing detailed and documented comments and protests on multiple large lease sales in an abbreviated time-frame, and, more concretely, when oil and gas lease are issued, and development foreseeably occurs, on public lands that have never been fully and accurately examined for the wildlife and other resources that may be affected.

34. Once fluid mineral leases are issued, under the Mineral Leasing Act, Federal Land Policy and Management Act, and implementing regulations, lessees acquire the ability to use as much of the surface as is required to extract oil and gas, for a term of at least ten years (or much longer if hydrocarbons are produced in paying quantities or the lease becomes part of a larger producing unit). For those leases that do not explicitly preserve the right to prohibit surface occupancy, the BLM's ability to require mitigation measures if potential impacts are subsequently discovered is greatly curtailed. Once a lease has been issued, it cannot be revoked absent very limited statutorily-prescribed circumstances. Even leases found to have been illegally issued by court decision are not automatically revoked, typically instead triggering subsequent proceedings by BLM to determine whether or how to continue the leases.

35. Based on Center staff review of proposed third- and, to the extent known, fourth-quarter 2018 leases, the trend of increasing leasing of sensitive habitats with decreased environmental review will continue, unless enjoined. For example, the massive second-round Wyoming Third Quarter 2018 lease sale encompasses approximately 350,000 acres of public land and minerals, some 63% fall within Priority Habitat Management Areas for greater sage-grouse, and approximately 98% within some form of sage-grouse habitat. Based on BLM's minimal disclosure and necessarily-rushed review of available public information, this proposed lease sale would also have severe and unexamined consequences on winter and migration habitats for mule deer and pronghorn, and on the scenic, watersheds, and recreational values of irreplaceable portions of the Northern Red Desert. The BLM's Wyoming fourth quarter sale has not yet been announced, but media reports state that it may encompass 900,000 or more acres including significant big game and sage-grouse habitats—and that acreage may increase further due to BLM's self-imposed EOI-processing deadlines under IM 2018-034.

36. Similarly, Nevada's third and fourth quarter 2018 lease sales have not yet been announced, but based on recent patterns of activity, we expect that hundreds of thousands of acres of public land, much of it within Priority or General Habitat Management Areas for greater sage-grouse, will be proposed for lease with minimal (or no, if Determinations of NEPA Adequacy are used) environmental disclosure and analysis, requiring the Center to attempt to compile accurate and detailed information for hundreds of square miles of remote Nevada basins within a fifteen-day comment period and ten-day protest period.

37. BLM Utah's third quarter 2018 lease sale includes seven parcels in the Fillmore Field Office and 26 parcels in the Salt Lake Field office. Most of the Salt Lake Field office parcels (25,752 acres) are within sage-grouse Priority Habitat Management Areas, including all

of the parcels in Rich and Summit Counties (Rich Population Area) and about half of the Utah County parcels (Carbon Population Area). Seasonal habitats within the lease parcel area include breeding and nesting, brood-rearing/summer, and winter habitats.

38. As the BLM has acknowledged, the Rich population area is one of the largest and most stable in Utah, and important for connectivity to grouse populations in Idaho and Wyoming. Nevertheless, BLM has failed to engage in analysis, as required by the RMP, as to whether these parcels are appropriate for leasing, or whether its management objectives could be better met by prioritizing the leasing of other lands and minerals outside of PHMA.

39. BLM Utah's fourth quarter 2018 lease sale has not yet been announced, but according to information from the BLM, we expect a statewide offering of parcels, likely, pursuant to IM 2018-034, with no environmental analysis other than a cursory Determination of NEPA Adequacy. BLM Utah has additionally announced that it plans to issue or lift suspensions on an additional 94 lease parcels in the Price and Richfield Field Offices initially offered or issued prior to 2008.

40. On July 2, 2018, BLM also issued a preliminary announcement of its intent to offer approximately a quarter-million acres of oil and gas leases scattered across the entire state of Colorado, including significant areas within two of the state's most critical remaining habitats for greater sage-grouse, the Northwest Colorado and North Park areas, with a 15-day comment period for the public to comment on massive areas of public land scattered across multiple geographic, geological, hydrological and ecological regions.

41. In addition to these proposed lease sales in sage-grouse habitat, IM 2018-034's requirements, including arbitrary processing deadlines, minimizing pre-leasing analysis, and

discouraging lease deferrals—will result in two other particularly egregious lease sales with inadequate prior consideration or public comment.

42. The proposed September 2018 lease sale includes exceptional-quality recreational lands and wildlife habitat in the Huerfano River basin of southeastern Colorado, just east of the Sangre de Cristo Wilderness, raising major concerns on impacts to local recreation, big game habitat, fisheries and aquatic habitat recreation, scenic values for the Wilderness and Great Sand Dunes National Park, and Navajo Nation cultural properties.

43. Under IM 2018-034 deadlines, BLM has also proposed, under a cursory Determination of NEPA Adequacy that in turn relies to a decades-old Resource Management Plan without any discussion of oil and gas impacts, fluid mineral leasing in northern Arizona for the first time in years. Despite virtually no active oil and gas activity in the area, because of the irrevocable potential for harm to the potential threats to resources in the area – including scarce surface and ground water, endangered fish, cultural properties, and neighboring National Parks – the Center’s mission has required it to expend substantial staff time investigating the possible consequences of these highly speculative proposed leases and advocating for resource protection.

44. In our experience, BLM decisions authorizing drilling activity (referred to by the agency as Applications for Permit to Drill, or APDs) do not provide an adequate opportunity for public notice and comment on the unavoidable environmental impacts of oil and gas leasing, for several reasons. First, based on our review of available data, over 50% of all APDs are processed under either Categorical Exclusions or Determinations of NEPA Adequacy, which generally provide no public notice or public comment. Second, under current BLM practice, tracking APDs and their potential impacts is difficult and burdensome for the public. Bare notice of APD applications are posted with no descriptive information on a database, the Automated Fluid

Minerals Management System, that requires considerable effort by the Center, other organizations, and the public to map, identify, and evaluate the affected parcels. Third, particularly where leases do not prohibit surface occupancy, as is the case of the vast majority of BLM fluid mineral leases, BLM authority to actually mitigate impacts at the permitting stage is limited.

45. Based on statements by the President, the Secretary of the Interior, the Deputy Secretary, and on DOI and BLM Executive Orders, reports, Instruction Memoranda and Bulletins, the Center expects the trend of more proposed leases, less analysis, shorter comment and protest periods, to continue and accelerate. This will significantly impair both the day-to-day work of our public lands team, and the resulting substantive decisions by the BLM. If the rules put in place by IM 2018-034 are allowed to continue for the third and fourth quarter 2018 lease sales, inadequate pre-leasing review and shortened public involvement will necessarily result in a failure to identify resources – at-risk species, critical habitats, sensitive watersheds, exceptional recreational resources, cultural artifacts, and more – that could be protected by either adequate stipulations or deferral of leasing for further analysis.

46. The requested injunctive relief that Plaintiffs are seeking from this Court will help prevent irreparable injury to the Center, its members and staff, the public, and the public lands and vital resources, such as sage-grouse. Ordering BLM to stop following IM 2018-034 regarding public notice, comment and protests, and instead to revert back to the prior 30 day public comment and protest periods, would help protect the interests of the Center, my own interests, and the public interest by providing for more timely and meaningful public notice and input to BLM's oil and gas leasing decisions, help protect the environment, and improve public lands decision-making.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed in Denver, Colorado on July 5, 2018.

A handwritten signature in cursive script, reading "Michael A. Saul". The signature is written in dark ink and is positioned above a horizontal line.

Michael Saul

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an agency of the United States,)

Defendants.)

No. 01:18-cv-187-REB

DECLARATION OF ERIK MOLVAR

I, Erik Molvar, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I hold a Master’s degree in Wildlife Management from the University of Alaska Fairbanks. I have authored scientific research articles that have been published in peer-reviewed

scientific journals including *Journal of Mammalogy*, *Alces*, *Oecologia* (Berlin), *Journal of Conservation Planning*, and *Canadian Field-Naturalist*.

3. I am Executive Director with Western Watersheds Project, a nonprofit conservation group working to protect and restore watersheds and wildlife throughout the West. I have served in this position since October of 2016. In this capacity, I manage staff, set strategic conservation priorities, work to advance improvements in public lands conservation and stewardship, and engage directly in conservation advocacy on behalf of western public lands.

Western Watersheds Project's Interests in Sage-Grouse Conservation.

4. Western Watersheds Project is a non-profit, membership conservation organization, which is headquartered in Hailey, Idaho, and currently has offices or staff in Idaho, Wyoming, Arizona, Oregon, Nevada, Montana, and Washington. The organization is recognized as an IRS 501(c)(3) charitable entity.

5. Western Watersheds Project has over 1,500 members throughout the United States, including in Idaho, Montana, Wyoming, Nevada, Utah, and other states where oil and gas leases are currently being offered for sale and may be offered for sale in the future.

6. Through the efforts of our staff, members, supporters, and volunteers, Western Watersheds Project is actively engaged in seeking to protect and preserve watersheds, native habitats, fish and wildlife, and other natural resources on public lands across the West, with a particular focus on promoting responsible livestock grazing management on public lands and enforcing the nation's public lands and environmental laws with respect to livestock grazing and related activities.

7. A large part of the area in which Western Watersheds Project is most active is what many people call the "Sagebrush Sea"—the sagebrush-steppe ecosystem which once

stretched across hundreds of millions of acres in the West, including parts of Idaho, Oregon, Washington, Nevada, Utah, Colorado, New Mexico, Wyoming, and Montana. Millions of acres of these sagebrush lands have been lost or degraded as a result of human activities, and they continue to be shredded by livestock grazing and oil and gas leasing and development.

8. The greater sage-grouse is an icon and indicator species for the Sagebrush Sea. Scientific literature establishes that the bird relies on sagebrush habitats for virtually all of its biological needs and life cycle.

9. Many members of the public, including myself and many other Western Watersheds Project staff, members, and supporters, treasure the sage-grouse. I have visited public lands to view sage-grouse in Wyoming and other states with my family, and will continue to do so regularly into the future – although my success in observing healthy sage-grouse populations has diminished substantially over the years, as sage-grouse and their habitats have declined. This causes me great personal anguish and loss.

10. The loss and degradation of sagebrush habitats has gone hand-in-hand with the well-documented decline in sage-grouse populations in recent decades. The effects have been particularly severe in Wyoming, where sage-grouse populations are declining over the long time horizon, and again are experiencing significant declines in 2018. I personally have found that sage-grouse are increasingly rare, and difficult to find—especially in Wyoming, where once-active sage-grouse leks are now hurtling towards extirpation at a rapid rate.

11. Many members of the public, including myself and many other Western Watersheds Project staff, members, and supporters, treasure the sage-grouse. Its declining numbers have personally harmed me and many other staff, members and supporters of Western Watersheds Project whom I know.

12. As set forth in more detail below, the decline of sage-grouse and the destruction of sage-grouse habitats has personally harmed my personal recreational and aesthetic experiences, and it further injures my deeply-held interests in ensuring that the native ecosystems of our region are protected and improved so that all the native plants, wildlife and other species that rely on the sagebrush-steppe ecosystems are preserved for the future.

13. Likewise, I know from conversations and other communications with Western Watersheds Project staff, members, and supporters that the decline of sage-grouse similarly harms the aesthetic, recreational, scientific, and spiritual interests of these individuals. In particular, our staff, members and supporters include many professional or amateur ornithologists—and even sage-grouse experts—whose interests in observing, studying, and enjoying the spectacle of healthy sage-grouse populations around the West are harmed by the declines seen in the species and its native habitats over recent decades.

14. Moreover, I am aware that Western Watersheds Project's staff, members, and supporters have significant scientific, recreational, spiritual, aesthetic, and other interests in the specific lease sale areas that are the subject of this litigation. As just few examples: Member Kevin Mueller has traveled extensively throughout Utah's wildlands and is extremely familiar with the Sheeprocks lease sale parcels and the sage-grouse populations there. Wyoming Director Jonathan Ratner has extensive recreational and professional experience traveling to and inventorying lands on Wyoming BLM's Lander, Rock Springs, Green River, Cody, Worland, Kemmerer, and Pinedale Field Offices, and on Utah BLM's Salt Lake, Vernal, Price, Richfield, Moab, and Monticello Field Offices, including areas where oil and gas leasing challenged in this lawsuit has occurred or is proposed. California Director Laura Cunningham has recreational and professional experience traveling to and inventorying lands on Nevada BLM's Tonopah and

Shoshone-Eureka Field Offices, including extensive experiences viewing sage-grouse in the Little Fish Lake and Monitor Valleys where oil and gas leasing will occur as part of the June 2018 lease sale. Board member Ralph Maughan has intimate familiarity with the Idaho lease sale parcels and has extensively traveled and inventoried lands on Idaho BLM's Pocatello Field Office near the Gray's Lake National Wildlife Refuge, as well as much of Nevada. I personally have advocated for protection of many of the areas now proposed for oil and gas leasing in Wyoming for more than a decade, and have traveled extensively in these areas, as well as areas proposed for development, as set forth in more detail below.

15. Because of the importance of sage-grouse, both as a species and as an indicator of what is happening to the sagebrush steppe of the American West, Western Watersheds Project has long been active in efforts to protect and restore sage-grouse populations and their habitats. We have undertaken a wide array of activities to protect and restore sage-grouse and their native habitats, including promoting, gathering, and disseminating scientific information; educating the public, land managers, and officials; reviewing agency management plans and activities, and commenting on them in an effort to steer them toward more responsible stewardship of sage-grouse and its habitats; as well as bringing administrative appeals and litigation intended to help protect sage-grouse and its native habitats.

16. For example, Western Watersheds Project worked with the Sagebrush Sea Campaign and others to secure funding and retain consultants to research the science and data, to support a petition to the U.S. Fish & Wildlife Service (FWS) to list the greater sage-grouse under the Endangered Species Act (ESA). Western Watersheds Project was one of twenty-one organizations that joined the December 2003 listing petition submitted to U.S. Fish and Wildlife Service seeking ESA protection for the greater sage-grouse.

17. In addition, Western Watersheds Project joined in various comments that were submitted to the Service during its status review of sage-grouse, providing further information to the Service to support listing, and defending against industry-led attacks on the listing petition.

18. After FWS found the sage-grouse was “not warranted” for listing under the ESA, in January 2005, Western Watersheds Project sued to overturn the finding in the District of Idaho. This court held the “not warranted” finding was the product of improper political meddling and reversed and remanded the finding to FWS. *W. Watersheds Project v. U.S. Fish & Wildlife Serv.*, No. 06-cv-277-BLW, 535 F. Supp. 2d 1173 (D. Idaho 2007). FWS initiated another public process and ultimately found the sage-grouse did warrant protection under the ESA, largely due to inadequate regulatory mechanisms to rein in threats throughout its range, but that listing it was precluded by other higher-priority species.

19. In response to FWS’s “warranted-but-precluded” finding, BLM and the Forest Service initiated the National Sage-Grouse Planning Strategy to amend land use plans across sage-grouse range in an effort to impose adequate regulatory mechanisms necessary to avert an ESA listing. Western Watersheds Project participated extensively in the planning process.

20. Because the sage-grouse plans that came out of the planning process did not adequately address threats to sage-grouse, including livestock grazing and oil and gas development, Western Watersheds Project and others sued, seeking to strengthen the plans. *W. Watersheds Project v. Schneider*, No. 1:16-cv-83-BLW (D. Idaho 2016).

21. While that litigation was pending, the Administration changed. The new Trump Administration began issuing a slew of Executive Orders aimed at expanding oil and gas development on public lands and refusing to implement protections against livestock grazing, including by eliminating essential sage-grouse protections put in place by the sage-grouse plans.

22. In response to those Orders, the Department of the Interior, under Secretary Ryan Zinke's leadership, sought to speed oil and gas development by issuing several Instruction Memoranda (IMs). The IMs sharply curtailed public review and comment on leasing decisions, both by issuing more decisions under categorical exclusions and determinations of NEPA adequacy, and by making offering public comment on other NEPA documents optional. IM 2018-034, which is the subject of this lawsuit, also shortened the protest period from 30 days to only 10. Those efforts—and the increased oil and gas leasing in important sage-grouse habitats they encourage—form the basis for this lawsuit.

23. Because of our longstanding investment in preserving the Sagebrush Sea and the species that depend upon it for their survival, Western Watersheds Project and its staff, members, volunteers, and supporters, have also grown increasingly concerned about oil and gas leasing and development within the species' range. A robust scientific consensus demonstrates that oil and gas leasing and development fragments and destroys sagebrush habitat that is essential to support sage-grouse life history requirements. As a result, oil and gas leasing and development cause sage-grouse population declines, particularly where they occur in high-value habitats that are used by many birds, like winter habitats. Habitat in Wyoming in particular is home to the most populous remaining "stronghold" for sage-grouse survival, and it is rapidly being leased and developed for oil and gas. But, with new technologies emerging, sagebrush habitats in Utah, Idaho, North Dakota, South Dakota, Nevada, Montana, and Colorado are also at increasing risk of fragmentation and destruction.

24. The abbreviated comment and protest periods presently provided by the Bureau of Land Management for oil and gas lease sales under IM 2018-034 are inadequate to allow full and

thorough public comment on the proposal to lease parcels of public land for fluid mineral development.

25. The extremely short new comment periods are too brief to allow Western Watersheds Project's staff, members, and supporters to conduct site visits with BLM to observe on-the-ground conditions. This impoverishes BLM decision-making because many Western Watersheds Project staff, members, and supporters have been engaged with management of lands at stake in these oil and gas leasing decisions for years and could provide valuable insight into ecological changes over time.

26. We are also not able to provide as much information as we would like in our comments to BLM. For the September 2018 Wyoming oil and gas lease sales, Western Watersheds Project signed on to group comments but were not able to comment independently or bring our organizational sage-grouse expertise to bear as much as we would have liked to, because the extremely short comment period coincided with our annual staff retreat and Board meeting. Similarly, we would have provided more sage-grouse and migratory bird information for the June 2018 Battle Mountain oil and gas lease sale protest in Nevada, but were not able to because of the extremely short protest period and competing priorities.

27. Because of the extraordinarily burdensome process of staying up-to-speed with fast-moving oil and gas lease sales under the new IMs, Western Watersheds Project has been forced to divert its Energy Program Coordinator, Kelly Fuller, away from other priorities like mining and other energy development projects, to increase her focus on oil and gas leasing and development. This has harmed Western Watersheds Project's ability to participate in agency decisions throughout the West that affect the Sagebrush Sea and other resources that Western Watersheds Project has spent decades trying to protect.

28. Our inability to adequately participate in the oil and gas leasing phase under IM 2018-034 is particularly important because once a lease has been sold, the odds of BLM entirely denying a well to be drilled on a lease are vanishingly small. Furthermore, BLM customarily allows leaseholders to design oil and gas developments on a given lease, limiting themselves to adjustments in timing and location rather than denying development proposal outright.

29. It is also very difficult to participate beyond the leasing phase, at the Application for Permit to Drill (APD) phase. In my experience, APDs are difficult to track because they are typically not made available online, but instead APDs (and Notices of Staking) are posted for 30 days in a binder in the Field Office where the development is proposed. It is necessary to travel to individual Field Offices at least every 30 days to be sure that one can comment on the APD in question. This is prohibitively expensive, time-consuming, and difficult given that Western Watersheds Project has one Energy and Mining Coordinator staff and there are 80 or so Field Offices. Furthermore, the Form EA/Decision Records/FONSI for individual APDs are typically not made publicly available, so the only information that the public has to base their comments on is a well location on a very small-scale map. This deprives the public of information on the presence and distribution of sensitive wildlife species, key habitats like sage-grouse PHMA or eagle nest locations, and crucial big game winter ranges and migration corridors, which may be close to proposed wells, pipelines, and access roads, but the existence of which are withheld by BLM.

30. Western Watersheds Project has contested similar efforts to restrict public participation in natural resource decision-making in the past. In particular, Western Watersheds Project was the lead group that successfully challenged the livestock industry-led attempt to gut or reduce public involvement in BLM's grazing management through the July 2006 rulemaking

that this Court reversed and permanently enjoined. *See W. Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008) *aff'd in part* 632 F.3d 472 (9th Cir. 2011).

31. Over the past two decades, Western Watersheds Project has also successfully used litigation and administrative processes to promote sage-grouse conservation and oppose resource uses that harm sage-grouse and destroy the Sagebrush Sea, especially livestock grazing. *See, e.g., W. Watersheds Project v. Salazar*, No. 08-cv-516-BLW, 2011 WL 4526746 (D. Idaho 2011) (holding that BLM “test case” RMPs violated NEPA and FLPMA for failing to address sage-grouse conservation needs); *W. Watersheds Project v. Jewell*, 56 F. Supp. 3d 1182 (D. Idaho 2014) (BLM violated NEPA and FLPMA in renewing dozens of grazing permits in key sage-grouse habitat in southern Idaho); *W. Watersheds Project v. Salazar*, 843 F. Supp. 2d 1105 (D. Idaho 2012) (BLM violated NEPA and FLPMA in renewing grazing permits in southern Idaho without considering cumulative impacts on sage-grouse and Resource Management Plan (RMP) duties to prioritize protection of sage-grouse as a sensitive species).

32. Notably, Western Watersheds Project previously challenged Wyoming BLM’s Pinedale RMP for failing to adequately protect sage-grouse and addressed the proposed “Normally Pressured Lance” oil and gas development, now projected to be finalized in 2019. *W. Watersheds Project v. Salazar*, No. 08-cv-516-BLW, 2012 WL 5880658 (D. Idaho Nov. 20, 2012), ECF Docket No. 31. The Court declined to enjoin the Lance project at that time because it was not yet final, but we understand that the BLM is now moving forward with the project despite the serious threats it poses to sage-grouse, with a final decision anticipated in 2019. We discuss the Lance project in our current litigation and plan to challenge it once it is finalized due to the enormous impacts it risks to sage-grouse and sagebrush habitat—3,500 wells to be drilled over 10 years, including in critical sage-grouse winter and connectivity corridors.

33. Western Watersheds Project’s ability to ensure public oversight when BLM proposes to undertake unlawful activities depends upon our ability to obtain information and provide input through reviewing BLM’s environmental analyses, conducting site visits, independently surveying affected areas, assessing impacts, and participating in public processes. The shortened public comment and protest periods make it much harder, if not impossible, for us to provide the thorough review that can most aid BLM decision-making.

34. The leasing and development of the Sagebrush Sea, and the gutting of public processes intended to allow for public input to help the agency fairly evaluate the actions’ environmental impacts, threaten irreparable harm to Western Watersheds Project’s (and its staff’s, members’, and supporters’) established scientific, educational, aesthetic, recreational, spiritual, and other interests in conserving, preserving, and restoring the ecological integrity of the sagebrush ecosystem, and securing the persistence of the sage-grouse and other species that depend upon the sagebrush ecosystem to survive.

Personal Interests in Preserving Sagebrush Habitats In Wyoming.

35. Before beginning my present work with Western Watersheds Project, I served as Sagebrush Sea Campaign Director for WildEarth Guardians from 2013 to 2016, and as Executive Director and Wildlife Biologist for Biodiversity Conservation Alliance (“BCA;” originally Friends of the Bow and Biodiversity Associates) from 2000 to 2013.

36. I am the author or editor of 17 books that are guides to western public lands, including *Wild Wyoming* (which covers wilderness and potential wilderness throughout the state) and *Wyoming’s Red Desert: A Photographic Journey*. These books are based on my statewide travels to public lands, during the course of which I documented the values of the most natural remaining public lands through mapping and photography. My photography of Wyoming public

lands appears in these and other books, including parcels in the south end of Adobe Town and Kinney Rim that are proposed for auction in the Wyoming December 2018 lease sale.

37. In the process of writing these books, I have explored western public lands extensively, especially in Wyoming, Utah, Nevada, and Montana. I regularly camp, hike, boat, backpack, hunt, fish, observe birds and wildlife, study habitat conditions, conduct field inspections, and seek spiritual renewal through my work and recreation involving public lands. I intend to continue this work into the future for as long as I am able and regularly return to areas that I know to be beautiful and ecologically valuable because of the explorations that formed the basis for my hiking guides. In particular, I intend to continue to visit the Sagebrush Sea in Wyoming and other states, in hopes of observing sage-grouse, pygmy rabbits, mule deer, and other sagebrush species. For example, I intend to return to the Bighorn Basin in August of 2018, and to the Red Desert in September of 2018, for these purposes.

38. I also make an annual tour of the Colorado Plateau and Great Basin in March of each year, to view sage-grouse, enjoy the spectacular beauty of our western public lands, engage in photography, and engage in spiritual renewal.

39. During my tenure with Biodiversity Conservation Alliance, I personally field inventoried over half a million acres of wilderness-quality lands in Wyoming, including the following units in the Red Desert, which are proposed for leasing in the December 2018 lease auction: Kinney Rim South, Adobe Town, Kinney Rim North, and Wild Cow Creek. These inventories were designed to provide detailed documentation of lands with wilderness qualities, with a goal of extending protections that would protect these wilderness qualities from oil and gas leasing and development through standards emplaced in RMP revisions and amendments.

40. While working for BCA, I represented conservation groups and concerned citizens in petitioning Adobe Town for Very Rare or Uncommon status under the State of Wyoming's Environmental Quality Act, which resulted in the full 180,910-acre citizens' proposed wilderness being designated as Very Rare or Uncommon in 2009. Adobe Town is the largest and most spectacular of Wyoming's desert wilderness candidates, characterized by deeply incised badlands including pillars, arches, and palisades of tuffaceous sandstone originating from volcanic eruptions during the Eocene epoch, which bear unique and rare mammalian fossils from this period as well as an unusually high density of archaeological sites dating back 10,000 years. I am the author of the Adobe Town Briefing Book, a WildEarth Guardians publication.¹ Parts of this designation are proposed for lease in the December 2018 lease auction.

41. I am one of the authors of proposed Red Desert National Conservation Area legislation, a proposal that would have protected more than one million acres of the Red Desert, including Adobe Town, the Kinney Rim, and the Jack Morrow Hills area. Leases in the December 2018 lease auction involve lands within this conservation proposal. This legislation was presented to the Wyoming congressional delegation in 2013 by the Wyoming Association of Churches and an Eastern Shoshone elder.

42. While working for WildEarth Guardians, I actively participated in drafting the Wildlife Corridors Conservation Act (WCCA), a bill currently pending before Congress that would establish National Migration Corridors on federal lands, and while working for WildEarth Guardians and Western Watersheds Project I have advocated for the Red Desert-to-Hoback mule deer migration corridor, currently recognized as the longest land-mammal migration in the lower

¹ Available online at <http://www.wildearthguardians.org/FlexPaper/Publications/AdobeTown/AdobeTown.html>.

48 states, to be protected as a National Migration Corridor. Portions of this migration corridor have been proposed for oil and gas leasing in recent lease sales; the protection of these lands for their migration corridor values also would confer habitat conservation benefits for sage-grouse. Also in the context of the WCCA, I have advocated for the designation of the Path of the Pronghorn migration corridor, the second-longest land-mammal migration running from summer ranges in Grand Teton National Park to winter ranges neighboring Seedsdakee National Wildlife Refuge. This migration corridor is threatened by oil and gas development under the Normally Pressured Lance project.

43. I am personally invested in these areas, not only because of my professional efforts to protect them over the past decade and a half, but also for aesthetic, recreational, scientific, and spiritual reasons. They harbor unique, high-value habitats for mule deer, sage-grouse, and other wildlife, and irreplaceable paleontological and cultural resources. The Red Desert is one of the most spectacular and relatively undisturbed pieces of public land left in the United States. It is inspiring in its biological diversity and its scenic beauty. For these reasons, I return to the Red Desert almost every year, often multiple times, for recreational reasons with my family to engage in camping, hiking, photography, wildlife viewing, wild horse viewing, hunting, and spiritual renewal. I put in for antelope and elk tags almost every year in this area, and plan to return there to hunt each year I am awarded a tag. It would cause me immeasurable grief to see these places fragmented or degraded.

44. I have advocated for sage grouse conservation since 2001. BCA was a signatory to the petition to list the greater sage-grouse as “endangered” under the ESA, and I also advocated for stronger sage-grouse protections in the context of land-use plans (including the Jack Morrow Hills Coordinated Activity Plan, the Rawlins Resource Management Plan, and the

Thunder Basin National Grassland Land and Resource Management Plan), and oil and gas leasing and development projects and proposals (including the Jonah Infill project, the Seminole Road coalbed methane project, the Continental-Divide – Creston Project, and the Atlantic Rim coalbed methane project). I oversaw litigation challenging several of these projects. I also engaged in advocacy for a programmatic EIS to amplify sage-grouse protections rangewide—a recommendation that the Department of the Interior ultimately adopted in the form of the West-wide sage-grouse RMP amendments.

45. I have also conducted comprehensive reviews of sage-grouse science to inform publications and advocacy for improved sage-grouse conservation. I am author of the Western Heritage Alternative, a comprehensive, science-based land-use plan alternative drafted for the Rawlins Resource Management Plan revision, and the Bighorn Basin Community Alternative, a similar science-based citizens' alternative that would have increased sage-grouse protections for the Cody and Worland BLM Field Offices, both of which were BCA documents. With both BCA and WildEarth Guardians, I have drafted and submitted comprehensive, science-based comments on sage-grouse plan amendments in Wyoming, Montana, Nevada, California, Idaho, and Utah. I am author of the following science-based WildEarth Guardians reports: *The Shrinking Geography of Sage Grouse Conservation* (2015); *Sage Grouse Conservation Efforts and Population Trends* (2015); and *Nevada Sagebrush Landscape Bill: An Analysis of Sage Grouse Conservation Potential* (2014).² I continue to monitor advances in sage-grouse science and incorporate these findings into sage-grouse advocacy on behalf of Western Watersheds Project.

² Available online at http://www.wildearthguardians.org/site/PageServer?pagename=priorities_wild_places_sagebrush

46. I also visit sage-grouse habitats and photograph sage-grouse during my many trips to visit public lands in Wyoming and my yearly trips to the Colorado Plateau and Great Basin. Much of the public land proposed for leasing in the Wyoming December 2018 and September 2018 lease auctions contains habitat important for sage grouse. Public lands currently being offered in Nevada's June 2018 lease sale are also important for sage-grouse.

47. Specifically, the Wyoming September 2018 lease sale contains parcels within the Thunder Basin National Grassland, an area that I have visited repeatedly and for which I have advocated strong conservation protections since 2001. I have viewed sage-grouse in this area, camped and hiked in this area, and engaged in photography of this area. While a staff member of BCA, I advocated for stronger sage-grouse protections through the Grassland LRMP, appealed several oil and gas projects (the Big Porcupine and Porcupine Tuit coalbed methane projects, striking a groundbreaking settlement on the former and blocking the latter), and led public outings to explore its sage-grouse habitats.

48. The sale of these parcels risks to still further decimate already-impacted sage-grouse population within the Thunder Basin National Grasslands. Western Watersheds Project has been closely engaged with the Converse County oil and gas development proposal, which will affect thousands of acres of sage-grouse habitat in the Thunder Basin National Grasslands. That project is anticipated to result in drilling 5,000 new oil and gas wells over 10 years on 1.5 million acres, and the development of associated roads and infrastructure. It will further fragment high-value sage-grouse habitats that are already showing the impacts of human development through flagging sage-grouse populations. Because there is already a proposal to develop these areas, the sale and development of the adjacent oil and gas leases to be offered in

the September 2018 sale is more likely—further increasing the likely harm to sage-grouse populations there.

49. The Wyoming December 2018 lease sale contains parcels in Kinney Rim and Adobe Town that are not only priceless due to their outstanding archaeological, scenic, and paleontological values, but also for the excellent sagebrush steppe habitat they provide for sage-grouse. As set forth in more detail above, I have extensively explored these areas both as part of my professional efforts to advocate for their protection and for personal recreation over the past two decades or more. They contain important habitat for sage-grouse, mule deer, and other sagebrush species. The available science suggests that oil and gas leasing and development would at best degrade and at worst destroy those values.

50. The June 2018 Nevada lease sale on the Battle Mountain District also includes parcels I have visited in my yearly sage-grouse viewing trips in March, which provide important sage-grouse habitat. I frequently travel to Nevada, including to Monitor Valley, where oil and gas leasing is proposed. I have viewed and photographed sage-grouse on a lek (sage-grouse mating ground) in Monitor Valley that is adjacent to one of the lease parcels in years past, and plan to return there in 2019 and other future dates in hopes of viewing this iconic species. Based on my knowledge of sage-grouse science, however, oil and gas development on this lease could cause lek abandonment and I fear that once the lease parcels in this area are sold and developed, I will no longer be able to view and enjoy sage-grouse there. This causes me great concern and anxiety.

51. On several occasions, I have visited the area where the Normally Pressured Lance (NPL) oil and gas development is proposed, often as a side trip on drives to Jackson, Wyoming when the opportunity to get out of the car and experience a quiet and natural landscape is a

welcome respite from driving. During these visits, I have engaged in wildlife viewing—particularly pronghorn and golden eagles, looked for sage grouse, and enjoyed the unspoiled scenic vistas and undisturbed sage-grouse habitats in these areas. Major portions of the NPL project area are Priority Habitat Management Areas designated under the Wyoming Greater Sage-grouse RMP Amendments, and/or winter concentration areas important for the entire sage-grouse population in the Upper Green River Valley. The ‘Path of the Pronghorn’ migration corridor, now considered the second-longest land mammal migration in the lower 48 states, passes through this project area. The level of habitat protection for both sage-grouse habitats and pronghorn migration corridors is insufficient to maintain the habitat capability for either sage-grouse breeding, nesting, and wintering, or pronghorn migration. I most recently visited these lands today, viewing and photographing undeveloped landscapes as well as pronghorns and wild horses. I am concerned that should this project be developed as proposed, there will be significant decreases in (or extirpations of) sage-grouse populations, and loss of the pronghorn migration corridor, and that these, along with the industrialization of a currently-undeveloped landscape, will impair my use and enjoyment of these lands on planned future visits.

52. The proposed oil and gas leasing now undertaken without adequate comment per the new Administration’s direction, including through IM 2018-034, will cause irreparable harm to my and Western Watersheds Project’s scientific, recreational, aesthetic, spiritual, and other interests in the persistence of sage-grouse and intact sagebrush habitats, as well as the scenic, cultural, paleontological, ecological, and other values the areas to be leased support in their undeveloped state. If afforded an adequate opportunity to comment on and/or protest these proposed lease sales, Western Watersheds Project could utilize the full force of its sage-grouse expertise to provide the agency with information that might cause it to defer or withdraw parcels

from leasing. Even if the agency did not ultimately alter its decision, receiving Western Watersheds Project's full input would undoubtedly improve the quality of the agency's analysis because the agency would be more informed about the full impacts of its decision to issue leases that could lead to the destruction or impoverishment of these ecologically rich and important areas.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of June, 2018 at Wilson, Wyoming.

A handwritten signature in dark ink, appearing to read "Erik Molvar", written over a horizontal line.

Erik Molvar

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UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,)
and CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiffs,)

v.)

RYAN K. ZINKE, Secretary Of Interior;)
DAVID BERNHARDT, Deputy Secretary)
of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

No. 01:18-cv-187-REB

DECLARATION OF KELLY FULLER

I, Kelly Fuller, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I am currently employed by Western Watersheds Project (WWP) as its Energy Campaign Coordinator.

Personal and Professional Background

3. I grew up hiking and camping in the American West, and I became aware of the many threats to its wildlife and public lands after I started going on camping trips with the conservation group Desert Survivors. Through Desert Survivors, I first began drafting public comments on actions that impacted the California desert, in the early 2000s.

4. In 2005-2006, I co-founded the Sunrise Powerlink Campaign, a 12-group coalition of community and conservation organizations opposed to a high-voltage transmission line slated to be constructed through a 600,000-acre state park. As part of that campaign I represented the Sierra Club's San Diego chapter to the media, government agencies, and the public. I also led a 78-mile walk through the California desert along the route of the proposed transmission line. In response to public pressure, the transmission line was re-routed to avoid the state park.

5. In 2007, I began working for Voyageurs National Park Association in Minneapolis, Minnesota—first as a volunteer and later as an employee, serving as interim Executive Director for several months in 2008. I wrote the group's communications materials, tracked proposed legislation; represented the organization to legislators, agencies, and NGOs; and also coordinated fundraising efforts.

6. In 2008, I began working as Communications Director for Plains Justice, in Vermillion, South Dakota. There, I created the first Great Plains communications campaign against the Keystone XL pipeline. I assisted farmers, ranchers, and other community members with communications and organizing against proposed coal facilities in two states and organized multi-state coalitions of environmental, community, and tribal groups.

7. From November 2010 through June 2013 I served as the Wind Campaign Coordinator for the American Bird Conservancy in Washington D.C. There, I tracked, analyzed, and commented on proposed regulations, Incidental Take Permits, Habitat Conservation Plans, Eagle Take Permits, and Environmental Assessments related to wind energy on public and private lands nationwide. I also organized a national campaign for bird-smart wind energy and taught volunteers how to protect birds by commenting on wind projects in their communities.

8. From July 2013 to June 2015, I served first as a consultant and then as Executive Director to the Protect Our Communities Foundation. There, I again worked on energy policy. I tracked, analyzed, and commented on project scoping, an air permit, and environmental impact analyses for various energy projects. I also led a successful organizing campaign that convinced the Forest Service and California Public Utilities Commission to extend scoping for a five-agency power line project on public lands.

9. Through these experiences, as well as my current position, I have helped community members and groups participate in energy projects in at least two dozen states.

WWP's Interests In Oil And Gas Leasing And Development

10. Beginning in February of 2017, I have worked for WWP. My position there primarily involves participating in public processes. I track proposed actions and draft comment letters on all types of energy projects, including oil and gas projects.

11. WWP's mission is to protect and restore western watersheds and wildlife through education, public policy initiatives, and legal advocacy. WWP works to influence and improve public lands management throughout the West with a primary focus on the negative impacts of livestock grazing on 250 million acres of western public lands, including harm to ecological,

biological, cultural, historic, archeological, scenic resources, wilderness values, roadless areas, Wilderness Study Areas and designated Wilderness.

12. Although WWP primarily focuses its advocacy efforts on public lands grazing, it is also concerned about oil and gas leasing and development, particularly where that development is slated to occur in sagebrush habitat crucial to sage-grouse and other species. I was hired specifically to help track and comment on energy projects that imperil resources that are priorities for WWP's advocacy efforts.

13. WWP has a longstanding interest in preserving the sagebrush steppe ecosystem.

14. WWP also has a longstanding interest in protecting the sage-grouse, an iconic ground-dwelling bird that depends upon the sagebrush ecosystem to survive. For almost two decades, WWP has advocated for protecting the sage-grouse from activities like grazing and oil and gas development that disturb the species and destroy its habitat.

15. Other environmental organizations frequently draw on WWP's expertise concerning sage-grouse when projects that may impact sage-grouse are proposed. They consult with WWP when writing public comments concerning sage-grouse issues and I frequently review and contribute sage-grouse analysis to those comments when WWP is a co-signatory.

16. Almost all of the sagebrush steppe is grazed. Oil and gas leasing and development compounds the damage to the sagebrush steppe from widespread overgrazing. Science also shows that oil and gas development devastates the sagebrush steppe ecosystem, and sage-grouse population declines commonly follow intensive oil and gas leasing and development.

17. Through public comments, WWP can advocate to protect sensitive wildlife populations and their key habitats from proposed oil and gas leasing and development, and

provide oversight to ensure that the agency complies with the law. WWP can also encourage the agency to mitigate wildlife and habitat impacts to render oil and gas leasing and development less harmful.

18. In my experience, information gained through the public comment process can help BLM make better decisions. For example, the deferred Idaho oil and gas lease sale challenged in this Complaint was originally proposed to be offered under a Determination of NEPA Adequacy, without any additional NEPA analysis, even though it was hydrologically connected to nearby Gray's Lake Wildlife Refuge, which is home to sensitive bird populations, and occurred within sage-grouse habitat. After receiving public comments, the agency elected to conduct an environmental assessment, analyzing and disclosing the lease's environmental impacts. BLM then deferred leasing the parcel, presumably as a result of the serious concerns the public comments raised. When the agency offered the parcel for lease again, it conducted an EA and issued a FONSI along with its EA, but after receiving highly critical public comments again, it decided to defer leasing the Idaho parcel altogether a second time.

Work With WWP

19. In my capacity as Energy Campaign Coordinator of WWP, I have drafted or helped draft comments on at least 11 proposed oil and gas lease sales or development projects and 8 other energy or mining projects. While I diligently track oil and gas leasing and development projects for WWP, my focus is broader than that, and I also participate on WWP's behalf in public processes surrounding a wealth of other energy generation, transmission, and extraction/mining projects.

20. More specifically, I was the primary author of comments on the Idaho June 2018 lease sale Environmental Assessment and lease sale protest. BLM allowed only a 15-day

comment period on that EA and only a 10-day protest period, which severely constrained my ability to raise all of the issues I thought important. The lease parcel occurs entirely within sage-grouse general habitat management area (GHMA). The sale would impact the East-Central Idaho population, which is a small population previously described as isolated and at “high risk” with a “low probability of persistence.” Portions of the leasing area are hydrologically connected to the Gray’s Lake National Wildlife Refuge, and would impact numerous sensitive birds and wildlife that depend on the important habitat there or that use the lease area itself for habitat. WWP’s members who visit the refuge and adjacent Caribou-Targhee National Forest for recreation and wildlife watching would also be affected.

21. After we filed our complaint in this action, BLM decided to defer leasing this area. I reached out to Jim Fincher, BLM Idaho’s Minerals Branch Chief, but he would not tell me why BLM deferred the parcel, or even whether the parcel was deferred due to a resource issue. He refused to tell me whether there is a mandatory waiting period before BLM can offer a deferred parcel for lease again, but stated that Idaho BLM would not approve the permanent withdrawal from leasing of this area. He also told me to file a Freedom of Information Act request to learn why the Idaho BLM state director used his discretion to defer the parcel. WWP then filed a FOIA request as he suggested, but the BLM’s response to our FOIA request completely redacted the Idaho BLM state director’s reason for the deferral.

22. The area was previously deferred from leasing in January 2018, after being scheduled for auction in BLM’s March 2018 Idaho lease sale. It was scheduled for auction again and then deferred from BLM’s June 2018 Utah lease sale. The expressions of interest that led it to be scheduled for lease sale auction twice in 2018 are still identified on BLM’s National Fluids

Lease Sale System website as “pending.” Thus, I expect this parcel will be offered again for lease soon.

23. I was the sole author of comments on the Environmental Assessment for the Utah June 2017 Richfield Field Office oil and gas lease sale. While not challenged in our Complaint, 11 of the 20 parcels offered in that sale contained sage-grouse PHMA within the Parker Mountain Population Area. The proposed action included potential lease development in important sage-grouse winter habitat and risked impacts to bald and golden eagles, as well as mule deer and elk.

24. I was the primary author of public comments and secondary author of the subsequent protest on the Utah September 2017 Fillmore Field Office oil and gas lease sale (*Sheeprocks* sale). Of the nine lease sale parcels offered in this sale, four occur within sage-grouse priority habitat management areas (PHMAs), while one occurs directly adjacent to PHMA. Portions of the sale occur within the “Sheeprocks Sage-Grouse Management Area.” The sage-grouse population in that area experienced nearly a 40 percent decrease over four years and saw its male numbers drop from 190 in 2006 to just 23 in 2015. As a result of this alarming decline the State of Utah’s wildlife management agency began efforts to augment this population by translocating birds from other populations to prevent it from becoming extirpated. Leasing these parcels risks to further impact this already-imperiled population.

25. I was the primary author of public comments on the Wyoming Converse County oil and gas development DEIS. That is a massive, 1.5 million-acre oil and gas development project in Converse County, Wyoming involving public lands administered by BLM’s Casper Field Office and the Forest Service-managed Thunder Basin National Grasslands. It will involve drilling up to 5,000 new oil and gas wells over 10 years, along with associated roads and

infrastructure. The project area includes almost 200,000 acres of PHMA and over a million acres of GHMA, and would affect numerous sage-grouse populations with declining trends. Lek attendance has only increased in one of the five PHMAs within the project analysis area—up 322% since 2006 to almost 16 birds. Lek attendance at the other PHMAs has declined from 38% to 100% since 2006. Nevertheless, the agencies plan to approve the development plan, waiving or otherwise altering necessary sage-grouse protections. We anticipate a final decision on this project in early 2019.

26. I worked with WWP Executive Director Erik Molvar to draft comments on the Wyoming Normally Pressured Lance Project DEIS. That project entails a massive development of 3,500 oil and gas wells—350 wells a year for 10 years—within important sage-grouse winter habitat and connectivity corridors for sage-grouse and other wildlife. It covers approximately 141,000 acres in BLM’s Pinedale and Rock Springs Field Offices, including 27,292 acres of sage-grouse winter concentration areas and 1,259 acres of Sagebrush Focal Areas (SFAs)—some of the most high value sage-grouse habitats. Impacts to the winter concentration areas will affect the nearly 2,000 sage-grouse that either use the project area year round or travel to the project area in the winter. Because BLM released the project’s Final Environmental Impact Statement on June 22, 2018, I expect a final decision will issue on this project by the end of this summer.

27. I have communicated extensively with Wyoming BLM’s Rock Springs Field Office concerning the upcoming EA for the Desolation Road Application for Permit to Drill (APD). These communications are time consuming. It is not possible for me to track other APDs as closely as I have tracked this one, due to my other work priorities and commitments.

28. I also reviewed or contributed content to oil and gas lease sale EA comments and protests prepared by the Center for Biological Diversity in Nevada, Montana, Utah, and Wyoming.

29. I primarily strive to take the lead commenting on oil and gas projects where there are significant threats to resources that are important to WWP, but they might not receive much public comment. For instance, I wrote comments on the Sheeprocks sale, challenged in our Complaint, because of the serious risks to sage-grouse and high-value sagebrush habitat in a part of Utah that does not include features that commonly attract public notice.

30. To monitor upcoming oil and gas lease sales and development, I have asked many BLM field offices to place me on their notification lists because I know from experience that some BLM field offices maintain notification lists for other public land uses such as livestock grazing, mining, and communications towers. With the exception of BLM Colorado, which maintains a state office oil and gas lease sale email list, I have been told that BLM offices do not have notification lists for oil and gas. The lack of oil and gas notification lists means that I must manually search BLM's ePlanning, state-specific Regional Oil and Gas Lease Sale, and Automated Fluid Minerals Support System (AFMSS) 2 websites to learn of new lease sales and proposed development in several different states. This is very time-consuming and before the changes put in place by BLM's new Instruction Memoranda (IMs), I usually did it about once a month. In areas of particular interest, like BLM's Rock Springs Field Office, I also regularly call and email the agency project leads to request information about upcoming opportunities for public involvement.

31. Each of the BLM websites I use presents its own challenges. Searching BLM's ePlanning website for comment opportunities on oil and gas leases and development projects

turns up not only upcoming lease sales, but also applications for permits to drill, decisions to develop existing leases, and decisions to expand developments on existing leases. These may be anything from one or two wells to extensive fields impacting hundreds of thousands of acres of sage-grouse habitat. My initial searches frequently turn up dozens of proposed projects, which I have to sort through to identify lease sales and development projects of interest. BLM's state-specific Regional Oil and Gas Lease Sale websites are simpler to search, but the information found there is only about lease sales and is often incomplete or outdated. BLM's Automated Fluid Minerals Support System (AFMSS) 2 website is glitchy, and I often have to conduct the same search several times a few minutes apart because it doesn't always return the same results.

32. To ensure that the BLM considers the interests of WWP's members during lease sales, I have to review the NEPA documentation for every leasing proposal listed on BLM's ePlanning website in WWP's geographic areas of interest to determine which leases to prioritize for comment. I cannot comment on every lease sale. WWP members sometimes contact WWP to find out if we have commented on lease sales in areas of particular interest to them, and when I have not been able to, they are disappointed.

33. Then, I have to evaluate each NEPA document to provide meaningful feedback to the agency. I need to examine the proposed project in detail, determine what wildlife may be impacted, and assess whether the NEPA documents accurately and fully describe impacts to the environment. I also need to locate and review the applicable Resource Management Plan to ensure that the proposed action is consistent with that plan, as well as any other past NEPA analyses that are incorporated by reference into the current NEPA document. These Resource Management Plans and other past NEPA analyses are not always available online, and sometimes I have to ask BLM more than once to provide them to me so I can review them.

BLM does not always provide me the documents incorporated by reference before the comment deadline even though 40 CFR 1502.21 says the agency must make them reasonably available to the public within the time allowed for comment.

34. This process often requires a great deal of additional research. For instance, I have to review scientific research about species that may be affected by proposed lease sales and development projects. I have to find the latest relevant scientific papers and make sure I understand what they say so that I can gauge whether what the agency is proposing is going to be truly harmful. I have to investigate whether there is relevant, publicly available data about the status of wildlife populations. Because most of BLM's NEPA documentation at the lease sale stage does not include any site-specific information concerning the status of local wildlife populations, I have to go out and find that information on my own so that I can understand whether BLM is fairly analyzing and disclosing environmental impacts.

35. I also need to understand site-specific information about the condition of the local sagebrush ecosystem. This includes reading scientific articles to gain an in-depth knowledge of sagebrush ecosystem functions, as well as relying on WWP's institutional knowledge to understand the condition of grazing allotments that overlap with leased parcels and proposed developments. When I can, I also reach out to WWP members so that I can incorporate their experiences and knowledge into our comments. That outreach is time consuming because first I have to determine which of our members might have interests in these areas, then contact them and await their response. BLM's new abbreviated comment and protest periods make this process much more difficult.

36. I frequently consult with other groups about the proposed sales, or work to co-author comments and protests with them. This requires the exchange of numerous drafts that

must be subject to review and approval by all organizations—a time-consuming process. It is extremely difficult to coordinate drafting and review of comments and protests within the abbreviated time periods for submission.

WWP's Harms From 15-day Comment Period And 10-Day Protest Period

37. The shortened public comment and protest periods under the new BLM IM 2018-034 have made it much harder to track, submit comments on, and protest lease sales and development projects that will harm sensitive habitats and wildlife, or have been done without adequate legal compliance.

38. For instance, I used to look at ePlanning once a month to identify oil and gas leasing decisions on which WWP might be interested in commenting. Now, because I cannot predict when BLM will receive and respond to expressions of interest, looking at sales once a month risks allowing sales of interest to fall through the cracks. To do an adequate job of tracking and commenting on proposed lease sales, I would need to thoroughly review the ePlanning website twice a month or more. Because of how time-consuming an adequate review is, I simply do not have time to do this, lessening my ability to ensure that BLM considers the interests of WWP's members.

39. It has also become much harder to predict where and when BLM will offer oil and gas leases. It used to be that BLM leasing cycled through field offices on a rotating schedule, making it possible to predict months in advance when certain areas of a state would come up for lease. That process has changed due to IM 2018-034, which eliminated the rotating field office leasing schedules. Now, BLM must offer up a lease within a certain number of days after receiving an expression of interest, with limited exceptions.

40. The public can look up those expressions of interest on BLM's National Fluid Lease Sales System website, but for most people that website is useless. It does not include maps of parcels that have been nominated for leasing, only the parcels' township and section numbers. Turning those township and section numbers into maps requires specialized mapping software and knowledge to use it that most members of the public simply do not have.

41. Even when I use the various BLM websites, I still cannot predict when BLM will publish a draft EA document for an upcoming lease sale, triggering the start of a 15-day (or shorter) comment period. For instance, I used to look at ePlanning once a month to identify oil and gas leasing decisions on which WWP might be interested in commenting, but under the BLM's new IMs, looking at sales once a month risks allowing sales of interest to fall through the cracks. If I fail to comment on a lease sale within the 15-day deadline, WWP may forfeit its opportunity to protest the sale administratively or challenge that sale in federal court. To do an adequate job of tracking and commenting on proposed lease sales, I would need to thoroughly review the ePlanning website twice a month or more. Because of how time-consuming an adequate review is, I simply do not have time to do this.

42. It is also difficult to predict when 10-day protest periods will occur. A few BLM offices post tentative dates for protest periods ahead of time on the state-specific Regional Oil and Gas Lease Sale websites, but not every office does this and even when an office does, those dates are only tentative.

43. As a result of the new abbreviated Environmental Assessment and protest comment periods, I have to keep my personal schedule open in case I have to work through the weekend to meet comment period deadlines. For example, the 10-day protest period for the June 2018 Idaho lease sale started on a Friday, which caused the comment period to include four

weekend days and only six weekdays. It was not as simple as just rescheduling my work time because two other 10-day lease sale protests in which WWP was interested were happening simultaneously.

44. Another example happened this spring. I was signed up to go on a trip with the U.S. Fish & Wildlife Service to help with sage-grouse lek counts. Due to the new shortened comment and protest periods under IM 2018-034, I withdrew from the trip to ensure that I would be available if a 10-day protest period or 15-day EA comment period popped up at the same time. The short timeframes have also reduced the quality of my participation.

45. Rather than conducting the extensive independent research necessary to truly understand on-the-ground conditions on the parcels at issue, I now must work from my personal knowledge base and without adequate time for outreach to WWP's members to ensure their knowledge of the leasing areas is included. This means that the public record is not as rich and does not have as much value in informing the agency's consideration of relevant issues, which is even more important since the quality of the agency's analysis is also suffering under the pressures to quickly offer nominated parcels for leasing.

46. Because of the short timeframes, I am unable to provide as much sage-grouse or other wildlife information as I would like to because there is not enough time. When I am the primary drafter of comments, I am unable to address as many issues as I would like to, and when I contribute to other groups' comments on behalf of WWP I often do not have sufficient time to review and draft comprehensive sections on sage-grouse and other wildlife issues because of the short turnaround time to complete drafts for sign-on.

47. For example, with respect to the Idaho lease sale that was slated for June 2018, there was a long list of issues I would have liked to address in the leasing decision protest

concerning impacts to the Grays Lake National Wildlife Refuge that I was not able to discuss because of the short comment period. I was also not able to draft independent comment for the September Wyoming lease sale, or to provide as much sage-grouse and migratory bird information as I would have liked to for the Nevada June Battle Mountain lease sale.

48. I simply cannot adequately participate in leasing decisions on behalf of WWP under the constraints imposed by these new policies in IM 2018-034.

49. This risks impacts that will devastate sage-grouse populations and other wildlife as a result of these large-scale leasing and development projects. Without allowing for adequate public participation in BLM decision-making—and without allowing for BLM to adequately consider potential impacts in the first instance due to the condensed timeline for producing environmental analyses—serious harms to sage-grouse and other wildlife are being swept through the cracks. In many cases, analysis of site-specific conditions necessary to really understand impacts to sage-grouse and sagebrush habitat is not occurring at the leasing stage because the agency claims it will conduct site-specific analysis at the application for permit to drill (APD) phase. But, in my experience, the agency rarely conducts full NEPA analysis at the APD phase, and instead proceeds with projects under categorical exclusions or determinations of NEPA adequacy. This results in a shell game by which the agency avoids required analysis and public disclosure of serious ecological risks associated with oil and gas leasing and development. In particular, this practice avoids considering impacts on localized sage-grouse populations, which is necessary to understand potential rangewide effects.

50. This will only get worse with BLM's new Information Bulletin IB 2018-061, which instructs BLM offices to “expedite the processing of APDs or infrastructure proposals for fluid mineral development by first considering if it can rely on existing NEPA analyses for

assessing the impacts of a proposed action and the possible alternatives” and if BLM cannot make a Determination of NEPA Adequacy based on past analysis, to consider whether it can use a Categorical Exclusion.

51. This uninformed decision making harms WWP’s organizational mission of protecting and restoring western watersheds and wildlife. WWP has been working for decades to protect sage-grouse. The species is suffering a death by a thousand cuts. Oil and gas leasing and development is one of the largest threats sage-grouse face, particularly in the eastern half of their range. WWP staff, members, and supporters regularly visit sage-grouse leks and the sagebrush ecosystem, for spiritual, recreational, aesthetic, scientific, and other reasons. It is much harder to protect these birds without adequate oversight. If I hadn’t found out about the sage-grouse issues on the Sheeprocks lease sale and alerted other conservation groups, for instance, the sage-grouse issues associated with that lease sale wouldn’t have received the attention they deserve. It lets our members and supporters down when I am not able to adequately participate on behalf of WWP, representing their interests. If WWP doesn’t participate in agency decision-making, it’s harder for other public to participate as well.

52. The Trump administration’s policies under Secretary Zinke’s leadership have made it harder and harder to maintain adequate oversight. For example, under new BLM guidance, the agency no longer publicizes when declines in sage-grouse populations or habitat trip the hard and soft triggers invoking greater sage-grouse protections in the plans. Thus, populations may be gravely imperiled, but there is no way for the public to find out about it unless they file a Freedom of Information Act request, something which most members of the public do not know how to do.

53. These harms are likely to continue into the future, and we anticipate they will be compounded in upcoming lease sales.

54. For instance, in June, 2018, Nevada BLM offered for sale 166 parcels of oil and gas leases on the Battle Mountain District, comprising 313,715 acres. The lease parcels included 21,710 acres of GHMA, 64,908 acres of PHMA, and 24,015 acres other sage-grouse habitats. Approximately 70% of the proposed acres for lease were in sage-grouse habitat, potentially affecting important habitats in the Little Fish Lake Valley and Monitor Valley. WWP's ability to provide input on these lease sales suffered due to the new extremely short public comment and protest periods under IM 2018-034.

55. Twenty-two of these Battle Mountain District parcels received competitive bids on June 12, 2018. By June 28, 2018, BLM had received noncompetitive offers for an additional 24 Battle Mountain District parcels. Twenty of the 46 parcels that received bids or offers and are thus expected to be leased include greater sage-grouse PHMA, GHMA, winter habitat, early brood-rearing habitat, late brood-rearing habitat, or have been identified as being near sage-grouse leks. Therefore, we continue to be concerned about impacts to sage-grouse.

56. In September 2018, we are expecting 360 parcels, comprising some 366,088 acres to be offered for sale on Wyoming BLM's Buffalo, Casper, Cody, Lander, Newcastle, Pinedale, Rawlins, Rock Springs, and Worland Field Offices. Some or all of the sale parcels include SFA, PHMA, State Wildlife Habitat Management Areas, citizen-proposed wilderness, and lands with wilderness characteristics. WWP's ability to provide input on these lease sales will suffer due to the new extremely short protest periods.

57. The upcoming September 2018 BLM Wyoming lease sale is an especially challenging one for the public because BLM Wyoming held a 30-day public comment period for

two Environmental Assessments analyzing 106 parcels but then held only a two-week Environmental Assessment comment period for an additional 254 parcels. Thus, for the additional 254 parcels, the public had more than twice the number of parcels to review in less than half the amount of time.

58. In September 2018, we are expecting the following leases will be offered for sale in Utah: seven parcels totaling 8.832 acres in Juab County on the Fillmore Field Office and 26 parcels totaling 36,396 acres on the Salt Lake Field Office. It is unclear from the BLM websites whether the agency will also offer 76 parcels on the Price Field Office, 16 suspended lease parcels in Wayne County, and two “Sold but not issued” parcels in Emery County. BLM solicited scoping comments on those parcels earlier this year but does not appear to have issued EAs for them afterwards. Some or all of the parcels proposed for leasing occur within sage-grouse SFA, PHMA, or GHMA. WWP’s ability to provide input on these lease sales has and will suffer due to the new extremely short public comment and protest periods.

59. We expect to see a fourth quarter lease sale in Wyoming in December 2018. We have requested that BLM provide a 30-day comment period for its Environmental Assessment but do not know if the agency will grant our request or when the EA will be released for public comment.

60. We expect future lease sales in Idaho but are uncertain of their dates. In addition to the nominated lands that BLM offered for lease and then deferred twice this year, BLM’s National Fluids Lease Sale System website shows that on June 23, 2018, BLM Idaho received 43 expressions of interest nominating land between the Cascade and Deadwood Reservoirs in Idaho for oil and gas leasing. Based on their geographic coordinates, some or all of these expressions of interest are within the Boise National Forest. We think this will be a highly controversial

location due to its nearness to Boise, recreational value, and sensitive wildlife habitat. Oil and gas leasing of national forest lands is conducted by BLM, so BLM Idaho will have to evaluate these expressions of interest for leasing. IM 2018-034 instructs BLM state offices to review all expressions of interest and offer for lease those that it determines to be eligible and available. BLM is to complete these reviews within six months, with limited exceptions, but it is unclear from the IM whether that is six months from when the land is nominated or six months from the expressions of interest cutoff date for a particular lease sale. IM 2018-034 also instructs BLM to post cutoff dates for each state on the National Fluids Lease Sale System website. Currently that website does not include cutoff dates for Idaho, which makes it even more difficult to know when to start checking BLM websites to see if these nominated Idaho lands are being offered for lease.

61. We also are expecting final decisions on the Normally Pressured Lance and Converse County projects, two enormous projects in key sage-grouse habitat, by 2019. Because BLM issued a Final EIS for the Normally Pressured Lance project on June 22, it is possible we will see a final decision on that project by the end of the summer.

62. Under the current regulatory regime, it's hard to know what's next until (or unless) specific sales, projects, and Applications for Permit to Drill are posted on BLM's ePlanning, state-specific Regional Oil and Gas Lease Sale, or Automated Fluid Minerals Support System (AFMSS) 2 websites. We will keep monitoring for sales that could harm sage-grouse and offering comments on those sales to aid the agency's decision-making process, but our ability to do this has been impaired by the new shortened comment and protest periods.

63. We strive to participate in projects at the leasing phase when possible. The leasing phase is a pivotal point in the oil and gas development process; if BLM receives a bid on

a lease, BLM cannot prevent future development, but only condition the terms. Once a lease is bid upon, the lease-holder basically gets to drill. It is also extremely hard to track and comment on Applications for Permit to Drill (APDs) that follow lease sales. IM 2017-074 instructs BLM to post APDs for 30 days on the Automated Fluid Minerals Support System (AFMSS) 2 website. The public can comment then, but that website does not include NEPA analysis or maps, nor does it identify the lease sale to which the APDs are related. To know where these APDs are located, the public has to generate its own maps from the geographic coordinates on the AFMSS 2 website. That requires specialized software and knowledge how to use it, which most members of the public do not have. Later on, those APDs for which BLM prepares Environmental Assessments or Environmental Impact Statements will have public comment periods, but to find those you have to keep checking BLM's ePlanning website. Many if not most APDs are granted with little to no NEPA analysis or opportunity for public involvement. I am closely tracking one APD on the Rock Springs Field Office, but I am not capable of devoting the level of effort that takes to numerous other APDs.

64. We expect to see more expressions of interest, leading to more lease offerings under the Trump administration's liberalized oil and gas policies. BLM seems to be lowering its standards for environmental protection and public involvement under this administration. Thus, more oil and gas development is likely, in more poorly designed and considered lease sales, and public oversight is being eliminated from the process by these new policies designed to restrict public participation. This threatens irreparable harms to WWP's interests in informed, well-considered environmental decision-making, and in preserving the remaining sagebrush steppe and species that depend on it from additional degradation and decimation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of June, 2018, in Depoe Bay, Oregon.

A handwritten signature in cursive script that reads "Kelly Fuller". The ink is dark and the handwriting is fluid.

Kelly Fuller

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,)
and CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiffs,)

v.)

RYAN K. ZINKE, Secretary of Interior;)
DAVID BERNHARDT, Deputy Secretary)
of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

Case No. 01:18-cv-187-REB

**DECLARATION OF LAURA
CUNNINGHAM**

I, Laura Cunningham, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I hold a Bachelor's degree in Paleontology from the University of California, Berkeley. I have authored a book on the historical ecology of California, *A State of Change: Forgotten Landscapes of California* (Heyday, 2010), and a children's book, *The Bay Area Through Time* (Heyday, 2013).

3. I am the California Director at Western Watersheds Project, a position I have held since March 1, 2017. In 2008 I co-founded an environmental advocacy group, Basin and Range Watch, which seeks to conserve the native ecosystems and landscapes of the Mojave Desert and Great Basin regions of California and Nevada. In 2016 I successfully applied to the IRS for 501(c)(3) non-profit status for Basin and Range Watch. I am on the board of Basin and Range Watch.

My Professional Interest In Sage-Grouse Conservation.

4. For Western Watersheds Project I have a keen interest in investigating sage-grouse habitats and populations in southern and central Nevada because I currently reside in Beatty, Nevada, which is on the California border but easily accessible to many parts of the southern half of Nevada. I regularly drive through central Nevada such as along Highway 6 where many of the oil and gas lease sales are mapped to occur. I examine grazing allotments in the areas of the oil and gas leases, as well as energy projects such as solar and wind project proposals.

5. The greater sage-grouse is an important Great Basin species that I have had a long interest in, and have attempted to study through literature review and field work observing the species in its native habitats. I have a professional interest in conserving the sage-grouse across Nevada.

6. Since 2015, Basin and Range Watch has been actively involved in monitoring BLM and USFS projects that may impact sage-grouse in the Great Basin of California and Nevada. In August 2017, I wrote a comment letter to the Ely BLM office concerning the Egan and Johnson Basin Restoration Preliminary Environmental Assessment, which proposed to restore sage-grouse habitat by chaining pinyon-juniper woodlands. I traveled to the area in eastern Nevada to do field work in order to write comments. In September 2017, I attended a BLM-Bishop field trip to the Bodie Hills in CA/NV to comment on pinyon-juniper treatments that would impact sage-grouse, and using all this information I planned on commenting on similar pinyon-juniper treatment proposals in the Monitor Range, managed by the Humboldt-Toiyabe National Forest, in the vicinity of the BLM Monitor Valley oil and gas leases. I traveled to the Monitor Valley several times from 2010 to 2017 to examine sage-grouse habitat on the basin floor sagebrush zone, and up into the sagebrush-pinyon-juniper savanna areas on the mountains to examine the habitats and plant communities before proposed agency actions took place. I saw and photographed sage-grouse hens on two different occasions, one in Monitor Valley near Morgan Creek, and in 2017 a hen along Mosquito Creek in Monitor Valley. Both of these observations were on BLM land.

7. Due to the extremely short new comment periods, Western Watersheds Project's staff are rarely able to conduct site visits with BLM to observe on-the-ground conditions. This impoverishes BLM decision-making because as Western Watersheds Project staff, I have been engaged with management of lands at stake in these oil and gas leasing decisions and could provide valuable insight into ecological changes over time, especially since I have been studying the ecological history of Nevada native plant and animal communities and landscapes for decades.

8. Basin and Range Watch has been interested in becoming more involved in opposing oil and gas leases in Monitor Valley and Little Fish Lake Valley, because of its long-standing interest in conserving ecosystems from development, energy extraction, and fragmentation. However, it has been hindered by the short deadlines to comment on such lease sales over so large an area.

9. Basin and Range Watch has a long history—since 2009—of doing site visits to photograph and take notes ("ground-truth") what is described in NEPA documents, and then sharing its findings on its website. This gives the public more information on how to comment on proposed projects. The organization sends email alerts and suggested comments that supporters can send in as their own comment, and encourages independent comments from the public as well. Basin and Range Watch also sends in extensive comments on projects.

10. Basin and Range Watch has also written several articles for social media and its website, penned by myself, to educate the public concerning the National Sage-Grouse Planning Strategy to amend land use plans across sage-grouse range in an effort to impose adequate regulatory mechanisms necessary to avert an ESA listing.

11. As part of my work for Western Watersheds Project, I recently undertook fieldwork in June 2018 checking grazing allotments in Hot Creek Valley, Big Sand Springs Valley, the Pancake Range, and the Reveille Range. The added impacts of oil and gas lease sales and potential drilling, over and above livestock grazing impacts to these native ecosystems, will exacerbate the degradation of these landscapes. And the comment deadlines for the oil and gas leasing and development decisions are too short for meaningful public input in my opinion.

Personal Interests In Preserving Sagebrush Habitats In Nevada.

12. I have a long history of recreational experience traveling to and inventorying lands on Nevada BLM's Tonopah and Shoshone-Eureka Field Offices, including extensive experiences viewing sage-grouse in the Little Fish Lake and Monitor Valleys where oil and gas leasing will occur as part of the June 2018 lease sale.

13. I have in the past enjoyed hiking, birdwatching, wildlife-viewing, photography, field-sketching, and camping in several of the areas where June oil and gas lease sales are occurring, including: Monitor Valley, Little Fish Lake Valley, Hot Creek Valley, and Big Sand Springs Valley.

14. For recreational purposes I have camped and hiked in the Monitor Valley at Mosquito Creek, Morgan Creek, and Barley Creek several times to hike up and access the Table Mountain Wilderness Area on the Monitor Range since. This is one of my favorite parts of Nevada due to the remoteness, wild landscapes, and solitude I can experience. I have been visiting the Monitor Valley every summer since 2006, and I plan to return this summer and in the future as often as I can during vacations. Seeing oil rigs in the vista would negatively impact my ability to escape artificial human developments and seek solitude, quiet, and natural wild landscapes. I have walked around Monitor Valley in the areas of oil and gas leases 006, 002, 011, and 014 to botanize, photograph scenic landscapes, and birdwatch on the valley floor. I plan to return to the Monitor Valley to explore new trailheads in the Monitor Range, and look for sage grouse, in August 2018.

15. For recreational purposes I have explored the Little Fish Lake Valley, which is a remote and beautiful enclosed basin surrounded by tall mountain ranges. There are scenic lakes and meadows here that I have visited to take landscape photos. I have camped in Little Fish Lake

Valley at the Green Monster trailhead that accesses the Table Mountain Wilderness Area in the Monitor Range, as well as at Clear Creek trailhead, which accesses an impressive gorge on the east side of the Monitor Range overlooking Little Fish Lake Valley. This is in the vicinity of oil and gas leases 019 and 025, which I have traveled through to access hiking points and photographic vistas. Oil and gas drilling here would ruin the feel of wild, remote Nevada that I am seeking. I plan to go back here to camp and hike in July 2018.

16. For recreational purposes I have hiked into the Hot Creek Range, camping in the mountains from an access road at South Sixmile Canyon by Morey Peak, driving through the Hot Creek Valley from Highway 6 at Tybo junction. This lies in numerous proposed oil and gas leases in Hot Creek Valley, and would impact my experience of camping and hiking in a remote area. The Hot Creek Valley is famous for a unique underground atomic bomb test in the 1960s near Morey Peak, outside of the Nevada Test Site, which I have toured. I have visited the signs of the Department of Energy that label this small test site in the vicinity of oil and gas lease 100.

17. I have toured the Hot Creek Canyon road that enters at Hot Creek Ranch in the vicinity of oil and gas leases 049, 045 and 048. This is a very scenic canyon with stream, meadows, cliffs and rock formations. I have undertaken wildlife viewing here of desert bighorn sheep, viewing wild horses, landscape photography, botanizing, birdwatching, hiking, and camping. Oil and gas drilling at the mouth of this canyon would negatively affect my ability to escape the signs of industrial developments.

18. Warm Springs is a primitively developed hot spring in Hot Creek Valley that may be negatively impacted by oil and gas leases 032 and 034. This is a popular hot spring swimming pool on an historic resort property that overlooks the Hot Creek Valley. I have recreated here on numerous times and enjoyed the remote, quiet and peaceful feel of the area. Industrial oil and gas

drilling would add noise, night lights, dust, and development to this remote location. I have seen and photographed desert bighorn sheep here every time I have visited Warm Springs, as they come down off of the Hot Creek Range and Kawich Range to drink. I have also observed and photographed pronghorn antelope in the vicinity of Warm Springs in Hot Creek Valley at oil and gas lease 034, in June 2018.

19. I have hiked and camped at Lunar Crater Volcanic Field, which is south of the Big Sand Springs lease area, but in view of the lease area. I have visited this area several times since 1992. There is also a BLM-signed interpretive area along Highway 6 to the north, that is not on some maps, that shows a relatively recent basalt volcanic flow in Big Sand Springs Valley that could be in lease areas 134 and 128. This area has a very remote and wild feel, and I come here to get away from urban developments and experience the spiritual renewal that wild central Nevada landscapes can provide. Oil and gas developments would destroy this feel.

20. I have gone to the Pancake Range and Big Sand Springs Valley to explore remote and arid Great Basin scenery, view wild horses, and hike. I plan to return to this area in August 2018 to explore the area on a four-wheel drive touring trip.

21. I am the author or editor of two books on ecology and history, and plan to write another book on the ecological history of the Great Basin in Nevada. Much of my book field research has taken place in the Monitor Valley, Little Fish Lake Valley, Hot Creek Valley, and Big Sand Springs Valley. Oil and gas lease sales in this remote, wild area will negatively impact my ability to study the ecology and history of these Great Basin landscapes.

22. I also undertake as a hobby *plein air* painting, sketching, and outdoor art projects in Nevada. I have taught oil painting classes in my free time to interested art students who want to get out in nature in Nevada, away from the city of Las Vegas, and explore wild and natural

areas. I have taken painting students to such localities as Ash Meadows National Wildlife Refuge, Desert National Wildlife Refuge, and Death Valley National Park. I plan on taking students in the future to remote and scenic areas of Nevada. One of my favorite places is Belmont, Nevada, the gateway community to the Monitor Valley, where students can stay in the small town and then venture out to paint and explore the wild vistas of Monitor Valley. Oil drilling rigs would negatively affect my ability to show students the remote and historical landscapes of central Nevada.

23. The proposed oil and gas leasing now undertaken without adequate comment per the new Administration's direction will cause irreparable harm to my and scientific, recreational, spiritual, and other interests in the persistence of natural Great Basin sagebrush communities and sage-grouse. Much of the deserts in the Western US have been impacted by man, and I am finding it ever more difficult each year to locate remote, wild areas that do not bear the mark of industrialization or extractive uses. These places are valuable for providing beautiful, unfragmented, natural landscapes which are increasingly rare.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 30th day of June, 2018 at Beatty, Nevada.



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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT,)
and CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiffs,)

v.)

RYAN K. ZINKE, Secretary Of Interior;)
DAVID BERNHARDT, Deputy Secretary)
of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

No. 01:18-cv-187-REB

DECLARATION OF LINDA F BAKER

I, Linda F Baker, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I hold a B.A. degree in English and Spanish teaching from Utah State University in Logan, Utah.

3. I am Executive Director of the Upper Green River Alliance, a nonprofit conservation group working to protect and preserve the air quality, water quality, natural habitats and native wildlife of the Upper Green River Valley in western Wyoming. I have served in this position since June 2002. In this capacity, I work with local residents, set strategic conservation priorities, analyze natural resource data, create informational maps and datasets, serve on local working groups, and advocate for the responsible management of approximately two million acres of BLM-managed public lands and resources in the Upper Green River Valley.

4. I have lived in the Upper Green River Valley since 1981, and am a landowner outside the town of Pinedale, with a home overlooking the longest-known mule deer migration corridor in the U.S. Pronghorn antelope, mule deer, sage-grouse, and moose are regular visitors to my property.

5. I am a hunter, skier, angler and hiker. My partner and I hunt on the valley's public lands in the ancient tradition of falconry, using peregrine falcons and gyrfalcons.

6. I have been employed in the Upper Green River Valley in many capacities including: recreation specialist for the U.S. Forest Service in Big Piney, Wyoming, laborer in geophysical (oil and gas) exploration, middle school English and Spanish teacher, Associate Director of the Sublette County Library, and High School Equivalency (GED) and English as a Second Language adult education instructor.

7. I have volunteered my time to serve on local, state, and federal government working groups, cooperating with other members representing agriculture, recreation, public at large, oil, gas, and mining companies, and government. I served as the conservation representative on the Wyoming Game & Fish Department's (WGFD) State-Wide Sage-Grouse Working Group tasked with created the Wyoming State-Wide Sage-Grouse Conservation Plan. I

served on the Sublette County, Wyoming Master Plan committee. Nominated by Secretary of Interior Gail Norton, I served four terms as chair and co-chair of the Bureau of Land Management's (BLM's) Pinedale Anticline Working Group (PAWG), and its task groups for wildlife, air quality, and water quality. The PAWG was convened to provide BLM with recommendations on Adaptive Management of all natural resources in the Pinedale Anticline Natural Gas Project area. I served on the Trapper's Point Working Group, tasked with assessing proposed oil and gas leasing on BLM-managed lands at the pronghorn migration corridor bottleneck called "Trapper's Point" outside Pinedale. I served as the conservation representative on Encana's (now Jonah Energy's) Normally Pressured Lance (NPL) natural gas project "Operator Committed Practices" committee. The "Operator Committed Practices" committee assembled all stakeholder representatives to consider Best Management Practices and recommendations for the proposed NPL project.

Upper Green River Alliance's Involvement in Public Lands Management

8. Upper Green River Alliance is a non-profit conservation organization based in Pinedale, Wyoming. The organization is recognized as an IRS 501(c)(3) charitable entity.

9. Upper Green River Alliance has over 200 supporters in Wyoming where oil and gas leases are currently being offered for sale and may be offered for sale in the future.

10. Our staff has been actively associating with and educating the public about oil and gas leasing and development, through workshops, conferences, brochures, overflights, and meetings.

11. Our staff regularly attends public meetings and informational workshops held by the Pinedale, Wyoming Bureau of Land Management, to learn about and comment on proposed oil and gas leasing, existing natural gas field development, and public resource management.

12. The Upper Green River Alliance seeks to protect and preserve the air quality, water quality, native habitats, fish, wildlife, and other natural resources on public lands in the Upper Green River Valley, and enforce the nation's public lands and environmental laws.

13. The Upper Green River Alliance staff has engaged extensively in local, state, and national media outreach work focused on public lands management. Our staff has been quoted in publications and media outlets including CBS, National Geographic, Smithsonian, High Country News, Field & Stream, Jackson Hole News & Guide, Wyoming Public Radio, PBS TV, Fly Fisherman, N.Y. Times, Audubon, L.A. Times, Bugle, ABC Nightline, Casper Star-Tribune, Pinedale Roundup, Wyoming Public Radio, Mother Jones, Christian Science Monitor, and the Washington Post.

14. Through the efforts of our staff working with a local rancher and the WGFD, we coordinated a successful campaign that prevented the sale of 2,700 acres of oil and gas leases at the critical pronghorn migration bottleneck at Trapper's Point. This resulted in the creation of the Trapper's Point Working Group, and eventually the BLM's designation of the Trapper's Point Area of Critical Environmental Concern (ACEC).

15. We coordinated with the Wyoming Game and Fish Department (WGFD), Wyoming Dept. of Transportation, local business leaders and area conservation groups to create and maintain the Trapper's Point interpretive site outside Pinedale on US Scenic Highway 191.

16. Working with local residents and an atmospheric physicist, we conducted photo documentation of flaring incidents on public lands of the Upper Green River Valley, including in the Jonah Natural Gas Field and the Pinedale Anticline Natural Gas field.

17. Working with pilots from other conservation organizations, we hosted middle school students on overflights of natural gas development on public lands, and conducted educational workshops in the Pinedale Middle School.

18. We hosted a two-day Wyoming Conservation Congress in Pinedale entitled “Wells, Wildlife and Quality of Life” attended by 350 residents and media representatives, Wyoming Governor Dave Freudenthal, and ranchers from the Power River Basin and the Upper Green River Basin. This resulted in creation of the Governor’s Wyoming Wildlife Trust Fund.

19. During the development of the Pinedale BLM Resource Management Plan (RMP) in 2008, we developed the “Responsible Energy Development” proposal as an RMP alternative. Based on our crucial wildlife habitat maps created with GIS data from the WGFD, we recommended that BLM designate certain vital, overlapping wildlife habitats as unavailable for oil and gas leasing in the Pinedale RMP. This resulted in BLM’s designation of five Areas of Critical Environmental Concern covering 453,700 acres.

Upper Green River Alliance’s Concerns With Impacts of Oil and Gas Development

20. Upper Green River Alliance staff and supporters have enjoyed for decades the clean air and waterways of the Wind River Range, Wyoming Range and Gros Ventre Range. We take pleasure in exploring the area’s unique deserts, and watching its amazing wildlife migrations and red-cloud sunsets. We celebrate our public lands in every season and for many reasons, including the solitude of floating and fishing on local creeks, rivers, and scenic, mountain lakes, hunting in the vast sagebrush grasslands, and hiking and skiing among our mountain peaks and valleys. We make a living here, and enjoy a rare quality of life in our wild Wyoming home.

21. As each natural gas well has been drilled, we have witnessed our air quality go from pristine to polluted. We are concerned about the safety of our groundwater, as more than 90 industrial water wells have become tainted with hydrocarbons in the natural gas fields. And we have endured the crush of roughnecks and their families who overcrowded our schools, roads, and medical clinic, bringing with them a 700% increase in drunkenness arrests, family violence, and sex offenses. During the most recent oil and gas boom, we were unprepared to host this mass of oil and gas migrants, and we lost a sense of safety in our town of 2,000.

22. Because of the teeming wildlife populations that live here, and the advent of huge, natural gas projects and associated funding opportunities, the Upper Green River Valley has been a magnet for wildlife research. Through long-term, peer-reviewed, scientific studies, unacceptable population declines have been documented as a result of oil and gas development.

23. Historic, native mule deer herds that live on the public lands covered by the Pinedale Anticline natural gas field have declined by 40%. In the same gas field, Greater sage-grouse populations have declined by as much as 53%. Pronghorn antelope are now avoiding the most heavily developed areas in the Pinedale Anticline, with winter habitat predicted to be of very high use declining by 82%. The BLM Pinedale Anticline Record of Decision requires the use of Adaptive Management and Best Management Practices when downward wildlife trends have exceeded pre-designated levels. While these unacceptable wildlife declines continue their descending spiral, BLM has failed to find successful mitigation methods that reverse these alarming trends. Adaptive Management has failed in the Pinedale Anticline gas field, and BLM has not established BMPs that can successfully mitigate natural gas drilling's impacts.

24. The decline in our native wildlife populations has been accompanied by the loss and degradation of sagebrush/grassland habitats because of invasive weed infestations in natural

gas fields, and along the roads that serve them. Specifically, cheatgrass invasion has been documented at hundreds of sites, by data collected in the BLM's Pinedale Anticline and Jonah Field Data Management Systems. While the Records of Decision for both natural gas fields direct the operators to conduct annual monitoring and reporting, and eradicate invasive weed species, records indicate that operators have failed in this responsibility, and BLM has not enforced ROD requirements. Once established, non-native cheatgrass rapidly replaces native vegetation, is unpalatable to wildlife and domestic stock alike, is extremely difficult to eradicate, and has seeds that survive 20 years or more in the soil. Again, Adaptive Management has failed. BLM has failed to achieve responsible, multiple use of public resources, resulting in degraded habitats that serve neither wildlife nor domestic stock.

25. Once the capitol of clean air, the Upper Green River Valley has become a dangerous place to breathe due to high levels of winter-time ozone: not only for healthy residents, but especially for those with existing breathing problems, our youth, and the elderly. Experts writing in the *New England Journal of Medicine* conclude that people are at risk of premature death from respiratory causes that are associated with increases in ozone concentration. The Wyoming Dept. of Environmental Quality has stated that, "elevated ozone ... is primarily due to local emissions from oil and gas development activities: drilling, production, storage, transport, and treating.... approximately 94% of VOC [volatile organic compound] emissions in the UGRB [Upper Green River Basin] and 60% of NO_x emissions are attributable to oil and gas production and development." BLM has failed to correctly analyze emission levels during the EIS processes for all existing natural gas projects under their purview. In fact, new scientific research indicates that BLM consistently under-estimates the emission levels of ozone precursors and particulate matter resulting from oil and gas development by as

much as 60%. Upper Green River Alliance's analysis of air quality impacts also indicate that the Jonah Field and Pinedale Anticline natural gas projects EIS air quality models severely underestimated emission levels. This has resulted in public safety concerns for local residents.

26. Upper Green River Alliance staff and supporters are acutely aware, as they go about their daily lives, that these documented declines in wildlife populations, air quality, water quality, and quality of community life cause harm to their aesthetic, recreational, scientific, biological, and spiritual motives for living in this remote, cold, desert landscape in western Wyoming. In particular, our personal interests in observing, studying, and enjoying the spectacle of this place's extraordinary natural wonders are wounded by the overwhelming multitude of declines seen in our natural resources and native habitats, all caused by natural gas development.

My Personal Concerns With the Impacts of Oil and Gas Development

27. I personally have the same concerns with the impacts of natural gas development previously mentioned. In addition, I am personally concerned not only for the future of my friends and neighbors in this valley but for the American West and its precious water resources.

28. As the northernmost headwaters of the Colorado River system, the Upper Green River Valley provides waters that eventually serve about four million downstream users. With the advent of increased global temperatures, melting Wind River Range glaciers that supply our rivers and aquifers, declines in potable water reserves, and an over-allocated Colorado River, the necessity of understanding the amount of surface and groundwater we currently have and are projected to use is of paramount importance for human survival in the arid American West.

29. During my service on the Pinedale Anticline Working Group, I became aware of a confusing mix of water oversight by state and federal officials. Ground and surface water monitoring was conducted but not analyzed, there was no baseline water monitoring data before

natural gas drilling began against which to measure impacts, monitoring protocols used were incorrect and changed several times, and field personnel were not appropriately educated. It remains difficult even now for interested laypersons to understand the quality and quantity of our vital water resources, and to clarify which agencies are responsible for what tasks. To make matters worse, there appear to be widespread turf wars where water management is concerned. In my opinion, less analysis, through curtailed public comment and protest periods, of ground and surface water impacts from oil and gas leasing and development is not only wildly, unnecessarily reckless, but hazardous to human health and safety.

30. To educate myself through reading, research, and “data-mining” over a period of three years, I created a water information database and set of interactive, online maps for the Upper Green River Valley. This database included permitted water well locations, amounts of groundwater used in gas fields, hydrocarbon contamination sites, produced water injection sites, geologic fault lines, and much more, and was intended to inform, educate, and encourage the State of Wyoming to create a similar database and a unified, state water department.

31. However, in my interactions with state regulators, it became clear to me that neither the State of Wyoming nor BLM has fully quantified or comprehended the serious impacts to and significant drain on the state’s surface and ground waters that will result from future, proposed, natural gas development. I believe this is one of the most pressing and important issues of our time. I know from experience that it takes significant time, research, cooperation, and contemplation to address these important issues, for which abbreviated leasing comment periods are completely inadequate.

My Personal Interests are Harmed by Shortened Comment and Protest Periods

32. Because of my 20-year investment in serving, preserving and protecting the Upper Green River Valley's natural resources, and years of living with and learning about our air, water, and wildlife, I am acutely aware of the time and effort it takes to understand the extensive and complex impacts associated with oil and gas leasing and development.

33. I believe that these public resources, these extraordinary wildlife populations, these remnant pockets of clear air and clean water are among the last vestiges of a rich, natural heritage on the North American continent, in an increasingly rare and inter-connected ecosystem. I value these gems as some people value their children, and I live to preserve and protect them. To witness their destruction and degradation causes me acute, intense, emotional and psychological pain, especially because I have long believed in honorable, informed resource managers in whose hands the future of these assets lie. I believe in a United States government that holds these public lands as a sacred trust for all Americans to enjoy. I do not believe it is legal or even fair for BLM to allow one industry to completely dominate and degrade our public commonwealth. In the Upper Green River Valley, the areas that geologists believe have oil and gas potential are already held by mineral leases, with more than 13,000 wells already drilled or permitted. Hundreds of these wells are "shut in", while companies await higher prices to produce from them. Rapid leasing without ample opportunity for public review, or consideration of the severe impacts to other natural resources that results from stripping important habitats, only serves to enrich oil and gas companies by making their stockholders believe they have more potential wealth than they actually do. BLM is complicit in this lie. The rest of America's public land owners are deprived of the fortunes inherent in clean, breathable air, safe and abundant water supplies, intact ecosystems, and a valuable, natural heritage for this and future

generations. To think that federal BLM land managers would allow our public resources' death by a thousand cuts is unbearable and unacceptable.

34. The abbreviated comment and protest periods presently provided by the Bureau of Land Management for oil and gas lease sales are plainly inadequate to allow me full and thorough scrutiny, and to provide substantive, knowledgeable comments on proposals to lease parcels of public land for oil and gas development.

35. It takes time, sometimes weeks or months and certainly more than 10 days, to review habitat maps for pronghorn, sage-grouse, mule deer and moose in an area proposed for leasing. It takes huge amounts of time to consider all the potential consequences from leasing and drilling, based on what we know already. Leasing and drilling impact air quality and water quality, the very essentials of life, and both are incredibly complex issues that can only be understood by taking the time to evaluate laws, statutes, and standards. Four times a year, a dedicated individual could take days out of her normal life to analyze, review, edit, and write a protest, if she didn't have any other obligations. But it is humanly impossible to carve out that kind of precious time from a life, and ludicrous for BLM to demand that impacted individuals take only one and a half weeks for lease parcel protest. With this IM, BLM places a huge, impossible burden on my ability to oversee responsible management of public lands. I am harmed beyond measure by BLM's thoughtless directive.

Upper Green River Alliance is Harmed by Shortened Comment and Protest Periods

36. Concerning public participation, BLM's IM 2018-034 (III.B.5.) states that, "state and field offices *may* provide for public participation during the NEPA process..." [emphasis added]. In this IM, BLM implies that providing opportunities for public participation is optional for state and field offices. This flies in the face of the traditions wrought by neighborly

cooperation and civil discourse that are the hallmarks of small town life in the American West where BLM-managed lands lie. Since UGRA staff first learned the definitions of acronyms such as NEPA, FLPMA, and CEQ, we have participated at the field office level with resource managers, wildlife biologists, and range conservationists to consider on-the-ground impacts of energy proposals. Far from the granite halls of Washington DC, where diesel fumes and car horns replace the scent of sagebrush and the silence of the plains, people here talk to find common ground. Public participation is a necessity for UGRA staff and supporters. It is insulting and rude for BLM to shun its Western neighbors, and promotes nothing but vitriolic wrath in response.

37. BLM's IM states that, "Field or state offices will post the NEPA compliance documentation on the BLM ePlanning website and in the public room 45 days prior to the start of the sale." In addition, BLM's IM states that, "A 10-day public protest period will begin the day the sale notice is posted, along with applicable NEPA documentation." So on the day that NEPA compliance documentation is posted, the public protest period simultaneously begins. After the 10-day protest period ends, there is no reason for Upper Green River Alliance to continue to read the NEPA documentation if response to BLM is not permitted, so the remaining 35 days of NEPA availability is pointless and a waste of time. BLM's rationale with this timeline makes no sense and exacerbates the public's confusion.

38. Due to the short, new comment periods, Upper Green River Alliance staff and supporters are rarely able to meet with BLM professionals, or conduct site visits with BLM to observe on-the-ground conditions. This ham-strings our staff, supporters and interested, public land owners and managers alike, for each group has experience, education, and local, historical

knowledge that can inform and improve BLM decision-making, and could provide valuable insight into ecological changes over time.

39. For example, due to the shortened comment period, we were unable to provide comments on the September lease sale parcels which lie just south of Pinedale and with which we are personally familiar, due to work schedules and personal commitments. We could have provided historical knowledge and scientific research that BLM may not have had time or resources to research and employ, but we were not able to because of the extremely short protest period and competing priorities.

40. Because of the time-consuming process of providing substantive, well-researched comments, and staying current with oil and gas lease sales under the new IMs, we are often forced to forego some of life's other priorities like work and family commitments. This has harmed Upper Green River Alliance's ability to participate in agency decisions that affect our commonwealth of water, air, and wildlife.

41. Our inability to adequately participate in the leasing phase is particularly important because once a lease has been sold, we know from years of experience with the BLM that a parcel may remain open to development for years beyond the normal 10-year term. In such cases, impact analyses may not reflect current conditions, and may fail to consider the most recent resource information or Best Management Practices.

42. Furthermore, BLM customarily allows successful leaseholders to design oil and gas developments on lease parcels, even forgoing historic, seasonal timing limitations to allow drilling year-round in crucial winter wildlife habitats, as on the Pinedale Anticline, resulting in significant wildlife population declines.

43. It is also very difficult for our supporters and the public to participate beyond the leasing phase, at the Application for Permit to Drill (APD) phase, despite BLM's false claims that drilling decisions and stipulations are prepared at this point where there is ample opportunity for public involvement. APDs are difficult to track because BLM does not make them available online. Instead, APDs (and Notices of Staking) are posted for 30 days in a binder in the BLM Field Office where the development is proposed. Interested citizens have to travel to the BLM Field Office every 30 days to review a hardcopy if they wish to comment on an APD. This is prohibitively expensive, time-consuming, and difficult, especially for working folks.

44. Furthermore, an APD's Conditions of Approval (COAs) or Findings of No Significant Impact (FONSIs) are not made publicly available by BLM, so the only information that the public has to base their comments on is a physical parcel location. This deprives the public of information on the presence and distribution of sensitive wildlife species, and crucial ranges such as wildlife migration corridors that may be impacted by development.

45. The leasing and development of the public lands managed by BLM, and the restrictions placed on public processes intended to allow public input to help the agency fairly evaluate the actions' environmental impacts, threaten lasting damage to the intended mission of the Upper Green River Alliance. With this severely restricted comment period, our staff and supporters' established scientific, educational, aesthetic, recreational, and spiritual interests in conserving, preserving, and restoring the ecological integrity of our home ecosystem withers.

I declare under penalty of perjury that the foregoing statements are true and correct. Executed this 6th day of July, 2018 at Pinedale, Wyoming.

/s/ Linda F. Baker
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WESTERN WATERSHEDS PROJECT,)
and CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiffs,)

v.)

RYAN K. ZINKE, Secretary Of Interior;)
DAVID BERNHARDT, Deputy Secretary)
of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

No. 01:18-cv-187-REB

**DECLARATION OF KEVIN
EMMERICH**

I, Kevin Emmerich, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I am currently a Co-Founder and Director of Basin and Range Watch – a 501(c)(3) non-profit working to conserve the deserts of Nevada and California and to educate the

public about the diversity of life, culture, and history of the ecosystems and wild lands of the desert.

3. I attended Utah State University and the University of Utah. I studied Geography and Geomorphology.

4. I have worked for the National Park Service for 17 years as a Park Ranger and Biological Resource Technician in 7 different National Parks and Monuments. I also worked for the Bureau of Land Management for 2 years as a Recreation Technician on the Colorado and San Juan rivers, in Utah. In 1990 and 1991, I worked as a National Park Service ranger in Great Basin National Park, where I first became familiar with many of the backcountry regions and habitats in Nevada's Great Basin Desert.

5. I moved to the southern Nevada area 17 years ago with my wife, after I had lived and worked in Death Valley National Park for the previous 11 years.

6. I have also worked as a consulting field biologist on herpetology and other biological survey projects on public lands. I have participated in surveys for desert tortoise, Mojave fringe-toed lizards, Panamint alligator lizards and desert bighorn sheep.

7. In 2008, I co-founded Basin and Range Watch. As Director of Basin and Range Watch, I review proposals for projects on public lands, including energy development proposals. I travel to proposed project sites, evaluate the projects, and draft comments and protests on them.

8. Basin and Range Watch has a long-standing interest in conserving the Great Basin habitats and open spaces of Central Nevada and the Great Basin Desert.

9. One of Basin and Range Watch's major focuses is providing a counterbalance to the push by federal and state agencies to open up undisturbed habitat and public lands in the Great Basin to energy development. At the beginning we mostly focused on renewable energy

projects that were being pushed through in sensitive habitat under streamlined reviews. There wasn't much demand for oil and gas development in our region; most was focused in the Colorado Plateau. But under the current Administration, oil and gas leasing and development has reached the Great Basin. As a result, we branched out into also participating in oil and gas leasing decisions about two years ago. We felt oil and gas leasing posed a similarly bad threat to the Great Basin as previous renewable energy development because of the short, "streamlined" review periods, lack of public information, and large amount of land affected.

10. Through participating in public processes and communicating with local communities, we aim to identify problems with energy sprawl and find solutions that will preserve our natural ecosystems and open spaces. We have also worked to mobilize interested public to engage them with public participation opportunities in the past. We do this by sharing information through email lists, attending public meetings, and conducting personal visits with people interested in the issues.

11. We couldn't do what we do without the opportunity to be engaged in the NEPA process. Through NEPA, the public can help the agency identify shortcomings in its analysis, and correct mistakes.

12. To find out about oil and gas leasing and development projects, I track them via ePlanning; the Federal Register; California Energy Commission documents; Public Utilities Commission documents for California, Arizona, Nevada; state Fish & Game Department documents; and others. I read through the analyses and other information I am able to find, do site visits, and conduct independent research.

13. In particular, Basin and Range Watch specializes in ground-truthing proposed project sites by visiting them, surveying them, and sharing our findings with the public. We

have pioneered citizen science monitoring of energy projects in the desert. Going to the site is simply the best way to actually see what's actually out there. Site visits are far better than doing a literature search or looking through government documents because if you're a naturalist or good biologist you can see for yourself without anyone else's bias what conditions are actually like on the ground. My wife and I frequently visit areas slated for development to assess and document natural conditions.

14. Basin and Range Watch also frequently comments on and/or protests proposed projects that threaten natural resources in the Great Basin. To draft good comments and protests takes experience, site visits, research, and thoroughly reading through environmental analyses to identify any shortcomings. It is a time-consuming and demanding process that requires doing significant independent research, and reading agency analyses, species reports, and scientific articles to deeply understand the potential impacts of the project. It also sometimes requires having personal meetings with agency staff to express concerns and better understand impacts.

15. Conducting this in-depth review in order to produce useful public comments is difficult to do in 30 days, let alone in the much-shorter public comment periods BLM is now offering. Even for somebody like me who's been out here for close to 28 years, and in Nevada for about 17, it's pretty hard to visit every parcel in large lease sales in such a short time. To truly assess the agency's decision-making, I have to visit each parcel, then take all the scientific papers concerning potential impacts and analyze all parts specific to the areas, and then organize them into comments. This process takes at least a couple of weeks.

16. It is also hard to engage the interested public within the extremely short timeframes for comment and protest. Putting a 10-day limit on public protest will undoubtedly prevent people from protesting the sales.

June 2018 Battle Mountain Sale

17. In 2018, Basin and Range Watch submitted comments opposing Environmental Assessment DOI-BLM-NV-B020-2018-0017-EA June 2018 Competitive Oil and Gas Lease Sale. The lease sale covers 300,000 acres on Nevada BLM's Battle Mountain District, including important sage-grouse habitat. We expressed concerns about water quality, habitat impacts, cultural resources and visual contacts. I drafted and submitted the comments on behalf of Basin and Range Watch.

18. Drafting these comments was more difficult than for other projects I have commented on in the past because BLM's environmental analysis was incredibly vague and provided little meaningful site-specific analysis. Doing an adequate job called for extensive independent research and investigation. Because Basin and Range Watch is relatively new to assessing oil and gas leasing and development projects, I can't rely as much on my background knowledge in drafting comments and have to do more independent research to make sure I am not failing to alert the agency to important environmental impacts it may have missed under its own tight internal deadlines. For example, I had to research potential impacts to water quality and quantity from proposed fracking.

19. After the Final EA came out (with no major changes), Basin and Range Watch protested the BLM's Decision Record and Finding of No Significant Impact for the project in May of 2018.

20. BLM made protesting very difficult by limiting the protest period to only 10 days. The Final Environmental Assessment was released on April 27th, 2018, and the protest period closed on May 7th. At this time, I was experiencing chronic pain from a medical issue I have involving a surgery I had 2 years ago. I will often have pain for 4 to 5 day periods and at this

time, it was very difficult to travel about 200 miles to the north on unpaved roads to check some of the sites that I had not visited. The lease area concerns over 300,000 acres that could experience a direct and cumulative basis. Had this lease sale been reviewed with an Environmental Impact Statement or at least a longer protest period, I would have had more time to visit the region.

21. Because the Final EA and protest period coincided with a personal trip I had planned, I had to write the protest in two days. The protest period was also effectively even shorter than 10 days because I had to have it finished 2 days before the deadline to get it in on time—I live in a small community that doesn't have overnight mail and protests cannot be submitted electronically. It wasn't easy to put out something I was satisfied with. A lot of details had to be eliminated to meet the deadline.

22. For example, I wasn't able to visit the 300,000 acres of lease parcels within the protest period, so I had to rely on past trips. When I had visited the lease parcels, I went with my wife who is a botanist and takes detailed notes on plant communities. I didn't have time to go through her notes and so I wasn't able to share the information they contained with BLM. If I had had more time to write the protest, I could have provided a wealth of site-specific information that I simply couldn't provide working under such a tight deadline and on such short notice. I also wanted to raise more meaningful issues about cultural resources and wanted to consult more people from Native American tribes over their concerns about water contamination, but the short ten-day window made it very problematic to contact people living in these rural regions.

23. "Streamlining" like this affects Basin and Range Watch because it makes it more difficult for us to fulfill our mission. It's hard for us to participate, which, in turn, limits the

resources and tools we have to avert the worst impacts of projects that will harm the Great Basin ecosystem. Because BLM supposedly does not initiate these processes with a final decision in mind, the process should involve legitimate engagement of stakeholders. The shorter periods make it harder for us to mobilize the interested public and write detailed comments to inform the agency's decision-making.

24. Curtailing engagement in this way impoverishes BLM's decision-making. Under the new approach to oil and gas leasing, the agency is required to make quick decisions for large swaths of land. It is using an adaptive management technique that misses a lot of important details. This makes public comment and protest to help BLM identify issues it has missed or failed to assess in adequate detail doubly important.

25. I am afraid that this is a purposeful effort to restrict opportunities for public participation. The 10-day protest period seems designed to make it more difficult for environmental groups to make meaningful comments. It seems that the BLM is streamlining this process with the intent of eliminating substantive comments so they don't have to respond to them. BLM seems to be treating NEPA like a hoop it must jump through to reach its desired outcome, rather than a legitimate public process.

Personal Interests in Lease Sale Parcels

26. I have visited many of the parcels offered in the Nevada June oil and gas lease sales during personal and professional trips and am gravely concerned about the impacts the sale and development of those parcels will have on the environment.

27. I have hiked and camped in the vicinity of the following leases: 008, 009, 011, 006, 002, 014, 010, and 008 – Monitor Range and Monitor Valley. I have personally seen Greater sage grouse in this part of Monitor Valley. I have also camped by and photographed

clear, running streams and water in Monitor Valley near these leases. I have seen Golden Eagles flying above these lease areas in Monitor Valley. I have seen Pronghorn antelope running in these areas. I have seen a saw whet owl near these leases. I have seen Mountain bluebirds in the lease area. I have enjoyed the solitude of Monitor Valley and appreciated the fact that it is undeveloped and has wilderness qualities. I enjoy the very dark night sky in Monitor Valley for star gazing. I appreciate that much of the region is undeveloped and contains few roads. . I have plans to visit Monitor Valley several times in the future. The development of these oil and gas leases will impact my visitor experience to Monitor Valley in the following ways: 1. Oil and gas development rigs will have to be illuminated at night. This will impede the dark, unspoiled visual quality of the area. 2. New roads will be built in lease areas and this will spoil the wild character of the region. 3. Oil and gas exploration has the potential to contaminate water quality and water may become unsafe for drinking. 4. New roads for oil rigs will fragment habitat for sage grouse and pronghorn antelope and will impact wildlife viewing opportunities.

28. I have hiked and camped in the vicinity of the following leases: 053, 056, 058, 021, 022, 027, 025, 052, 050 and 019 – Little Fish Lake Valley. I have seen Greater sage grouse here. I have seen Golden eagles here. I have hiked near Little Fish Lake. I have enjoyed the solitude of Little Fish Lake Valley and appreciated the fact that it is undeveloped and has wilderness qualities. I enjoy the very dark night sky in Little Fish Lake Valley for star-gazing. I appreciate that much of the region is undeveloped and contains few roads. I have plans to visit Little Fish Lake Valley again in the future. The development of these oil and gas leases will impact my visitor experience to Little Fish Lake Valley in the following ways: 1. Oil and gas development rigs will have to be illuminated at night. This will impede the dark, unspoiled visual quality of the area. 2. New roads will be built in lease areas and this will spoil the wild character

of the region. 3. Oil and gas exploration has the potential to contaminate water quality in Little Fish Lake and water may become unsafe for use drinking. 4. New roads for oil rigs will fragment habitat for sage grouse and pronghorn antelope and will impact wildlife viewing opportunities.

29. I have hiked and camped in the vicinity of the following leases: 100, 111, 105, 097, 099, 049, 045 and 046 – the Hot Creek Range and Hot Creek Valley. I have seen a herd of 36 desert bighorn sheep in this vicinity. I have seen a Greater sage-grouse in this region. I have seen a goshawk flying over this region. I have seen pronghorn antelope in this region. I have plans to visit the Hot Creek Range and Hot Creek Valley in the future. The development of these oil and gas leases will impact my future visitor experience in the following ways: 1. Activity may scare and frighten desert bighorn sheep and seeing them may not be as common. 2. Oil and gas development rigs will have to be illuminated at night. This will impede the dark, unspoiled visual quality of the area. 3. New roads will be built in lease areas and this will spoil the wild character of the region. 4. Oil and gas exploration has the potential to contaminate water quality in local springs and groundwater and water may become unsafe for use drinking. 5. New roads for oil rigs will fragment habitat for sage grouse and pronghorn antelope and will impact wildlife viewing opportunities.

30. I have hiked and camped in the vicinity of the following leases: 134, 138, 142, 136, and 101. I have seen pronghorn and an American kestrel here. I have enjoyed the vast open view and have camped at the Lunar Crater as well. The development of these oil and gas leases will impact my future visitor experience in the following ways: 1. Activity may scare and frighten pronghorn and seeing them may not be as common. 2. Oil and gas development rigs will have to be illuminated at night. This will impede the dark, unspoiled visual quality of the area. 3. New roads will be built in lease areas and this will spoil the wild character of the region. 4. Oil

and gas exploration has the potential to contaminate water quality in local springs and groundwater and water may become unsafe for use drinking. 5. New roads for oil rigs will fragment habitat for sage grouse and pronghorn antelope and will impact wildlife viewing opportunities.

31. Ordering BLM to stop following IM 2018-034 and instead to revert back to the prior 30 day public comment and protest periods would help protect the interests of Basin and Range Watch, my own interests, and the public interest by providing for more timely and meaningful public notice and input to BLM's oil and gas leasing decisions, help protect the environment, and improve public lands decision-making.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 23rd day of June, 2018, in Beatty, Nevada.



Kevin Emmerich

2. I hold Bachelor of Science in Molecular Biology with a minor in Chemistry, and Master in Environmental Law and Policy and Resource Management degrees from the University of Wyoming.

3. I work for the Wyoming Wilderness Association as a Community Organizer and Public Land Policy Specialist.

4. The Wyoming Wilderness Association is a grassroots nonprofit organization that works to protect Wyoming's public wildlands, including roadless and undeveloped areas that qualify for wilderness designation. Through our advocacy in the 1970s and 80s, Congress passed the Wyoming Wilderness Act of 1984. This landmark designation permanently protected 1.1 million acres of ecologically diverse, wild country in Wyoming. We revitalized our efforts in 1994 to meet the need for a local voice for protection of wilderness and roadless areas. We primarily work to protect these areas by participating in public processes surrounding land use plans and other National Environmental Policy Act (NEPA) processes, and by educating the public so that they can also participate in those processes.

5. My work as a Community Organizer and Public Land Policy Specialist focuses on lands managed by the Bureau of Land Management (BLM), and in particular, those on the Rock Springs Field Office—more generally known as the Red Desert.

6. In 2011, the Rock Springs Field Office initiated the process of revising the Resource Management Plan (RMP) under which it manages part of the Red Desert. The effort is still underway. The Wyoming Wilderness Association has been participating in the public planning process since scoping began on behalf of our members and supporters, to try to persuade BLM to include conservation measures for the Red Desert into the Final RMP. We have worked hard to keep lands with wilderness characteristics and other wild, remote lands in

the Red Desert wild by getting them deferred from oil and gas leasing in the next RMP. We have done this by submitting public comments; visiting with our elected officials; and mobilizing our members and supporters to draft letters to the editor, opinion pieces, and public comments about the land use plan revision.

7. Some of the lands with wilderness characteristics we have been working to protect are being offered for lease in the June, September, and December 2018 Wyoming lease sales.

8. If the lands are offered for lease under the 20-year old Rock Springs RMP currently in effect, it will prevent us from getting them deferred from leasing in the new RMP. Because the leasing decisions are being made under an antiquated RMP, this prevents the public from getting the opportunity to effectively participate in the RMP-level decision that the lands are appropriate for leasing. It really suppresses good governance, transparency, and civic engagement. It also undermines our efforts over the past 7 years to advocate for protecting these lands through RMP allocation decisions.

9. The decision to lease these lands has irreversible impacts on the public lands and native ecosystems that the Wyoming Wilderness Association has been working to protect from development. The leasing and development of oil and gas on these lands will exacerbate climate change, which will in turn have cascading impacts on the human environment. Once leased and developed their other ecological values will be destroyed; a compromised landscape is compromised forever. Looking at our environment through an economic lens is destroying our environment forever. Thus we, and the public we represent, have a strong interest in participating in decisions to offer these lands for lease.

10. I begin tracking and commenting on oil and gas leasing decision about two years ago for the Wyoming Wilderness Association. To do this I use BLM's Eplanning website to track parcels offered for lease. I use GIS to map the parcels so I can see whether they affect areas that we consider priorities for protection. If they do, I try to mobilize citizen engagement to get the interested public to oppose the lease sales by speaking with their elected officials, drafting public comments, contacting their local BLM office, and submitting opinion pieces to local publications. I also plan to comment on and protest the proposed lease sale.

11. This process takes time. Identifying and mapping each lease parcel using GIS is time-consuming. I also frequently seek to arrange in-person meetings with our local BLM office to discuss leasing proposals. It can take three weeks to a month to get an in-person meeting with the BLM State Director, who is the decision-maker for deferring leases. It also takes a considerable amount of time to meet with County Commissioners, the Governor, and other elected officials. Engaging the public is equally time-consuming. I have to contact interested members who live in the area and care about the area so they can write letters, OpEds, and otherwise participate the process. I also have to contact and engage the media; without media coverage, the public is completely in the dark about these leasing decisions. The media portion alone takes a week or two.

12. On behalf of Wyoming Wilderness Association, I have commented on the second and third quarter Wyoming lease sales in 2018. Because of our comments in the second quarter lease sale, the BLM corrected information provided in the draft Environmental Assessment. As a result, the State Director deferred two leases that conflicted with parcels and Lands with Wilderness Characteristics. Due to our ability to comment in a timely fashion, the BLM was able to make better decision in the final EA for the second quarter lease sale. We also submitted

a protest comment on the final EA, and again, we were able to provide necessary information to the BLM that resulted in the deferral of three more leases in critical wilderness quality lands. Wyoming Wilderness Association also commented on the third quarter lease sale. However, this lease sale was under the impact of IM 2018-034 and contained numerous mistakes, incorrect information, and a poor analysis overall. We only had a limited time to provide essential information to the BLM in our comment, which reduced our ability to ensure the BLM had the best information possible about the effected lands in the lease sale.

13. The now-optional comment period, and 10-day protest period, under BLM's new IM 2018-034 do not allow for adequate public participation.

14. For example, I had four days when I learned about part two of the third quarter lease sales to file a comment with maps, inventories, and information to fill in some of the gaps in BLM's analysis. I needed to bring a lot of information to BLM's attention because the EA was a rushed, poor-quality, uninformative document. I simply couldn't do an adequate job to provide the full look at the environmental consequences that the BLM needs to have before they make final decisions on where leasing should occur. Four days is not an adequate amount of time to field check parcels offered for leasing, as well as do all of the research needed to understand the environmental impacts of the leasing decisions and also write comments.

15. The rushed timeline that the BLM is forcing on the public is causing inaccurate analyses, and the implications of the lease sales based on that misinformation will permanently affect the landscape and our environment. The timeline also diminishes civic engagement in the management of our public lands, which belong to everyone. If the public can't speak up about resource management decisions and their voice isn't being heard, you have disengagement from the public. This causes a breakdown of democracy because fewer and fewer people are

vocalizing their input on oil and gas leasing decisions. That effect on the land is devastating. You have a situation where only the folks profiting get to decide what happens and the landscape is harmed as a result. There are a majority of people, even in Wyoming, who care more about having a healthy ecosystem than about economic gain that mostly benefits big corporations.

16. The result harms the ecosystem, and it hurts Wyoming Wilderness Association's mission. Once oil and gas leasing occurs, wildlands cannot be protected because they are compromised. If a lease gets to the Application for Permit to Drill (APD) phase, it is already happening. Only small changes can be made, like maybe painting some of the drill rigs brown so they blend in better with their surroundings. The BLM doesn't respond to comments at that phase or even read them. I've found participating largely ineffective. Also, it's extremely hard to find out about APDs. You have to be in the local BLM office and look at their white book where APDs are published, which is updated every week. You would have to visit each Field Office every week to know what is going on. That is simply not feasible for a small group like ours, especially because participation at that level is so ineffectual.

17. The new optional public comment and shortened, 10-day public protest periods for oil and gas lease sales preclude adequate public comment, which impoverishes the BLM's decision-making around these lease sales by meaning only industry gets a seat at the table. The sale and development of the leases threatens irreparable harm to the environment by destroying fragile wildlife habitat and intact native ecosystems that can never be restored. This harms the Wyoming Wilderness Association's organizational mission to protect these lands in their natural state and harms my interests in preserving the native biodiversity, natural beauty, wildness, and solitude they offer.

18. Ordering BLM to stop following IM 2018-034 and instead to revert back to the prior 30 day public comment and protest periods would help protect the interests of Wyoming Wilderness Association, my own interests, and the public interest by providing for more timely and meaningful public notice and input to BLM's oil and gas leasing decisions, help protect the environment, and improve public lands decision-making.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 2nd day of July, 2018 at Laramie, Wyoming.



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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,)
and CENTER FOR BIOLOGICAL)
DIVERSITY,)

Plaintiffs,)

v.)

RYAN K. ZINKE, Secretary Of Interior;)
DAVID BERNHARDT, Deputy Secretary)
of Interior; and UNITED STATES)
BUREAU OF LAND MANAGEMENT,)
an agency of the United States,)

Defendants.)

Case No. 01:18-cv-187-REB

DECLARATION OF JEFF KUYPER

I, Jeff Kuyper, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I am currently employed by Los Padres ForestWatch (“ForestWatch”), a community-supported nonprofit organization that works to protect the Los Padres National

Forest, the Carrizo Plain National Monument, and other public lands throughout California's central coast region. I have served as the organization's Executive Director for twelve years.

Personal and Professional Background

3. I hold a bachelor's degree in Environmental Studies from the University of California at Santa Barbara, received in 1998, and a Juris Doctorate degree and a Certificate of Environment & Natural Resources Law from the University of Oregon School of Law, obtained in 2002. I have worked in a professional capacity with nonprofit conservation organizations for more than eighteen years.

ForestWatch's Interests In Oil And Gas Leasing And Development

4. Beginning in February of 2006, I have worked for ForestWatch and am the lead staff person overseeing issues pertaining to oil and gas drilling and leasing on public lands. In that capacity, I research and monitor proposed and existing oil and gas projects, track violations and file complaints with government agencies, write comment letters to federal land management agencies, attend and present testimony at public hearings, and work with other ForestWatch staff, experts, and volunteers to reduce the environmental footprint of fossil fuel development on federal public lands.

5. ForestWatch is a 501(c)(3) nonprofit organization with more than 800 members, headquartered in Santa Barbara, California. ForestWatch's mission is to protect and restore public lands along California's Central Coast from the famed Big Sur coastline, to San Luis Obispo's Santa Lucia Range and the Carrizo Plain National Monument, to the rugged backcountry of Santa Barbara and Ventura counties. ForestWatch focuses much of its efforts on the Los Padres National Forest and nearby public lands, including the Carrizo Plain National Monument, Hopper Mountain National Wildlife Refuge Complex, the Fort Hunter-Liggett

Wildlands, Carrizo Plain Ecological Reserve, and lands administered by the Bureau of Land Management (“BLM”), including federal land in the jurisdiction of BLM’s Bakersfield field office.

6. My responsibilities involve, among other things, monitoring BLM’s management of public lands in central California, including its designation and protection of areas of critical environmental concern and its management of oil and gas industry activities; reviewing the latest science and policy relating to BLM’s land management and activities occurring on BLM lands, such as oil and gas activities; and advocating for better land management and environmental review by BLM through administrative outreach to the agency and litigation.

7. I am also responsible for engaging and informing the public about activities occurring on BLM lands. I coordinate ForestWatch’s public education and outreach programs. As part of these programs, we maintain a website with current information about issues affecting Los Padres National Forest and nearby public land, including BLM lands, and how the public can get involved in protecting these lands. ForestWatch publishes a newsletter several times a year, distributes information at public gatherings, and organizes hikes, lectures, and other educational events for the public.

8. On behalf of ForestWatch, I regularly comment on oil and gas projects and activities on, and adjacent to, federal land in central California. For example, I have submitted formal comments and protests to oil and gas lease sales by BLM in Central California, including in 2005, 2006, 2009, and 2011. As a direct result of our protest in 2005, BLM issued a new statewide policy requiring BLM to prepare an Environmental Assessment prior to conducting oil and gas lease sales. This policy has resulted in additional opportunities for public involvement in

the oil and gas leasing process, including an early method of alerting BLM to possible issues and concerns regarding specific parcels of land identified for leasing.

9. More recently, I submitted detailed comments on BLM's draft resource management plan for the Carrizo Plain National Monument, and its draft resource management plan for the Bakersfield Field Office. Throughout this process, ForestWatch has urged BLM to consider alternatives to its proposed resource plan that increase protections for ecologically valuable land in its jurisdiction, including greater restrictions from oil and gas development activities.

10. In my experience, information gained through the public comment process can help BLM make better decisions. For example, the 2005 and 2006 lease sales included several parcels of land immediately adjacent to the Los Padres National Forest, Carrizo Plain National Monument, Bitter Creek National Wildlife Refuge, and within the Wind Wolves Preserve. Our protest – along with the protests of several neighboring landowners – resulted in BLM withdrawing these contested parcels (totaling a combined 10,000 acres) from the lease sale, and to date, these lands have not been further made available for oil and gas leasing.

11. At the time, BLM provided a 30-day public comment period on the Environmental Assessment of the lease sale, along with a required 45-day advance notice of the lease sale. I distinctly recall this being an inadequate amount of time to carefully evaluate a highly technical environmental document, conduct appropriate research and site visits, prepare meaningful comments, identify and contact affected landowners in extremely remote and rural areas using County parcel data, and provide information to interested landowners on how to file their own protests. Several landowners were unable to file protests within the allotted time.

12. To monitor upcoming oil and gas lease sales and other oil and gas projects, I first ask to be notified of sales by BLM. We have requested such notice on multiple occasions, and BLM has repeatedly failed to provide us with timely notice of these projects. In several situations, we have learned about projects after they have already been approved, and have to request information about them after-the-fact, after all opportunities for public comment and protest have already passed. BLM's failure to provide us with timely notice even extends to places like the Carrizo Plain National Monument, where despite numerous requests, we do not always receive notice of proposed oil and gas projects. BLM's failure to properly notify us about these proposals materially affects our ability to review them and submit comments, and to alert other members of the public who may be similarly interested in participating in the planning and approval process for these projects.

13. Based on BLM's past practice, I have little confidence that the agency will follow through on promises to provide the information I request, so I also have to track Expressions of Interest and Applications for Permit to Drill online through BLM's ePlanning website. This is a very time-consuming process that we conduct approximately weekly to ensure that we learn about projects shortly after they are posted.

14. BLM's ePlanning website is not user-friendly, and even I and my staff – who have decades of experience searching through public records – often have a difficult time obtaining accurate information through this website. Specifically, BLM's ePlanning site has two ways to search for new projects – via a map, and via a text list. The map shows the approximate locations of proposed and approved projects – however, the map does not differentiate between new projects and approved projects, meaning that each time we conduct a map search, we have to click on every icon near our areas of interest, which becomes very duplicative. The text search

function is equally as confusing, as it doesn't seem to list projects in any particular chronological order and often identifies project locations only by an archaic township and range coordinate or a well number, requiring us to cross-reference those numbers with maps and other on-line tools to determine whether a proposed project is within our area of interest.

15. Searching for oil and gas drilling decisions produces an extensive list of search results, often including oil wells and parcels far away from our area of interest. It also produces many routine decisions including sundry notices, abandonment notices, pipelines, along with applications for permits to drill. For example, in 2018, our routine search currently produces 100 distinct results through which we have to sift each time to ensure we do not miss any new projects. This number will surely increase as we progress further into the year, making each subsequent search even more extensive and burdensome for our small nonprofit organization. While BLM's ePlanning search function allows the public to search within more specific areas – such as within the Carrizo Plain National Monument – not all projects within the monument boundaries are produced during those searches because occasionally BLM codes them incorrectly in the database. For example, when I conduct a search today for all projects proposed or approved in the Carrizo Plain National Monument in 2018, the textual search produces only two results (a water tank replacement at a campground, and resurfacing of a road). Astonishingly, the search fails to identify a new oil well and pipeline that BLM approved in the Carrizo Plain National Monument in March 2018, even though it fits the search criteria.

16. When I locate projects of interest in the ePlanning database, I notify the BLM of our interest in the project. Then I review any scoping notices and environmental documents associated with the project in order to provide meaningful feedback, input, and recommendations to the agency. I need to examine the proposed project in detail, determine which wildlife may be

impacted, and assess whether the environmental documents accurately and fully describe impacts to the environment. I also need to review the applicable provisions in the Resource Management Plan to ensure that the proposed action is consistent with that plan.

17. This process often requires a great deal of additional research. For instance, I have to do scientific research about species that may be affected by proposed lease sales. I have to find the latest relevant scientific papers so that I can gauge whether what the agency is proposing is going to be truly harmful. I have to investigate whether there is relevant, publicly available data about the status of wildlife populations. Often times, BLM's environmental documentation is missing key details, requiring us to conduct our own research in the field and with experts so that I can understand whether BLM is fairly analyzing and disclosing environmental impacts.

18. I frequently consult with other groups and stakeholders – including nearby rural landowners – about the proposed projects, or work to co-author comments and protests with them. This requires the exchange of numerous drafts that must be subject to review and approval by all organizations—a time-consuming process. It is extremely difficult to coordinate drafting and review of comments and protests within the time periods the Bureau provides.

19. The thirty-day comment and protest periods for draft NEPA analyses concerning proposed oil and gas lease sales were initially inadequate. The shortened public comment and protest periods under the BLM's new Instruction Memorandum (IM) 2018-034 make it much harder to track, submit comments on, and protest lease sales and development projects that will harm sensitive habitats and wildlife, or have been done without adequate legal compliance.

20. I seriously doubt that I will be able to adequately participate in leasing and other project decisions on behalf of ForestWatch under the constraints imposed by current BLM guidance in IM 2018-034.

21. This harms ForestWatch's interests in encouraging better BLM decision-making. ForestWatch has had success altering leasing proposals that risked harms to sensitive resources through the public comment processes. BLM's efforts to curtail public engagement under the new policy will diminish our ability to fully express our interests to BLM at the leasing phase, which in turn will decrease the quality of BLM's decision-making. Without adequate public input, BLM may not receive information about public values around parcels proposed for leasing. This could imperil sensitive wildlife populations and vegetation communities, cultural resources, scenic qualities, ecosystems, and other resources we strive to protect.

22. It also undercuts reforms for which ForestWatch successfully advocated, specifically BLM's California policy requiring the agency to do an Environmental Assessment prior to any oil and gas lease sales in California.

23. This is particularly concerning because the leasing phase is the pivotal moment when BLM can choose to preclude surface development, defer offering parcels containing sensitive resources for lease, or otherwise prevent environmental impacts from occurring. Once a parcel is leased, BLM can no longer prevent development. It can only impose certain minimal conditions on development at the Application for Permit to Drill (APD) phase.

24. In addition, BLM makes it very challenging for us to monitor and respond to APDs. As a result of settlement in an unrelated case, BLM in California has agreed to post the cover pages of APDs within three days of approval on the agency's ePlanning website. There is no mechanism for the public to learn about APDs when oil companies submit them to BLM, other than periodically contacting BLM by phone, email, or in person (three hours away from our office) to inquire about the existence of any APDs for any particular areas of interest. This makes it difficult for us and the general public to meaningfully participate in BLM's approval

process for APDs. The BLM provides 30 days to file challenges to approved APDs. We do not have the time or resources to check the agency's website on a daily basis, so when we do learn about an approval of an APD in our area of concern, we typically have much fewer than 30 days to file the challenge.

25. The BLM has affirmatively notified us about one APD, approved in the Carrizo Plain National Monument on March 16, 2018. The Record of Decision for this APD directs the public to file an appeal within 30 days to the U.S. Department of Interior's Board of Land Appeals pursuant to 43 CFR Part 4. This created confusion, since 43 CFR 3165.3 states that requests for reviews of APDs must first be filed with the BLM State Director. Given this confusion, we submitted both an appeal to the Interior Board of Land Appeals, and a request for State Director Review, both of which have different formatting requirements and timelines under BLM regulations. BLM subsequently acknowledged providing the public with the wrong appeal mechanism in the Record of Decision, and our appeal to the Interior Board of Land Appeals was dismissed while our request for review is currently pending with the BLM State Director. This confusion surrounding how to challenge an APD made it extremely difficult for us to file our requests and supporting materials in a timely manner. BLM regulations provide only 20 days for the public to submit requests for State Director Review under this regulation, again, making it very challenging for us and the general public to review the BLM's APD and supporting documentation, to request and receive additional materials from BLM, to visit the site, and to prepare the request for review.

26. The difficulties associated with public participation at the APD phase make it even more important for BLM to allow for adequate public participation at the leasing phase. Because it is so hard to track and respond to specific APDs, and because it seems BLM is less

willing to impose major changes or restrictions at the APD phase, it is critical that the public be afforded an opportunity to meaningfully review leasing proposals to advocate for measures to protect sensitive resources or advocate for deferral. BLM's new policies in IM 2018-034 concerning shortened or optional public comment and protest periods will make providing this input more difficult, undermining BLM's decision-making process, and ultimately resulting in worse decisions that may destroy irreplaceable ecological, cultural, and scenic resources.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed this 5th day of July, 2018, in Santa Barbara, California.



Jeff Kuyper



U.S. Department of the Interior

New Energy Frontier

Node / Report to Secretary Ken Salazar Regarding the Potential Leasing of 77 Parcels in Utah

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Report to Secretary Ken Salazar Regarding the Potential Leasing of 77 Parcels in Utah

On January 17, 2009, a federal district court enjoined the U.S. Department of the Interior from entering into oil and gas leases for 77 parcels in Utah that had been included in a December 19, 2008 auction. The court entered a temporary injunction against the sale of the parcels after concluding that plaintiffs had established “a likelihood of success on the merits” regarding their claims that the proposed lease sales violated the National Environmental Policy Act, the Federal Land Policy and Management Act and the National Historic Preservation Act.¹

On February 6, 2009, Secretary Ken Salazar concluded that the issues raised by the court, along with other concerns that had been raised about the lease sale, merited a special review.² Accordingly, Secretary Salazar directed that the leases be withdrawn and bonus payments be returned to the bidders. He subsequently requested that Deputy Secretary David J. Hayes lead a Departmental team that would evaluate the December lease sale and make recommendations regarding the matter.

This report responds to Secretary Salazar's request. The report is based on a review of the administrative record that accompanied the auction of the 77 parcels; an inspection of the parcels in question via overflight or on-the-ground inspection; interviews of BLM, National Park Service (NPS), and other Interior Department officials who were involved in lease-related decision-making; a listening session with state and local officials and representatives, followed by a public town hall meeting for interested members of the public (held in Vernal, Utah on May 26); and conference calls with industry representatives and conservationists.³

The review's findings and recommendations are:

Findings

- The lease sale that BLM's Utah office conducted in the fall of 2008, which culminated in the December 19, 2008 auctioning of 116 parcels, including the 77 parcels that are the focus of this report, deviated in important respects from the normal leasing process:

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- The fall 2008 lease sale began in the customary fashion. On August 1, 2008, BLM informed representatives of the National Park Service of its intent to hold an oil and gas lease sale on November 18, 2008. It identified parcels that were proposed to be included in the sale, and requested input from the NPS “no later than September 5, 2008, in order to address your concerns prior to making a lease recommendation.” In a parallel notice provided for BLM field office managers, BLM’s State office indicated its intent to provide public notice of lands that would be offered for sale by October 3, 2008. The prior notice that BLM provided to the NPS regarding parcels that it proposed to include in a public lease sale conformed with long-standing BLM/NPS practice.⁴ NPS responded to the August 1st pre-notification and provided timely input on the parcels that BLM identified as candidates for the fall oil and gas leasing sale.
- After soliciting input on the proposed lease sale from the National Park Service, BLM decided to expand the lease sale and delay the public announcement of parcels that were being offered for leasing from October 3, 2008 to November 4, 2008. BLM did not provide the National Park Service its customary opportunity to provide input on the lease sale, even though BLM had decided to greatly expand the lease sale from the 79 parcels that had been suggested in the August 1, 2008 pre-notification to 241 parcels that were announced on November 4, 2008. Among the new parcels added without prior notice to NPS were a number of parcels in the immediate vicinity of three National Park units (Arches National Park; Canyonlands National Park; and Dinosaur National Monument).
- A third party informed NPS of BLM’s action two business days before BLM was scheduled to publicly announce on November 4, 2008 the expanded lease sale. Because it had not received prior notice and an opportunity to discuss the appropriateness of auctioning parcels next to units of the National Park system, NPS requested that BLM defer the late-added parcels from the lease sale until the next quarterly sale so that NPS could have a full opportunity to review and comment on the proposed lease sales. BLM refused to do so.
- After strong public concern was expressed regarding the proposed sale of many parcels near National Park units for oil and gas development, BLM provided NPS with a belated opportunity to request that parcels be removed from the auction that already had been publicly announced for sale.
- After a short but intensive period of negotiations, BLM agreed to remove parcels that were most objectionable to NPS due to their immediate proximity to Park boundaries.⁵ NPS remained concerned about other parcels near the Parks with regard to their potential impacts on viewscales, soundscapes and regional air quality, but NPS acquiesced with the BLM auction going forward so long as:
 - BLM would recommit in writing to BLM’s historic consultation practices with NPS and, in addition, that BLM would provide NPS with advanced notice and an opportunity to consult before allowing exemptions, modifications or waivers to original lease terms.
 - BLM would meet with NPS and develop a plan to address how to address air quality models and “to identify viable modeling/analysis options.” NPS made this request because ozone concentrations at Canyonlands National Park “are within about 90% of the current 8-hour ozone National Ambient Air Quality Standard (NAAQS) and may well exceed a new 8-hour standard the Environmental Protection Agency has proposed even without new sources of emissions.”⁶ (It also should be noted that the U.S. Environmental Protection Agency had expressed concerns to BLM regarding the need for quantitative air quality information regarding oil and gas leasing activity in the region.⁷)
- BLM’s Utah State Office and NPS’ Intermountain Regional Office subsequently entered into a Memorandum of Understanding on May 13, 2009 which memorialized BLM’s historic consultation practices with NPS and BLM’s

commitment to provide NPS with advanced notice and an opportunity to consult before allowing exemptions, modifications or waivers to original lease terms. ⁸

- With regard to the air quality issues raised by NPS:
 - On January 15, 2009, a few days before leaving office, Bush Administration appointees representing BLM and the United States Forest Service executed a Memorandum of Understanding which asserted that quantitative air quality analysis would not be “appropriate” when making oil and gas planning decisions, or when undertaking “low-level energy development activity.” ⁹
 - On February 11, 2009, BLM and NPS officials engaged in a professionally facilitated meeting to address NPS's request to develop a plan for addressing air quality issues in the airsheds surrounding the three National Park units potentially impacted by oil and gas leasing activities. The facilitator described the talks as ending in an “impasse”; no agreement was reached between BLM and NPS regarding whether and/or how to undertake quantitative air quality analysis to cover oil and gas leasing activity in the region.¹⁰
- Because NPS's jurisdiction is tied to its National Park units, NPS did not address parcels that were proposed for sale and were not in the vicinity of one of its parks. Some of the 77 parcels that were subject to the court's injunction are near other unique and sensitive landscapes, including Nine Mile Canyon, an area that is world renown for its sophisticated, extensive, and potentially fragile rock art, and Desolation Canyon, a deep river canyon that is upstream of the Grand Canyon and one that rivals its beauty. ¹¹
- The lands associated with the 77 leases in question are covered by three Resource Management Plans (“RMPs”) that BLM signed on October 31, 2008, only 4 days before the lease sale was noticed to the public. These RMPs are general planning documents that cover several million acres of public lands in BLM's Moab, Vernal and Price districts (the three RMPs are hereinafter referred to as the “Utah RMPs”). The Utah RMPs had been developed over a period of several years. They include the following features:
 - As a general matter, the Utah RMPs exclude a relatively small proportion of potentially available BLM lands from oil and gas drilling. By way of example, the Utah RMPs provide BLM with the discretion to lease the large majority of lands that it identified as having “wilderness characteristics” for oil and gas development.¹² Likewise, the Utah RMPs provide BLM with the discretion to allow oil and gas development on parcels in the immediate proximity of National Park units and a number of other sensitive landscapes, including lands that have wilderness characteristics, and lands that have other values that may not be consistent with oil and gas development (e.g., hiking, biking, river rafting and other recreational activity that is prevalent in the region). The RMPs identify a menu of potential stipulations that BLM can append to leases to mitigate the environmental impacts associated with oil and gas development of the land.
 - The Utah RMPs are high level planning documents; they do not provide BLM officials with guidance on whether individual parcels should be made available for oil and gas development when such parcels are near National Park units and other sensitive landscapes or when such parcels have wilderness characteristics or other values that may not be consistent with oil and gas development. Guidance from BLM is necessary, given the strong competing values that BLM officials must take into account when making leasing decisions for individual parcels in eastern and southern Utah. The unique canyons and mesas that dominate the landscape in this region and Utah's “red rock” areas are among America's most treasured landscapes.¹³ Illustrating the point, Arches National Park attracts more than one million visitors a year, and it is estimated that BLM lands in the vicinity of Arches National Park and Canyonlands National Park attract more than two million recreational visitors per year. On the other hand, extensive oil and gas and related infrastructure development is taking place in some other areas covered by the Utah RMPs. In

particular, intensive oil and gas development is occurring in the Uinta Basin, which is primarily covered by the Vernal RMP.

- The Utah RMPs do not model existing air quality in the region or attempt to aggregate, in a quantitative way, the impacts that additional oil and gas leasing may have on air quality in the region. As manifested in the Memorandum of Understanding that was signed by political appointees on January 15, 2009, BLM takes the position that quantitative air quality impacts need not be evaluated until operators request permission to initiate development on specific parcels or, in some cases, when operators develop a concentrated plan of development for a given area. However, individual drilling activities often are exempt from air permitting requirements. BLM does not have a mechanism for evaluating the impact of oil and gas development on air quality in the region, despite the fact that air quality levels for some health-based parameters, such as ozone, are marginal and may be deteriorating.

Recommendations

1. **1. Communication and Cooperation Needs To Be Improved Between BLM and the National Park Service and Other Stakeholders Regarding Leasing Decisions**

BLM's decision to auction off oil and gas development rights on lands that are immediately adjacent to some of our nation's most visited and treasured national parks reflects a failure in communication and cooperation between BLM and the National Park Service. Although BLM responded and came to the negotiating table when the National Park Service and the public heavily criticized BLM's decision to lease parcels for oil and gas development on the doorstep of some of Utah's most beautiful national parks, it should not take a public relations melt-down to trigger a meaningful dialogue between the two agencies. Better communication and cooperation is needed between BLM-Utah and Park units in the Intermountain Region. BLM should improve its understanding of the importance of Park values that would be implicated by oil and gas drilling activity occurring alongside the border of and in proximity to a National Park or Monument. This standard should equally apply to BLM managed units of the National Landscape and Conservation System (NCLS). And for its part, it is important that the Park Service understand the need for BLM to evaluate potential multiple uses of BLM lands, in accordance with the Federal Land Policy and Management Act.

Likewise, BLM should seek better communication and cooperation with other stakeholders who have concerns regarding decisions to allow oil and gas development on other sensitive landscapes that have unique values, but which are not near a National Park or Monument, such as Nine Mile Canyon and Desolation Canyon. BLM has its own inherent stewardship responsibilities that should inform its decision-making when evaluating whether to allow commercial development of BLM lands in or near sensitive, treasured landscapes. BLM officials also should be attentive to the input of other stakeholders who seek to protect such lands because of the competing values they represent – whether it be wilderness characteristics associated with the lands, competing recreational interests, or other values.

Some observers may point out that the process of putting together the areas' Resource Management Plans should have provided the opportunity to foster communication and cooperation between BLM and other interested agencies and stakeholders. Because RMPs are high level planning documents, however, they do not make individual leasing decisions for specific parcels; those must be made on a case-by-case basis. As a result,

the type of communication and input needed between BLM and the National Park Service regarding potential oil and gas leasing next to National Park units did not occur in the RMP process.

The Utah RMPs illustrate this point. They adopted a broad planning level presumption that the large majority of available BLM lands should potentially be made available for oil and gas development, including lands with wilderness characteristics and lands immediately adjacent to the National Parks. But they did not focus on how BLM officials should weigh competing considerations when deciding, for example, whether to offer or defer a request to nominate a parcel adjacent to Arches National Park or in a wilderness quality area for potential oil and gas development.

Thus, while some proponents argue that the RMP process provided all of the input needed to make individual leasing decisions, that is clearly not the case. Decisions whether to offer specific parcels for oil and gas development must be made on a case-by-case basis, taking into account competing resource values and site-specific circumstances. This decision will be better informed if important stakeholders such as the National Park Service, the State, industry representatives, and other interested organizations are provided a meaningful opportunity for input and dialogue before parcels are announced for public sale. That did not occur here. The new MOU between BLM and NPS should help avoid a repeat of this situation, but we recommend that BLM consider more systematic and bureau-wide initiatives for improving communication and cooperation with important stakeholders when considering what parcels might be offered in potential lease sales.

2. BLM Should Develop Guidance to Assist BLM Officials In Making Parcel-Specific Leasing Decisions

As noted above, BLM has not identified the criteria that BLM officials should apply when deciding whether individual parcels should be made available for oil and gas development. The proximity of such parcels to National Park units, NLCS units and other sensitive landscapes, the fact that parcels may have wilderness characteristics or other values that may not be consistent with oil and gas development, and the relative intensity of existing investments in the immediate area of proposed leasing, including oil and gas drilling activities and related infrastructure, are factors that presumably should have a bearing on leasing decisions for individual parcels.

BLM should develop and issue decision-making criteria that fills this important void and provides a rational basis to better assist BLM officials on how they should weigh competing considerations when deciding whether an individual parcel that is available for leasing as a general matter (e.g, where an RMP would otherwise allow leasing of the parcel in question) should, in fact, be leased and for what purpose(s), given site-specific considerations.¹⁴ The factors that are relevant to individual leasing decisions, such as proximity to special landscapes (including, but not limited to, parks), to wilderness qualities, and to the presence of existing development and infrastructure, among other factors, should be identified by such guidance. New BLM guidance should then suggest approaches for weighing such factors in the decision-making process.

3. It May Be Appropriate to Reinstate Some of the 77 Parcels; Others Should Not Be Leased for Oil and Gas Development

As noted above, site-specific considerations can and should have an important bearing on whether individual leases should be offered for oil and gas development in the context of expansive RMPs, such as those involved here. Because BLM has not developed guidance regarding how site-specific factors should be weighed in determining whether specific parcels should be offered for oil and gas development, managed to protect their

wilderness values, or opened up for recreational purposes, the preparers of this report are not in a position to make final determinations regarding the ultimate disposition of the 77 parcels in question.

To address this need, we recommend that the acting BLM Director appoint a multi-disciplinary team of experienced BLM officials who have not been involved in decision-making regarding the 77 parcels in question to make site-specific decisions on whether to reinstate any of the 77 parcels. The BLM team should do its work expeditiously; companies who successfully bid on specific parcels should receive timely feedback on whether they will be able to develop those parcels.¹⁵ In proceeding with this exercise, the BLM team should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

After conducting this evaluation, the BLM team should determine whether: (1) the parcels should be reoffered to the original bidders under the same conditions as previously specified (in which case the winning bidders should have the opportunity to repay their bonus payments and move toward execution of their leases); (2) the parcels should be reoffered for oil and gas development, but under different terms than had been specified in the original offering (in which case the parcels should be subjected to a new auction process); or (3) the parcels should be deferred from leasing.

In connection with the BLM team's review of the 77 parcels, the review team has identified several groupings of parcels that are relevant:

14 Parcels Located Within Already Existing Gas Development And Infrastructure Areas

A set of 14 parcels are located near current production areas that are largely already dedicated to oil and gas development, and which have existing infrastructure to facilitate such development. These factors suggest that reinstatement of the sale of these leases may be appropriate. The BLM team should seek to confirm, on a site-by-site basis, that the stipulations associated with each parcel are adequate, given the specific topographical and locational characteristics of each parcel. As noted above, the BLM team also should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

These parcels are located as follows:

- Central Uinta Basin: parcels 90, 91, 93, 94, 96, 97, 98, 112, 115, 116.
- Southern Uinta Basin: parcels 209, 210, 211, 212.

16 Parcels Located Within More Limited Development Areas

A second set of 16 parcels is located where the intensity of existing production is more limited. The parcels in this second grouping, however, are not near particularly sensitive landscapes and they do not appear to trigger strong concerns regarding recreation or other alternative uses. These factors suggest that reinstatement of the sale of these leases may be appropriate. The BLM team should seek to confirm, on a site-by-site basis, that the stipulations associated with each parcel are adequate, given the specific topographical and locational characteristics of each parcel. As noted above, the BLM team also should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

These parcels are located as follows:

- East of Green River, UT: parcels 159, 187.
- Southeast of Green River, UT: parcels 162, 163, 164, 166, 167, 168, 169, 170, 171, 175.
- South of Green River, UT: parcels 361, 368, 369, 370.

47 Parcels Requiring More Detailed Site-Specific Analysis

The remaining 47 parcels require more detailed site-specific analysis. These parcels fall within three broad categories.

The first category includes parcels that are near two sensitive landscapes that have special cultural and physical attributes: Nine Mile Canyon and Desolation Canyon. Some oil and gas development is beginning to occur in these areas, and parts of the areas are subject to on-going environmental reviews. With regard to Nine Mile Canyon, however, concerns have been raised regarding potential impacts that existing and potential future development on mesas above Nine Mile Canyon may have on the cultural resources in the canyon and on other values associated with the canyon. (BLM has designated Nine Mile Canyon as an “ACEC”: an Area of Critical Environmental Concern.) Likewise, Desolation Canyon is a world-class river canyon that has outstanding natural landscape characteristics. Significant acreage in the Desolation Canyon area has been classified as a Wilderness Study Area that is off-limits to oil and gas development.

Additional oil and gas development potentially may be appropriate in both of these areas, but given the special nature of the resources in and around Nine Mile Canyon and Desolation Canyon, a careful, site-specific examination by a the multi-disciplinary BLM team should be undertaken. The BLM team should seek to confirm, on a site-by-site basis, that the stipulations associated with each parcel are adequate, given the specific topographical and locational characteristics of each parcel. The BLM team also should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

The parcels are located as follows:

- Desolation Canyon: parcels 86, 87, 335, 337, 338, 339, 340, 341, 342, 343, 345, 348, 349, 350, 355.
- Nine Mile Canyon: parcels 83, 328, 330, 331, 332.

The second category of the 47 parcels includes six parcels that are in or adjacent to White River Canyon. White River Canyon is a unique landscape. It is located in the highly productive Uinta Basin. Some of the mesas above the canyon have been leased and developed. Additional gas development in the area potentially is appropriate, particularly if new wells can be drilled on already-existing drilling pads, but given the special nature of the White River Canyon area, a careful, site-specific examination by the multi-disciplinary BLM team is appropriate, with special attention given to the stipulations proposed for each parcel. (A number of the parcels have “no surface occupancy” restrictions which would mitigate impacts to the canyon.) In addition, the BLM team should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

The parcels are located as follows:

- White River Canyon: parcels 106, 109, 110, 111, 136, 137.

The third category of the 47 parcels includes parcels that are in the Moab region, in an area of limited existing oil and gas development, of potentially high recreational values, and within a ten mile radius of Arches National

Park or Canyonlands National Park. As explained below, while we do not believe that all leasing activity should be delayed pending the completion of the air quality analyses that are recommended below, parcels that are close to national parks or monuments (the parcels here are in a band that is only 5 to 10 miles from these national park units) should receive heightened scrutiny because their development could more immediately impact air quality in the nearby parks.

The sole additional parcel is in the northern portion of the Vernal area, adjacent to Dinosaur National Monument. Although that parcel is on land that already has been disturbed, there is very limited oil and gas development in the area and the immediacy of the parcel to the National Monument recommends it for a more deliberative review by the BLM team.

The BLM team also should review protests that have been lodged against each of the parcels in question and address those protests when making its final decisions.

To summarize, the parcels that fall into this category include:

- West of Arches National Park: parcels 174, 176, 177, 180, 181, 182, 183, 184, 185, 186, 196, 197.
- East of Arches National Park: parcel 242.
- East of Canyonlands National Park: parcels 201, 202, 203, 205, 206, 207, 208.
- West of Dinosaur National Monument: parcel 101.

4. Air Quality Analysis

The National Park Service's and the Environmental Protection Agency's concerns about the lack of robust quantitative air quality data and analysis regarding baseline conditions, and the potential contributions that additional oil and gas development may have on air quality in the region, appear to be well-founded. While some analyses of air quality issues have been undertaken in the areas covered by the Utah RMPs and others are underway, attention to the issue remains both limited and fragmented.

We recommend that BLM move forward with a comprehensive air quality strategy for the region, in consultation with the National Park Service, the Environmental Protection Agency, and state officials. The comprehensive strategy should include:

- An analysis of whether and, if so what, additional monitoring is needed in the Utah RMP areas to adequately characterize air quality in the region for key parameters.
- A plan to install and maintain any additional monitoring stations, in cooperation with other agencies and interested stakeholders.
- The initiation of a programmatic air quality environmental impact statement that will analyze current air quality in the Utah RMP areas, and will model the impacts that alternative development scenarios may have on air quality in the areas. Questions regarding the geographic area or areas that should be the subject of such programmatic analyses should be determined through the EIS scoping process.

We recognize that the court relied on the absence of quantitative air modeling in granting a temporary restraining order against execution of the 77 parcels at issue here. The court acted in the context of BLM's unwillingness to make any commitment to undertake quantitative air quality analyses for any leasing activity. As

noted above, this report is recommending that BLM initiate a comprehensive air quality analysis for the region. As the BLM team reviews individual leasing decisions, it should evaluate whether the approval of some of the leases for oil and gas development can go forward without waiting for the completion of the comprehensive air analysis. Factors that may be relevant in that regard include whether the parcels are in areas where extensive oil and gas production already is occurring; the nature of the stipulations attached to leases which may minimize air impacts; the proximity of the parcels to areas that may be most sensitive to potential air impacts (e.g., Nine Mile Canyon, Desolation Canyon, and the three National Park units); and the availability of relevant air quality analysis pertaining to the areas in question. (In that regard, we understand that some air quality analytical work is underway in connection with the West Tavaputs EIS process; it may have relevance to the air quality questions associated with Nine Mile Canyon and Desolation Canyon. Also, we understand that an industry-sponsored Uinta Basin study is nearing completion; it also may have some relevance to some of the parcels).

Endnotes

¹ More specifically, the court concluded that “[b]y not engaging in quantitative ozone dispersion modeling,” BLM was “unable to assess the concentration of pollution in the air and therefore cannot adequately measure those pollutants which are expressed in ambient concentrations.” The court continued: “Thus, the plaintiffs have made the requisite likelihood of success showing as to their NEPA claim . . . BLM cannot rely on EISs that lack air pollution and ozone level statistics.” Similarly, the court determined that plaintiffs made a showing of success on the merits for their National Historic Preservation Act and Federal Land Policy and Management Act (FLMPA) claims because BLM’s failure to take into account the effect of air pollution on areas outside of Nine Mile Canyon made it unable to determine if the lease sale had the potential “to cause effects on historic properties.”

² As explained in the Secretary’s February 6 memorandum to the BLM State Director: “There has been considerable controversy surrounding this lease sale, including questions about the degree of coordination between the BLM and other Federal agencies, including the National Park Service, and the adequacy of the environmental review and analysis performed in connection with certain parcels as well as the underlying Resource Management Plans. On January 17, 2009, a Federal district court issued a Temporary Restraining Order enjoining issuance of oil and gas leases for 77 of the parcels offered. Given the concerns raised about the adequacy of the consideration given to important values many members of the public associate with these 77 parcels, such as sensitive landscapes and cultural resources, and my belief that the issues raised merit further review, I am directing you to withdraw the 77 parcels that were covered by the January 17, 2009, Temporary Restraining Order from further consideration in this lease sale.”

³ In addition to Deputy Secretary Hayes, the review team included Acting BLM Director Mike Pool and Acting National Park Service Director Dan Wenk. Messrs. Pool and Wenk contributed to the findings and recommendations, but Mr. Hayes, as the team leader, has adopted the findings and recommendations as his own.

⁴ This practice had been memorialized in a Memorandum of Understanding executed in 1993. The MOU had expired, but the practice continued to be followed on a routine basis, as illustrated by the August pre-notification of the proposed fall lease sale.

⁵ See [Attachment A](#) (the attached maps show, in blue, the parcels adjacent to the National Park units that were publicly announced for auction, but which were removed prior to the auction after NPS strongly objected and public attention was drawn to proposed oil and gas development immediately adjacent to the parks).

⁶ See generally Attachment B (Memorandum from Regional Director, Intermountain Region, NPS to Director, Utah State Office, BLM (Nov. 25, 2008)).

⁷ See Attachment C.

⁸ See Attachment D.

⁹ See Attachment E.

¹⁰ The facilitator's report on the February 11, 2009 meeting is not attached; it is captioned as "protected from disclosure: deliberative process, attorney-client communication."

¹¹ See Attachment F (map depicting the location of the 77 parcels at issue).

¹² The Moab RMP identified 266,471 acres as having wilderness characteristics, but it did not "select" the large majority of that acreage (218,724) to be managed for their wilderness characteristics. See Moab RMP at page 28. Likewise, the Vernal RMP identified 277,596 acres as having wilderness characteristics, but it did not select the majority of that acreage (171,418 acres) to be managed for their wilderness characteristics. The Price RMP identified 937,440 acres as having wilderness characteristics, but it did not select the large majority of that acreage (840,330 acres) to be managed for their wilderness characteristics.

¹³ A large number of protests are being lodged against leasing decisions in this area. By way of example, a significant concentration of protests have been lodged against proposed leases on BLM lands that are west of Arches National Park. Many of these lands have compelling landscape characteristics and are heavily used for recreational purposes.

¹⁴ The Mineral Leasing Act provides that all lands subject to the MLA "which are known or believed to contain oil or gas deposits may be leased by the Secretary [of the Interior]." 30 U.S.C. 226(a)(emphasis added). The Supreme Court has held that the MLA gives the Secretary broad discretion not to offer an oil and gas tract for leasing. *Udall v. Tallman*, 380 U.S. 1,4 (1965). More recently, the U.S. Court of Appeals for the Ninth Circuit has held that refusing to issue leases is a legitimate exercise of the Secretary's discretion under the MLA. *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 123-40 (9th Cir. 1988). See also *Marathon Oil Co. v. Babbitt*, 966 F. Supp. 1024 (D. Colo. 1997), *aff'd*, 1999 U.S. App. LEXIS 123 (10th Cir.), The IBLA has expressly held that lands identified for oil and gas leasing in an RMP are open for permissible uses, and thus BLM has no duty to offer them for lease, even when BLM has received a pre-sale non-competitive offer to lease. Richard D. Sawyer, 160 IBLA 158, 163 (2003).

¹⁵ We also are recommending that the acting Director of the National Park Service identify NPS officials who will be made available to work with the BLM team with regard to evaluating potential impacts that leasing activity may have on National Park units. As with the BLM team, these individuals should not have had prior involvement in this matter.

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

WESTERN WATERSHEDS PROJECT,
et al.,

Plaintiffs,

vs.

RYAN K. ZINKE, Secretary of the Interior, *et al.*,

Defendants.

Case No. 1:18-cv-00187-REB

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO SEVER AND TRANSFER
[ECF No. 12]**

INTRODUCTION

Plaintiffs Western Watersheds Project and the Center for Biological Diversity’s (collectively, “Plaintiffs”) response to Defendants’ motion to transfer concedes, as it must, that the Plaintiffs are challenging actions that occurred entirely outside of this district, several of which were challenged in a separate lawsuit in the District of Montana on the very same day that Plaintiffs filed suit. While the plaintiffs in each of those cases are different, litigating separate cases challenging the same government actions and involving essentially the same legal claims would be a waste of judicial resources. Plaintiffs also cannot justify proceeding in this district when the actions challenged all occurred in, or relate to, actions or land in other districts. They argue that the local interest should be of lesser consideration in this case because their suit challenges common legal violations across multiple lease sales. But they ignore that any court decision regarding the particular lease sales will have the greatest impact, both environmental and economic, on the communities in the districts where the leases are located. The interests of the Plaintiffs do not override those interests.

Plaintiffs’ primary argument appears to be that a court in this district has accepted this sort of pleading from Plaintiff Western Watersheds Project before and therefore should do so again. *See* Pls’ Br. Opposing Mot. to Sever/Transfer (“Pls’ Br.”) at 2 (ECF No. 25) (citing *W. Watersheds Project v. Salazar*, Civ. No. 08-516-E-BLW, 2009 WL 1299626 (D. Idaho May 7, 2009); *W. Watersheds Project v. Schneider*, No. 1:16-cv-83-BLW, 2017 WL 874568 (D. Idaho Mar. 3, 2017)). Those cases are distinguishable, however, because at least some of the challenged final actions related to lands in Idaho. *See W. Watersheds Project*, 2009 WL 1299626, at *1. Further, both cases involved resource management plans (“RMPs”), general plans that affect large areas for which the area of local interest is not easily defined. *See W. Watersheds Project*,

2009 WL 1299626, at *3, *W. Watersheds Project*, 2017 WL 874568, at *3-4. This case, in contrast, involves oil and gas leases, which are much more discrete actions and are confined to particular geographic areas. In other cases, which Plaintiffs ignore, courts in this district have transferred cases involving similar discrete actions to courts in the geographic region where the authorized actions would occur. *See W. Watersheds Project v. Salazar*, Civ. No. 08-cv-435-E-BLW, 2010 WL 375003, at *3 (D. Idaho Jan. 25, 2010) (severing and transferring challenges to grazing permits regarding lands in Nevada to the District of Nevada); *W. Watersheds Project v. Schneider*, No. 1:13-cv-261-EJL, 2014 WL 12788740, at *6 (D. Idaho Mar. 13, 2014) (transferring a challenge to a watersheds restoration plan regarding lands in Nevada to the District of Nevada). Thus, in appropriate circumstances, courts in this district have transferred claims brought by Western Watersheds Project, and the Court should do so here.

Plaintiffs also argue that the Court should not sever and transfer claims involving specific leases because their claims involve alleged “common legal violations” regarding the “approval of oil and gas leases across the greater sage-grouse range.” Pls’ Br. at 2. But the fact that Plaintiffs allege similar violations as to several different lease sales does not mean that those claims need to be heard together in one lawsuit, particularly where another lawsuit involving some of the very same leases is pending elsewhere.

In sum, the interests in avoiding duplicative litigation and litigating claims in districts most affected by the litigation weigh heavily in favor of transfer.

ARGUMENT

I. A Court May Sever Claims To Promote Judicial Efficiency

The Court should first sever the claims against lease sales in different jurisdictions in order to transfer the separate claims to more appropriate venues. *See* Defs’ Mem. in Supp. of

Mot. to Sever and Transfer (“Def. Mem.”) at 8-10 (ECF No. 12-1). Plaintiffs counter that Rule 21 allows severance of parties, but not claims brought by the same party. *See* Pls’ Br. at 9-12. They also argue that their claims cannot be severed because the claims are “broadly-framed.” *Id.* at 9. Neither of these arguments has merit.

Despite the title of Rule 21—“Misjoinder and Nonjoinder of Parties”—the rule also addresses severance of claims. *See* Fed. R. Civ. P. 21 (“The court may also sever any claim against a party.”). Courts have found that the rule “authorizes the severance of any claim, even without a finding of improper joinder, where there are sufficient reasons for ordering a severance.” *Wyndham Assocs. v. Bintliff*, 398 F.2d 614, 618 (2d Cir. 1968) (citing *Sporia v. Pa. Greyhound Lines*, 143 F.2d 105 (3d Cir. 1944)). Severance is appropriate where there are “legal and factual differences” between the various claims. *Delce v. Amtrak & Rescoe Holdings, Inc.*, 180 F.R.D. 316, 319 (E.D. Tex. 1998). Further, “where claims are more properly tried in another forum, severance is the judicial tool of choice.” *Id.* Therefore, there is no merit to the assertion that claims, as opposed to parties, may not be severed or that claims may not be severed for the purpose of transfer.

Indeed, in a prior case brought by Western Watersheds Project, a court in this district severed claims involving grazing permits in Nevada and transferred them to a district court in Nevada. *See W. Watersheds Project v. Salazar*, 2010 WL 375003, at *2-3. The court stated that it had “the authority to sever claims and order their transfer to another district where they could have been brought originally.” *Id.* at *2 (citing 15 Wright, Miller and Cooper, *Federal Practice & Procedure*, § 3845 at p. 64-65 (2007)). The court noted that “Nevada has a substantial interest in resolving challenges to BLM actions within its borders.” *Id.* The court also noted that the District of Idaho was especially congested relative to other courts and, after considering all

relevant factors, transferred the claims involving grazing permits in Nevada to district court in Nevada. *Id.* at *3. The same result should apply here to the claims challenging leases issued by BLM field offices outside of Idaho and the instruction memoranda (“IM”) drafted by officials in Washington, D.C.

Plaintiffs attempt to avoid this result by arguing that their claims are “overarching legal claims” and are “broadly-framed claims” that extend beyond individual jurisdictions. Pls’ Br. at 9. Plaintiffs’ claims must be viewed, however, as challenges to individual lease sales and policy documents in order to be considered valid claims under the Administrative Procedure Act (“APA”). The APA requires that plaintiffs challenge discrete final agency actions and prohibits broad challenges to agency programs. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 893 (1990) (an agency program “cannot be laid before the courts for wholesale correction under the APA”). Thus, in order for their claims to be proper, they must be construed as separate claims challenging discrete lease sales and instruction memoranda. Viewed in this light, they can and should be severed to enable transfer to more appropriate forums. *See W. Watersheds Project v. Salazar*, 2010 WL 375003, at *3 (severing and transferring claims and ordering Western Watersheds Project to revise its complaint to eliminate claims challenging decision by BLM’s Nevada District Offices).

II. The Court Should Grant Transfer In Order to Avoid Having Multiple Courts Resolve Disputes Over the Same Leases and Instruction Memoranda

One major reason that the Court should transfer Plaintiffs’ claims is to avoid conflicting rulings regarding the same leases and instruction memoranda challenged in this case. *See* Def. Mem. at 17-19. The *Montana Wildlife Federation* case filed in the District of Montana also challenges IM 2018-026, as well as the March 2018 Montana lease sale and the March 2018 Wyoming lease sale. *Id.* at 17. Granting Defendants’ motion to sever and transfer would avoid

the need for multiple courts to resolve similar claims involving the same actions and avoid the potential for conflicting judgments. *Id.* at 17-19. Plaintiffs counter that severing and transferring their claims would result in a greater potential for conflicting judgments, *see* Pls' Br. at 15, but their arguments defy logic and common sense.

Plaintiffs assert, without authority, that "transfer to multiple districts would also increase the risks of inconsistent rulings." *Id.* But the fact that different courts may issue rulings that are, in some general sense, inconsistent does not raise the prospect of conflicting judgments that would arise if the same lease sale is subject to two court rulings in different jurisdictions. Rather, the problem of conflicting judgments arises if the same agency action is challenged in multiple courts and those courts order different relief. *See Feller v. Brock*, 802 F.3d 722, 727-28 (4th Cir. 1986). Transferring the claims involving lease sales that are already being challenged in other districts would avoid that problem and also avoid the waste of judicial resources that would occur if two district courts were to litigate claims involving the same lease sales.

Plaintiffs also argue that it would be "much more difficult" for them to litigate their claims if they are severed into multiple lawsuits in different jurisdictions. Pls' Br. at 15. But this outcome is due to the nature of Plaintiffs' complaint. Plaintiffs chose to challenge eight different lease sales in three different states. Comp. ¶¶ 150-225. It should not be surprising that Defendants would seek to break up the claims by challenged lease sale and to have those lease sale challenges heard in districts where the lease sales occurred, particular given that several of the lease sales are already subject to another lawsuit. Plaintiffs nevertheless argue that their claims are not based just on the individual lease sales, but also on the "broad sweep of BLM oil and gas leasing decisions." Pls' Br. at 15. Under the APA, however, Plaintiffs must challenge discrete final agency actions, not BLM programs. *See Lujan*, 497 U.S. at 890-94. Indeed, this

district has previously recognized that a party may not challenge BLM's decision "on a generic basis." *W. Watersheds Project*, 2009 WL 1299626, at *1. Instead, in order for Plaintiffs' challenge to be considered a valid APA challenge, it must be construed as a challenge to "separate decisions of each BLM office." *Id.*

Further, while for purposes of this motion the Plaintiffs paint their suit as a broad challenge to the sage grouse plan amendments as a whole, their claims challenge compliance with individual plans. For example, they argue that they are challenging the "'prioritization' directive" in the plan amendments, but in fact, each plan has its own direction regarding prioritization, and Plaintiffs' claims challenging the leases will be measured against those specific plans. *See, e.g.*, Compl. ¶¶ 150-157 (alleging that the February 2017 Wyoming Lease Sales failed to comply with the prioritization directive in the Buffalo, Casper, and Newcastle Resource Management Plans ("RMP") in the High Plains District and the Cody, Worland, and Lander RMPs in the Wind River/Bighorn Basin District). Likewise, their claim that BLM did not adequately analyze cumulative impacts for the lease sales will be judged based on the environmental analysis supporting each lease sale. Thus, their claims will be judged based on individual leases and plans, as they should be under the APA.

Accordingly, Plaintiffs' challenges to each lease sale must be viewed separately for purposes of APA review, and the challenges to each lease sale should be heard in the jurisdiction most appropriate for each such challenge. While this may be "understandably frustrating" to Plaintiffs, who seek "across-the-board protection" for sage-grouse and its habitat, it is the "normal[] mode of operation of the courts." *Lujan*, 497 U.S. at 894. Thus, Plaintiffs cannot circumvent the rules regarding APA review and avoid transfer by asserting that they seek across-the-board changes to BLM's leasing practices.

III. The Claims Should Be Heard in Jurisdictions Where the Local Communities Will be Most Impacted by the Challenged Actions and Any Court Ordered Relief Regarding those Actions

The claims should be heard in the geographic regions that will be most impacted by the environmental and economic effects of the challenged leasing decisions, as well as any court decisions affecting the leases. *See* Def. Mem. at 13-15. Transfer to districts in those geographic regions is appropriate based on the well recognized interest in having local controversies resolved locally. *See id.* Plaintiffs cannot refute that the communities in the geographic region of the lease sales would be most impacted by the lease sales and the litigation. Instead, Plaintiffs argue that their claims do not raise “local” concerns because their concerns and claims are national in scope. Pls’ Br. at 17.

Plaintiffs miss the point—it is not just their interests that are stake. As demonstrated in Defendants’ brief, courts have routinely held that the impacts of oil and gas leasing in particular are most acutely felt in the geographic region where the leasing will occur and have transferred claims on that basis. Def. Mem. at 13-14. Landowners who may be impacted by the leasing, communities that may benefit from the economic effects of leasing, and even members of Western Watersheds Project and the Center for Biological Diversity in the respective jurisdictions (whose presence in the various jurisdictions is necessary in order for Plaintiffs to have standing) will be most impacted by the challenged actions. Plaintiffs’ concern about BLM’s leasing practices as a whole does not change the fact that leasing decisions have local impact and generate local concern. Further, the fact that the instruction memoranda are national in scope and were drafted by policymakers in Washington, D.C. weighs in favor of transfer of those claims to the District of Columbia. *See* Def. Mem. at 15-16.

Plaintiffs rely heavily on decisions by a court in this district in prior cases brought by Western Watersheds Project. See Pls' Br. at 17-18 (quoting and discussing *W. Watersheds Project*, 2009 WL 1299626, at *3 and *W. Watersheds Project*, 2017 WL 874568, at *3). Those cases, however, are distinguishable because they involved at least some final actions in Idaho. *W. Watersheds Project*, 2009 WL 1299626, at *3. Further, both cases involved RMPs, which provide management structure for large areas of public land. See, e.g., *W. Watersheds Project*, 2009 WL 1299626, at *3. The court in *Western Watersheds Project* reasoned that parts of the public land governed by the RMPs may actually be closer to district courts in other jurisdictions and therefore it was unclear which district should be considered a "home" district. *Id.* Regardless of the validity of that reasoning, it does not apply here. Plaintiffs are challenging leasing decisions, which are confined to more discrete geographic areas and occur entirely within the geographic jurisdiction of particular district courts. Thus, like other cases involving oil and gas leases, the claims should be heard in the geographic area where the leases are located. See, e.g., *S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) (transferring claims involving oil and gas leases in Utah to district court in Utah and explaining that "[t]he controversy is localized in the sense that it involves Utah lands" and "hence there is a strong local interest in having this case heard in Utah").

In cases involving coal mining, courts have likewise transferred cases to courts in the geographic regions where the coal mining operations were taking place. See *WildEarth Guardians v. Jewell*, No. 1:15-CV-2026-WJM, 2016 WL 8577508, at *6–7 (D. Colo. June 17, 2016) (transferring surface mining claims to the District of New Mexico and the District of Wyoming); *WildEarth Guardians v. Jewell*, No. 15-cv-01984-REB, 2016 WL 796189, at *3 (D. Colo. Mar. 1, 2016) (transferring surface mining claims to the District of Utah); *WildEarth*

Guardians v. U.S. Office of Surface Mining Reclamation *Enf't*, No. 1:13-cv-518, 2014 WL 503635, at *1 (D. Colo. Feb. 7, 2014) (transferring surface mining claims to Wyoming, New Mexico and Montana and noting that the “value in having environmental claims litigated where their impacts resonate most deeply eclipses any alleged judicial economy in lumping together in one suit and one venue various locally charged claims”); *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 922 F.Supp.2d 51 (D.D.C. 2013) (transferring claims challenging the “Wright Area” leasing decisions in Wyoming to Wyoming); *WildEarth Guardians v. U.S. Forest Serv.*, No. 1:11-cv-03171-AP, 2012 WL 1415378, at *4 (D. Colo. Apr. 24, 2012) (transferring claims challenging leasing decisions in Wyoming to Wyoming).

Accordingly, the lease claims should be severed and transferred to districts in the geographic regions where the leased lands are located.

IV. Plaintiffs Cannot Rely on Deference to Their Chosen Venue to Support the Litigation of Duplicative Claims that Have No Connection to this District

With the weight of the public interest factors stacked against them, Plaintiffs argue that their choice of forum is entitled to deference. *See* Pls’ Br. at 13-14. But the deference owed to Plaintiffs’ choice of forum can only be stretched so far, and deference can be overcome by showing that “the private and public interest factors clearly point towards trial in the alternative forum.” *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 266 (1981). Here, the relevant factors clearly do point towards having the claims heard in forums that are more closely tied to the challenged actions and, with respect to certain actions, are already subject to suit elsewhere.

Against the weight of the public and private interest factors, Plaintiffs repeatedly state that they chose this district and that Western Watersheds Project is based in Idaho and the Center for Biological Diversity has staff in Idaho. Pls’ Br. at 13-14. But those facts simply do not outweigh the interests in having localized controversies resolved locally and avoiding duplicative

litigation. Moreover, Plaintiffs allege that they have members and staff in several states, including the states where the leasing is occurring. See Compl. ¶¶ 19.A.-B. Such allegations are necessary for the Plaintiffs to establish that they have standing to challenge the individual leasing decisions. See, e.g., *Friends of the Earth v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 181 (2000) (environmental groups' standing must be based on alleged injuries to individual members of the groups who are injured by the challenged action). Despite allegedly having members who were injured by the challenged actions in other jurisdictions, Plaintiffs chose to bring suit in Idaho, where no oil and gas leases at issue have been offered. That choice is not entitled to deference.

V. Efficient Management of the Claims in This Case Is No Substitute for Transfer of the Claims to Appropriate Venues

Recognizing the overlap between the claims in this case and the claims filed in the District of Montana on the same day, Plaintiffs argue that this case can be “managed efficiently” to avoid duplicating the efforts of the courts. See Pls’ Br. at 18-20. No such management would be necessary if the claims were severed and transferred so that similar claims challenging the same BLM actions could be heard together. Moreover, their proposal for managing the case, which Defendants do not agree with, would not result in the efficient resolution of the claims. Instead, Plaintiffs suggest that overlapping claims could be left for later stages of the case. See *id.* at 19-20. Such a resolution would allow two sets of plaintiffs multiple bites at the apple and require the government to litigate the claims twice. That would be prejudicial to the government and would waste scarce judicial resources.

CONCLUSION

For the reasons stated above and in Defendants’ memorandum in support of their motion to transfer, the Court should sever and transfer Plaintiffs’ claims to the U.S. District Courts for the Districts of Montana, Utah, Wyoming, and the District of Columbia.

Respectfully submitted this 29th day of July, 2018,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 2018, I filed a copy of the foregoing Defendants' Reply in Support of Motion to Sever and Transfer [ECF No. 12] electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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**DEFENDANTS' MOTION TO SEVER
AND TRANSFER**

Plaintiffs Western Watersheds Project and the Center for Biological Diversity (together, "Plaintiffs") seek judicial review of eight Bureau of Land Management oil and gas lease sales and two Department of Interior Instruction Memoranda ("IMs"). *See* Complaint, ECF No. 1.

None of these claims relate to lands or activities in Idaho. All eight lease sales, and the agency's

public processes associated therewith, occurred in different judicial districts. Further, three of the eight lease sales as well as one of the IMs are also being challenged in cases pending in the District of Montana. *See Montana Wildlife Fed'n et al v. Zinke et al*, case no. 4:18-cv-00069-BMM, ECF No. 1. *See also Wildearth Guardians et al. v. U.S. Bureau of Land Management et al*, case no. 4:18-cv-00073-BMM.

In order to avoid the potential for inconsistent judgments by multiple district courts, as well as the inefficiency of having multiple courts review the same administrative records and render judgments on the same agency actions, Defendants seek to sever and transfer the Plaintiffs' lease sale challenges to the districts in which the subject lands are located. Thus, all challenges to lease sales in Montana, Utah, and Wyoming should be transferred to the Districts of Montana, Utah, and Wyoming, respectively. Plaintiffs' challenges to IM 2018-026 and IM 2018-034 should be transferred to the District of Columbia because the decision-making processes for those IMs occurred in that district and have nationwide application. Severing and transferring Plaintiffs' claims in this manner will result in a much more efficient resolution of the litigation, will reduce the potential for inconsistent judgments, and will promote the local interest in having localized controversies decided at home.

Respectfully submitted this 29th day of May, 2018,

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**DEFENDANTS' MEMORANDUM IN
SUPPORT OF ITS MOTION TO SEVER
AND TRANSFER**

INTRODUCTION

Plaintiffs Western Watersheds Project and the Center for Biological Diversity (together, “Plaintiffs”) seek judicial review of eight Bureau of Land Management (“BLM”) oil and gas lease sales and two Department of Interior (“DOI”) Instruction Memoranda (“IMs”). *See* Complaint, ECF No. 1 (“Compl.”).¹ None of these claims relate to lands or activities in Idaho. All eight lease sales, and the agency’s public processes associated therewith, occurred in different judicial districts. Further, three of the eight lease sales as well as one of the IMs are also being challenged in another case filed contemporaneously—indeed, on the same day—in the District of Montana. *See Montana Wildlife Fed’n et al v. Zinke et al*, Case No. 4:18-cv-00069-BMM, ECF No. 1, Ex. 1 (“MWF Compl.”);² *see also Wildearth Guardians v. U.S. BLM*, Case No. 4:18-cv-00073-BMM, ECF No. 1, Ex. 2 (“WEG Compl.”).

In order to avoid the potential for inconsistent judgments by multiple district courts, as well as the inefficiency of having multiple courts review the same administrative records and render judgments on the same agency actions, Defendants seek to sever and transfer the Plaintiffs’ lease sale challenges to the districts in which the subject lands are located. Thus, all challenges to lease sales in Montana, Utah, and Wyoming should be transferred to the Districts of Montana, Utah, and Wyoming, respectively. Plaintiffs’ challenges to IM 2018-026 and IM 2018-034 should be transferred to the District of Columbia because the decision-making

¹ This motion is written with the understanding, further clarified through communications with Plaintiffs’ counsel, that Plaintiffs’ current complaint only challenges the BLM activities listed as “Final Actions” in Plaintiffs’ complaint, and does not challenge any of the actions listed as “pending actions” or “cumulative actions.” *See* Compl. ¶ 148 (“Along with IM 2018-026 and IM 2018-034, the Final Actions constitute the ‘Challenged Decisions’ at issue in this Complaint.”).

² We will be filing a similar motion to sever and transfer claims that are not based in Montana in *Montana Wildlife Federation*.

processes for those IMs occurred in that district and have nationwide application. Severing and transferring Plaintiffs' claims in this manner will result in a much more efficient resolution of the litigation, will reduce the potential for inconsistent judgments, and will promote the local interest in having localized controversies decided at home. The table below sets out which agency activities are challenged in this case, any parallel litigation, and the district to which Federal Defendants seek to transfer those challenges.

<i>BLM activity challenged in this case</i>	<i>Also challenged in</i>	<i>Requested Transferee Venue</i>
Montana June 2017 Lease Sale (Compl. ¶¶ 158–66)	<i>Montana Wildlife Federation</i>	District of Montana
Montana December 2017 Lease Sale (Compl. ¶¶ 199–208)	<i>Montana Wildlife Federation, Wildearth Guardians</i>	District of Montana
Montana March 2018 Lease Sale (Compl. ¶¶ 209–18)	<i>Montana Wildlife Federation, Wildearth Guardians</i>	District of Montana
Utah September 2017 Lease Sale (Compl. ¶¶ 186–98)	N/A	District of Utah
Wyoming February 2017 Lease Sale (Compl. ¶¶ 150–57)	N/A	District of Wyoming
Wyoming June 2017 Lease Sale (Compl. ¶¶ 167–76)	N/A	District of Wyoming
Wyoming September 2017 Lease Sale (Compl. ¶¶ 177–85)	<i>Montana Wildlife Federation</i>	District of Wyoming
Wyoming March 2018 Lease Sale (Compl. ¶¶ 219–25)	<i>Montana Wildlife Federation</i>	District of Wyoming
IM 2018-026	<i>Montana Wildlife Federation</i>	District Court for the District of Columbia
IM 2018-034	No	District Court for the District of Columbia

BACKGROUND

I. The Oil and Gas Leasing Process

The Mineral Leasing Act, 30 U.S.C. §§ 181–287, provides the Secretary of the Interior with the authority to offer for lease certain federal minerals, including oil and gas. The Secretary delegated this authority to BLM for onshore minerals. *See* 43 C.F.R. § 3100.0-3. To implement the Mineral Leasing Act, BLM promulgated regulations that govern leasing and development of federal onshore oil and gas on public lands and federal mineral estates. *See* 43 C.F.R. Parts 3100–3180. BLM employs a three-stage decision-making process for managing public lands for oil and gas leasing and development. *See Pennaco Energy, Inc. v. U.S. Dep’t of Interior*, 377 F.3d 1147, 1151–52 (10th Cir. 2004).

First, BLM broadly assesses the presence of minerals and other resources on specified federal lands through the planning process to determine which areas should be open and which closed to potential oil and gas leasing and development, and to determine for open areas which stipulations should be included in any future leases. 43 C.F.R. § 1601.0-5(n); IM 2018-034, Ex. 3. Land use plans—referred to by BLM as resource management plans (“RMPs”)—guide future leasing of federal mineral estates but generally do not authorize any specific projects. *See* 43 C.F.R. § 1601.0-5(n). The RMPs developed by BLM are supported by environmental impact statement (“EISs”) prepared in accord with the National Environmental Policy Act (“NEPA”). The EISs provide an analysis of the potential environmental impacts of oil and gas development and other resource impacts. 43 C.F.R. § 1601.0-6. Once BLM issues an RMP, subsequent, more specific decisions, implementing site-specific projects must conform to the plan. 43 C.F.R. § 1610.6-3(a).

The second stage of the oil and gas management process requires BLM State Offices to hold competitive oil and gas lease sales. 30 U.S.C. § 226(b)(1)(A); *see* 43 C.F.R. Subpart 3120; 43 C.F.R. § 3120.1-2(a). Typically, for each oil and gas lease sale, BLM prepares an environmental assessment under NEPA, which “tiers” to the EIS prepared at the RMP stage. *See* 40 C.F.R. § 1508.28 (Council on Environmental Quality regulations discussing tiering under NEPA). Lands that may be available for leasing in a competitive lease sale include: lands formerly subject to oil and gas leases that have terminated, expired, been canceled or relinquished; lands selected by the authorized officer; and lands included in an expression of interest. 43 C.F.R. § 3120.1-1(a)–(f). Once the agency identifies which parcels it intends to lease, it holds a competitive lease sale, where the parcels are auctioned and sold to the highest bidder. *Id.* §§ 3120.5-1, 3120.5-3. BLM state offices post the final sale notice with a list of the offered parcels prior to the sale date. *See* 43 C.F.R. § 3120.4-2. Any entity may protest a parcel offered for sale within ten days of posting of the final sale notice. *See* IM 2018-034.

The third stage of the resource development process occurs following issuance of oil and gas leases, when BLM determines whether, and under what conditions, it will approve specific development proposals for the leases. 30 U.S.C. § 226(g); 43 C.F.R. § 3162.3-1 (2017). Before an oil and gas company can do any drilling or preliminary surface disturbance, it must submit an application for a permit to drill, at which point BLM undertakes additional environmental review to ensure NEPA compliance and, if it approves the action, imposes any necessary conditions of approval. *See* 43 C.F.R. § 3162.3-1; *see also Amigos Bravos v. U.S. Bureau of Land Mgmt.*, Nos. 6:09-cv-00037-RB-LFG; 6:09-cv-00414-RB-LFG, 2011 WL 7701433 *5 (D.N.M. Aug. 3, 2011).

II. Resource Management Plan Amendments

Beginning in December 2011, BLM and the U.S. Forest Service (“USFS”) (launched a national planning process to incorporate sage-grouse conservation measures into their land management plans in ten western states. *See* 76 Fed. Reg. 77,008 (Dec. 9, 2011). For purposes of the planning process, sage-grouse habitat was divided into two regions: (1) the Great Basin (or Western) Region, covering California, Nevada, Oregon, Idaho, and parts of Utah and Montana, and (2) the Rocky Mountain (or Eastern) Region, covering North and South Dakota, Wyoming, Colorado, and parts of Utah and Montana. *Id.* at 77,009.

In September 2015, BLM and USFS completed the planning process by each issuing two records of decision (“RODs”) approving the Plan Amendments for the Great Basin Region and the Rocky Mountain Region. *See* 80 Fed. Reg. 57,639 (Sept. 24, 2015) (notice of BLM’s Rocky Mountain Region ROD).³ Altogether, the Plan Amendments approved, amended, or revised ninety-eight land use plans to establish increased protections for sage grouse. Compl. ¶ 49. Eight suits were brought challenging the sage-grouse amendments.⁴

³ *See also* 80 Fed. Reg. 57,633 (Sept. 24, 2015) (notice of BLM’s Great Basin Region ROD); 80 Fed. Reg. 57,333 (Sept. 23, 2015) (notice of the Forest Service’s Great Basin Region ROD); 80 Fed. Reg. 57,332 (Sept. 23, 2015) (notice of the Forest Service’s Rocky Mountain Region ROD).

⁴ *Western Exploration, LLC v. U.S. Dep’t of Interior*, No. 3:15-cv-491 (D. Nev.) (filed Sept. 23, 2015) (challenging the Plan Amendments for the Nevada and Northeastern California sub-region); *Otter v. Jewell*, No. 1:15-cv-1566 (D.D.C.) (filed Sept. 25, 2015) (challenging the Plan Amendments for the Idaho and Southwestern Montana sub-region); *Wyoming Stock Growers Association v. U.S. Department of the Interior*, No. 2:15-cv-181 (D. Wyo.) (filed Oct. 14, 2015); *Wyoming Coalition of Local Govs. v. U.S. Dep’t of Interior*, No. 2:16-cv-41 (D. Wyo.) (filed Mar. 1, 2016); *Herbert v. Jewell*, No. 2:16-cv-101 (D. Utah) (filed Feb. 4, 2016); *WWP v. Schneider*, No. 16-cv-83 (D. Idaho) (filed Feb. 25, 2016) (challenging multiple plan amendments); *American Exploration & Mining Ass’n v. U.S. Dep’t of the Interior*, No. 16-cv-737 (D.D.C.) (same); and *W. Energy Alliance v. U.S. Dep’t of the Interior*, No. 16-cv-112 (D. N. Dakota) (filed May 12, 2016) (same).

In October of 2017, BLM announced its intent to consider additional amendments to some or all of the ninety-eight RMPs that were previously amended to address sage grouse, in part to respond to the court’s decision on the merits in *Western Exploration, LLC*. See *Notice of Intent*, BLM, 82 Fed. Reg. 47248–49 (Oct. 11, 2017); *W. Expl., LLC v. U.S. Dep’t of the Interior*, 250 F. Supp. 3d 718, 749 (D. Nev. 2017). Draft EISs for additional plan amendments in Idaho, Utah, and Wyoming became available for public comment on May 4, 2018. See 83 Fed. Reg. 19,801 (Idaho); 83 Fed. Reg. 19,803 (Utah); 83 Fed. Reg. 19,810 (Wyoming).

STANDARD OF REVIEW

I. Motion to Sever Under Federal Rule of Civil Procedure 21

Under Rule 21, a court may “sever any claim against a party.” Fed. R. Civ. P. 21. Courts have broad discretion in determining whether to sever claims under Rule 21. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1297 (9th Cir. 2000); 4-21 Moore’s Federal Practice Civil § 21.05 (2010) (stating that courts have “great discretion under Rule 21 to restructure an action to promote the efficient administration of justice”); 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1689 (3d ed. 2001) (“Questions of severance are addressed to the broad discretion of the district court.”). A complaint that advances one or two legal theories applied to multiple, unique factual situations will be treated as pleading multiple claims that may be severed under Rule 21. *Coughlin v. Rogers*, 130 F.3d 1348, 1350–51 (9th Cir. 1997).

II. Motion to Transfer Venue Under 28 U.S.C. § 1404(a)

This Court has broad discretion under 28 U.S.C. § 1404(a) to transfer claims to another judicial district based on considerations of convenience and fairness. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29–30 (1988); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834,

843 (9th Cir. 1986). Section 1404(a) provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). In determining whether an action should be transferred under section 1404(a), courts employ a two-step analysis. First, a court considers whether the action could have originally been brought the proposed transferee districts. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985); *Inherent.com v. Martindale-Hubbell*, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006). Second, a court undertakes an individualized, case-by-case consideration of convenience and fairness, taking into account the convenience of the parties and the interests of justice. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000).

In the Ninth Circuit, the “interest of justice” factor requires the consideration of several public interests, including: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized controversies decided at home; (3) the interest in having a case heard in the state that is most familiar with the governing law; (4) the relevant public policy of the forum state; (5) the desire to avoid multiple litigation from a single transaction and to promote consistency among court rulings that affect the development of the case; and (6) the relative intensity in the two jurisdictions of any local interests that the litigation might implicate. *See Decker Coal Co.*, 805 F.2d at 843; *id.* (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)); *GNC Franchising*, 211 F.3d at 498–99; *IDACORP, Inc. v. Am. Fiber Sys., Inc.*, No. 1:11-cv-00654-EJL, 2012 WL 4139925, at *3 (D. Idaho Sept. 19, 2012). Many courts consider the interest of justice to be the most important factor in the analysis. *See Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure*, § 3854 (2008) (“Indeed, a number of federal courts have considered this factor decisive – outweighing the other statutory

factors – in ruling on a change of venue motion even though the convenience of the parties and witnesses pointed in a different direction.”).

The “convenience” factor typically requires that a court consider a number of private interests, most of which relate to witnesses, including: (1) the relative ease of access to sources of proof; (2) the cost of obtaining witnesses; (3) the availability of compulsory process for attendance of unwilling non-party witnesses; and (4) the possibility of a view of the premises, if a view would be appropriate to the action. *See Decker Coal Co.*, 805 F.2d at 843 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)).

ARGUMENT

The Court should sever Plaintiffs’ claims regarding oil and gas lease sales for each of the lease sales challenged here and transfer those claims to the district court in the state affected by the sale. Because two separate litigants have chosen to file challenges to the same four lease sales in two separate courts,⁵ and this Court has no geographical nexus and minimal interest in the issues in this case, Defendants respectfully submit that severing and transferring the cases in this manner would avoid inconsistent judgments, promote judicial economy, and allow as many claims as is practicable, given the scope of the overall litigation, to be litigated in a district court in the state affected by the particular lease sales.

I. The Court Should Sever Plaintiffs’ Claims

The Court should sever Plaintiffs’ claims relating to challenged lease sales in Montana, Utah, and Wyoming into three separate actions because they relate to separate lease sales in three different states. The Court should also sever Plaintiffs’ claims relating to IMs 2018-026 and IM

⁵ *See* table, *supra* at 2, noting that the December 2017 and March 2018 lease sales in Montana and the September 2017 and March 2018 sales in Wyoming have also been challenged in the District of Montana.

2018-034 into one separate action. Severing these claims will allow the parties to litigate, and the courts to adjudicate, the cases in an efficient manner and therefore will promote judicial efficiency and avoid wasting substantial resources.

Rule 21 “authorizes the severance of any claim, even without a finding of improper joinder, where there are sufficient other reasons . . . [such as where] they arise from different factual situations,” as the claims in this case do. *Khanna v. State Bar of Cal.*, No. C-07-2587 EMC, 2007 WL 2288116, at *2 (N.D. Cal. Aug. 7, 2007). Rule 21 can also be used “to sever claims of parties, otherwise permissibly joined, for purposes of convenience, to avoid prejudice, or to promote the expeditious resolution of the litigation.” *Ferger v. C.H. Robinson Worldwide, Inc.*, No. C06-174RSL, 2006 WL 2091015, at *1 (W.D. Wash. July 25, 2006). “Even when venue is proper as to all defendants, the court may sever a claim against a party and transfer it to a more convenient forum.” 7 Wright & Miller § 1689.

Severance is appropriate because each of the eight lease sales was the product of a distinct administrative process that should be considered on its own administrative record, and that administrative process separately occurred in each state. Furthermore, the lease sales for each state are specific to the public lands they govern and were created through a process that involved the applicable states, counties, and entities with an interest in that particular state. Additionally, the needless complexity that would accompany any effort to litigate all of Plaintiffs’ claims in a single civil action warrants severance into cases of a more manageable size. If the claims are not severed and transferred, as set forth below, it will take inordinate amounts of time and effort by the parties and the Court to litigate Plaintiffs’ claims as to all of the lease sales, and that litigation will occur outside of the sight and reach of the numerous state and local stakeholders who participated in the underlying administrative processes.

The Court should also sever Plaintiffs' claims relating to IM 2018-026 and IM 2018-034 into one case, separate from the lease sale claims. Plaintiffs' challenges to BLM instruction memoranda raise issues of subject-matter jurisdiction that are not raised by Plaintiffs' challenges to lease sales, which can be briefed separately in a motion to dismiss after these cases are transferred. *See Anderson v. McCarthy*, No. C 16-00068 WHA, 2016 WL 6834215, at *7 (N.D. Cal. Nov. 21, 2016) (agency guidance not final agency action). Defendants are not raising these issues now, but mention them to point out that even if the Court does not grant our motion to sever, the claims challenging the IMs will likely be on a different procedural track than claims challenging lease sales. Furthermore, if claims challenging the IMs go forward, those challenges will be based on separate administrative records than challenges to lease sales.

Accordingly, Defendants respectfully request that the claims be severed.

II. Challenges to Lease Sales in Montana, Utah, and Wyoming Should be Transferred to those Districts and Challenges to Instruction Memoranda Should be Transferred to the District of Columbia

Should the Court agree that severance is appropriate, it should do so in an order that also transfers the claims to the judicial districts where the land that is the subject of each lease sale is located, and that transfers the IM challenges to the District Court for the District of Columbia. The overwhelming localized interest in lease sales favors transfer, and the principles of judicial economy favor all challenges to the same lease sales or IMs being heard in the same forum.

A. Venue is Proper in Each of the Districts Where Parcels that are the Subject of those Sales are Located, and in the District of Columbia for Challenges to the IMs

Venue is proper in each of the judicial districts in which the parcels subject to each sale are located, and in the District Court for the District of Columbia for challenges to the IMs.

Under 28 U.S.C. § 1391(e), a civil action against an official or agency of the United States may be brought in any judicial district in which

(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.

Id. § 1391(e)(1).

Transferring claims related to each lease sale to the district in which the parcels are located meets both prongs (A) and (B) because BLM has offices in each district, the decisionmaking process occurred in the district where the parcels are located, and the property subject to each sale is located in each of these districts. With regard to 28 U.S.C. § 1391(e)(1)(A), officers and agencies of the United States can have more than one residence. For purposes of this litigation, BLM is a resident of Montana, Utah, and Wyoming because it has offices in all three states and manages land and resources in all three states. *See, e.g., Forest Guardians v. U.S. Dep’t of Interior*, 416 F.3d 1173, 1176 n.4 (10th Cir. 2005) (noting that BLM has offices in California and Wyoming); *see also Dehaemers v. Wynne*, 522 F. Supp. 2d 240, 248 (D.D.C. 2007).

Moreover, the decision-making process for each lease sale occurred in the state office offering the sale. *See* 43 C.F.R. § 3120.1-2(a). “In cases brought under the [Administrative Procedure Act (“APA”)], courts generally focus on where the decisionmaking process occurred to determine where the claims arose.” *See Nat’l Ass’n of Homebuilders v. U.S. EPA*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009). For this same reason, transfer of claims challenging IM 2018-026 and IM 2018-034 to the District Court for the District of Columbia is also proper, because BLM has offices in the District of Columbia, and because according to Plaintiffs’ own

allegations, the decision-making process for the IMs occurred in DC. See Compl. ¶¶ 91–93, 96–97.

In addition to BLM’s residency in each state, the “property that is the subject of the action” – i.e., the parcels subject to each lease sale – are located in each state, thus making venue appropriate under 28 U.S.C. § 1391(e)(1)(B). The “touchstone” for application of 28 U.S.C. § 1391(e)(1)(B) is whether the action “center[s] directly on the real property, as with actions concerning the right, title[,] or interest in real property.” *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, No. C 08-05646 JSW, 2009 WL 1025606, at *2–*3 (N.D. Cal. Apr. 14, 2009) (transferring case challenging BLM’s adoption of a land use plan for property in another district, to the other district). That requirement is satisfied here because Plaintiffs challenge and seek to vacate BLM’s issuance of oil and gas leases, which involve the acquisition of a “real property interest.” See *Ferguson v. Lieurance*, 565 F. Supp. 1013, 1015 (D. Nev. 1983) (transferring case challenging rejection of oil and gas lease applications for parcels in Wyoming to the District of Wyoming because lease sales involve the acquisition of a “real property interest.”).⁶

⁶ Although not essential, Plaintiffs also have offices in at least some of these districts. WWP has offices in Wyoming and Montana. See Western Watersheds Project, Contact Us, <https://www.westernwatersheds.org/contact-us/> (last accessed May 16, 2018). Center for Biological Diversity has an office in Washington, DC, see <http://www.biologicaldiversity.org/about/contact/> (last accessed May 22, 2018) and a Utah Field Campaigner, <http://www.biologicaldiversity.org/about/staff/index.html#dseed> (last accessed May 16, 2018).

B. The Public Interest Factors Favor Transfer

1. The Local Interest in Having Localized Controversies Decided at Home and the Relative Intensity of Local Interests Both Favor Transfer

Each of the proposed transferee districts have far greater connections connected to those sales than the District of Idaho. “Land is a localized interest because its management directly touches local citizens.” *S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) (citing *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 71 (D.D.C. 2003)). *Cf. S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231, 234 (D.D.C. 2012) (in case challenging resource management plans, “[b]ecause this action concerns real property situated in Utah, all parties conclude that this suit could have been brought in the District of Utah.”). As discussed above, lease sales in particular “center directly on real property,” *Center for Biological Diversity*, 2009 WL 1025606, *2–*3 because they involve the conveyance of a “real property interest.” *Ferguson*, 565 F. Supp. at 1015.

Both the environmental and economic effects of the lease sales will be felt in the districts in which the parcels that are subject to the sales are located. In *Southern Utah Wilderness Alliance v. Norton*, a court in the District of Columbia held that a case challenging a lease sale in Utah should be transferred to the District of Utah because the environmental injuries alleged by the plaintiffs “would be most particularly felt in Utah, and thus . . . the courts of Utah would have a clear interest in resolving the dispute.” No. Civ.A. 01-2518(CKK), 2002 WL 32617198, *88 (D.D.C. April 27, 2004). Similarly here, Plaintiffs allege that “these oil and gas leases threaten substantial degradation and fragmentation of key sage-grouse habitats” and “[e]nergy development has well-documented adverse effects on sage grouse survival, breeding, and behavior.” Compl. ¶¶ 11, 30. The impacts that Plaintiffs allege would be most closely felt where

“[s]urface development” would occur. *See Id.* ¶ 30. The challenged lease sales would also have “substantial impacts on the local economy,” *see WildEarth Guardians v. U.S. Forest Serv.*, 2012 WL 1415378, *4 (D. Colo. April 24, 2012), since the states in which the oil and gas is produced receive about fifty percent of the federal royalty, and generally provide the work force. *See* 30 U.S.C. § 191 (royalties). *See also Sierra Club v. U.S. Dep’t of State*, No. C 09-4086 SI, 2009 WL 3112102, at *3–5 (N.D. Cal. Sept. 23, 2009) (transferring case based on the interest in having cases heard in the region affected by the action being challenged); *Ctr. for Biological Diversity v. Kempthorne*, No. C-07-0894 EDL, 2007 WL 2023515, at *5–7 (N.D. Cal. July 12, 2007) (same).

In contrast, this district has no connection to any completed lease sale challenged in Plaintiffs’ complaint. The only lease sale in Idaho referenced in Plaintiffs’ complaint is an upcoming June 2018 oil and gas lease sale for parcels in Idaho and Utah, *see* Compl. ¶¶ 230–39, but that sale does not provide a basis for venue because that sale is not final agency action and, therefore (as Plaintiffs concede), it is not challenged in the operative complaint.⁷ *See* Compl. ¶ 284 (“The Pending Actions . . . are appropriate for judicial review . . . once they become Final Actions.”). Thus, any claim challenging an Idaho lease sale is unripe, and the District of Idaho does not have any interest in either the lease sales challenged in this case or the application of the challenged IMs to the challenged lease sales. Additionally, there have not been any lease sales in the District of Idaho since July of 2016, so there is less of a local interest in lease sales generally in this District than in the Districts of Montana, Utah, and Wyoming. *See* Bureau of Land

⁷ Even if an impending but as-of-yet non-final lease sale could serve as grounds for asserting venue in this District—and it cannot—Plaintiffs’ reliance on the proposed Idaho lease sale would still be misplaced because that proposed sale has been deferred, and thus is not imminent. *Ex.* 4.

Management, *Idaho Oil and Gas Lease Sales*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/idaho> (last accessed May 25, 2018).

This lack of connection to a challenged lease sale in Plaintiffs' chosen forum weighs in favor of transfer to the districts where each sale occurred. *See S. Utah Wilderness v. Norton*, No. CIV.A. 01-2518(CKK), 2002 WL 32617198, at *3 (D.D.C. June 28, 2002) (transferring case challenging lease sales from the District of Columbia to Utah in part because "Plaintiffs have failed to demonstrate a substantial link between their choice of forum . . . and the facts of the controversy."). There, as here, "[t]he relationship between the challenged agency action – the sale and issuance of . . . oil and gas leases – . . . and this District is attenuated at best." *Id.*; see also *Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 13 (D.D.C. 2000) ("the Court recognizes the diminished consideration accorded to a plaintiff's choice of forum where . . . that forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter.") (collecting cases).

The public interest in having the issues raised by these claims decided in the geographic region most directly impacted by the court's decision favors transferring these claims to the "home" forums. *See Decker Coal Co.*, 805 F.2d at 843 (recognizing the "local interest in having localized controversies decided at home" (quoting *Piper Aircraft*, 454 U.S. at 241 n.6)). These lease sales have no connection to this district and therefore the challenges to them should be moved to the districts in which the relevant parcels are located.

2. Challenges to the IMs Should be Transferred to the District Court for the District of Columbia

In contrast to the localized decision-making process and localized interests implicated by the lease sales, IM 2018-026 and IM 2018-034 implicate issues of national scope and are national policy memoranda authored in Washington, D.C. "In cases brought under the APA,

courts generally focus on where the decisionmaking process occurred to determine where the claims arose.” See *Nat’l Ass’n of Homebuilders*, 675 F. Supp. 2d at 179 (citing *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 25 (D.D.C. 2002); *Akiachak Native Cmty. v. Dep’t of Interior*, 502 F. Supp. 2d 64, 68 (D.D.C. 2007)). According to Plaintiffs’ own allegations, the decision-making process for the IMs occurred in Washington, D.C. See Compl. ¶¶ 91–93, 96–97. Furthermore, BLM has offices in the District of Columbia, and both the Secretary of the Interior and the Deputy Secretary of the Interior reside in Washington, D.C.

There is also not a clear local interest in the IMs in this District. There have not been any lease sales in the District of Idaho since July of 2016. See Bureau of Land Management, *Idaho Oil and Gas Lease Sales*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/idaho> (last accessed May 25, 2018). This means that the challenged IMs have not been applied to any lease sales in Idaho. In contrast to the localized interest in the lease sales, the IMs are matters of national interest because they guide lease sales across the country. See Compl. ¶¶ 103 (alleging that “IM 2018-026 directed that BLM Field Offices may ignore the prioritization requirement of the Sage-Grouse Plan Amendments at the leasing stage.”); 109 (alleging that “BLM is now implementing IM 2018-034 in its administration of federal minerals and oil and gas leasing on public lands, . . .”). This lack of any localized interest in this forum, coupled with the location of the decision-making process in Washington, D.C., weighs in favor of transfer. *C.f. Babbitt*, 104 F. Supp. 2d at 13 (declining to transfer case challenging gas development in the National Petroleum Reserve in Alaska as a “matter of national interest” and noting that the Secretary of Interior, as well as two of the policy makers involved in the decision-making process, were located in the District of Columbia).

3. Transfer will Promote Consistency Among Court Rulings

Transfer of certain claims is necessary to avoid inconsistent judgments. In both this case and in *Montana Wildlife Federation*, both plaintiffs challenge IM 2018-026, the December 2017 and March 2018 lease sales in Montana, and the March 2018 lease sale in Wyoming under FLPMA, NEPA, and the APA. *Compare* Compl. ¶¶ 199–225, 277–307, 326–31 with *MWF* Compl. ¶¶ 55 & n.38, 61–66, 76–84. A third group of plaintiffs also challenge the December 2017 and March 2018 lease sales in *Wildearth Guardians v. BLM* under NEPA. *See WEG* Compl. ¶¶ 50–81. The legal theories that both plaintiffs raise are also very similar. Both plaintiffs allege that BLM violated FLPMA in offering the lease sales or in approving IM 2018-026 because, they allege, neither the sales nor IM 2018-026 are in conformance with the sage-grouse RMP amendments approved in September of 2015. *Compare* Compl. ¶ 282, 327–28 with *MWF* Compl. ¶¶ 81–83, 88–89. All three groups of plaintiffs allege that BLM violated NEPA by failing to consider a range of reasonable alternatives to the sales, failing to consider the direct, indirect, and cumulative impacts of the sales, and failing to prepare an Environmental Impact Statement. *Compare* Compl. ¶¶ 304–305 with *MWF* Compl. ¶¶ 92, 98, 102–04, 108–10 and *WEG* Compl. ¶¶ 64–81. Thus, not only do the facts and records overlap for these cases, but many of the same legal theories are being pressed as well, leading to a risk of conflicting court rulings and judgments if motions to transfer are not granted.⁸

In these circumstances, the interests of justice strongly favor a single court hearing similar claims regarding the same lease sales to avoid the risk of conflicting judgments. *See*

⁸ As mentioned above, Defendants will also file an analogous motion to sever and transfer in *Montana Wildlife Federation*. This means that we will seek to transfer claims in *Montana Wildlife Federation* relating to lease sales in Wyoming to the District of Wyoming, and challenges to policy memoranda in *Montana Wildlife Federation* to the District of Columbia, among other relief.

Feller v. Brock, 802 F.2d 722, 727-28 (4th Cir. 1986) (“Prudence requires that whenever possible, coordinate courts should avoid issuing conflicting orders.”); *see also Church of Scientology v. U.S. Dep’t of the Army*, 611 F.2d 738, 750 (9th Cir. 1979) (recognizing the need to “avoid the embarrassment of conflicting judgments”). This is because the imposition of conflicting orders requires the subject party “to choose between coordinate courts and to knowingly violate an outstanding court order,” thus “forc[ing] the [subject party] to run a serious risk of contempt sanctions,” creating “morale and credibility problems,” and imposing a “hardship” on the subject party that “implicates basic principles of judicial obedience.” *Feller*, 802 F.2d at 727 (citations omitted). Transferring claims challenging each lease sale or IM to the same venue will promote judicial economy by permitting consolidation and as noted will avoid the risk of inconsistent judgments. As the Supreme Court has instructed, “[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy, and money that section 1404(a) was designed to prevent.” *Cont’l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960); *see also Chrysler Capital Corp.*, 663 F. Supp. at 484 (“[T]he Court finds that the interest of justice will be served by transferring this case . . . so that one court can resolve the entire controversy.”).

Faced with similar circumstances, courts in this circuit have routinely granted motions to transfer so that cases which would qualify as related if filed in the same judicial district can be adjudicated by the same court. *See, e.g., Hawkins v. Gerber Prods. Co.*, 924 F. Supp. 2d 1208, 1214 (S.D. Cal. 2013) (granting motion to transfer based on the interest of justice to a court where similar actions were pending in order to conserve resources and avoid “the possibility of inconsistent judgments”); *FTC v. Watson Pharms., Inc.*, 611 F. Supp. 2d 1081, 1089 (C.D. Cal. 2009) (granting motion to transfer to alleviate “the risk of conflicting judgments”); *Williams v.*

Lincoln Nat'l Life Ins., 121 F. Supp. 3d 1025, 1037 (D. Or. 2015) (granting motion to transfer to conserve resources and avoid the potential for inconsistent judgments); *Callaway Golf Co. v. Corp. Trade Inc.*, No. 09-cv-384 L(POR), 2010 WL 743829, at *7-8 (S.D. Cal. Mar. 1, 2010) (same). We ask that this Court do the same.

4. Transfer Would Relieve Court Congestion in this District

The public interest in judicial economy also weighs heavily in favor of transfer. In an age of increasingly congested federal dockets, it makes little sense for multiple courts to hear challenges to the same lease sales. This is particularly so here, where the Districts of Montana and Wyoming are comparatively less congested, with 412 and 217 filings per judgeship, as opposed to the District of Idaho's 518. See Administrative Office of the U.S. Courts, *U.S. District Courts- Federal Court Management Statistics—Profiles*, <http://www.uscourts.gov/file/24036/download>, (Dec. 31, 2017).⁹ Thus, transfer would not only alleviate congestion in this Court, but may lead to faster resolution of these claims in the transferee courts. See *Control ESI, Inc. v. Univ. of Denver*, 2012 WL 6608822, *2 (D. Ariz. Dec. 18, 2012) (transferring case to court with less congested docket in part because the “case can expect a speedier resolution” in the transferee court.).

5. Familiarity with the Governing Law and Public Policy of the Forum State are Neutral Factors

This Court's familiarity with governing laws is a neutral factor “when the issues involve[] federal law because courts follow the principle that all federal courts are “competent to decide federal issues correctly.” *Defs. of Wildlife v. Salazar*, No. CV 12-1833 (ABJ), 2013 WL 12316872, at *4 (D.D.C. Apr. 11, 2013) (citing *Sierra Club v. Flowers*, 276 F. Supp. 2d at 70

⁹ The District of Utah is about as congested as Idaho, with 525 filings per judgeship. See *id.*

n.6, *In re Korean Air Lines Disaster of Sept. 1, 1983*, 829 F.2d 1171, 1175 (D.C. Cir. 1987)) (internal quotation marks omitted). Because this is an issue of federal law, any public policy of the state of Idaho is also neutral.

C. The Convenience Factors are Neutral

The convenience factors considered by courts when determining whether to transfer a case are neutral here. As this case is brought under the APA and will be decided on the basis of an administrative record, the convenience factors are not particularly relevant. *See, e.g., Huffman*, 2011 WL 322661, at *5 (granting transfer motion and noting that the “time and expense devoted to the discovery and trial processes . . . are neutral inasmuch as the judicial inquiry in these cases will be based exclusively on the administrative record”); *Defs. of Wildlife v. Jewel*, 74 F. Supp. 3d 77, 85 (D.D.C. 2014) (granting transfer motion because, inter alia, “[t]his case will be decided on the basis of the administrative record with no witnesses likely to be called”). However, should witnesses be called, such as in hearing a motion for a preliminary injunction, transfer to each state where the lease sale decision-making process occurred and where the parcels are located would facilitate the presentation of witness testimony.

CONCLUSION

For the reasons stated above, the Court should sever and transfer Plaintiffs’ claims to the U.S. District Courts for the Districts of Montana, Utah, Wyoming, and the District of Columbia. Severing and transferring the case in this way will allow this litigation to be managed in an efficient manner and avoid conflicting rulings and judgments by the district courts.

Respectfully submitted this 29th day of May, 2018,

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