IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-1608-DDD-NRN

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

DOUG MAYES,[1] in his official capacity
as Field Manager for the U.S. Bureau of Land
Management's Royal Gorge Field Office, and
BUREAU OF LAND MANAGEMENT,

Respondents,

and

BISON OIL & GAS IV, LLC and VERDAD
RESOURCES, LLC,

Respondent-Intervenors

FIRST AMENDED PETITION FOR REVIEW OF AGENCY ACTION

INTRODUCTION

1. This case challenges a set of Bureau of Land Management (BLM) decisions concerning oil and gas development in northeastern Colorado from "Fee/Fee/Fed" wells, which are wells that use directional drilling to extract federal minerals from neighboring private or state surface lands. Specifically, Petitioner Center for Biological Diversity challenges three decisions of Respondents BLM and Field Manager Doug Mayes approving a total of 26 Applications for Permit to Drill federal oil and gas deposits from Fee/Fee/Fed wells in Weld County, Colorado

[1] Automatically substituted pursuant to Fed. R. Civ. P. 25(d).

("Colorado APD Decisions"). Petitioner also challenges BLM Permanent Instruction Memorandum 2018-014 ("PIM 2018-014"), which governs the approval and development of Fee/Fee/Fed wells, including the Colorado APD Decisions challenged here.

2. PIM 2018-014, entitled "Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations," purports to strip BLM officials of the power to regulate surface operations associated with Fee/Fee/Fed wells, including to reduce air emissions, water and soil contamination, wildlife disruptions, noise and visual intrusions, and other impacts. It also relieves Fee/Fee/Fed well developers of ordinary bonding, reporting, and operating requirements. PIM 2018-014 thus allows private developers to reap the benefits of extracting public minerals without assuming the burden of properly mitigating the resulting harms.

3. This is a particular concern for the state of Colorado, where the majority of BLM-permitted wells today involve a Fee/Fee/Fed scenario. The use of Fee/Fee/Fed wells has surged in Colorado over the past decade due to advances in directional drilling technology. Whereas federal oil and gas leases were traditionally developed from vertical wells located atop the federal lease itself, directional drilling and the checkerboard ownership pattern of public lands now allows developers to tap federal minerals from adjacent private or state lands. This unchecked extraction of publicly owned minerals threatens significant harm to Colorado communities and natural resources.

4. Most of Colorado's Fee/Fee/Fed oil and gas wells are located in the Front Range, the most populous region of the state and home to the state's largest cities. Ozone concentrations in the Front Range have for decades exceeded the health-based ozone standard of 70 parts per billion, and the U.S. Environmental Protection Agency has designated the region as an ozone nonattainment area. Fracking and drilling contribute to elevated ground-level ozone

concentrations, which in turn has profound effects on human health. Due to PIM 2018-014, BLM refuses to impose, monitor, or enforce any mandatory measures to reduce the ozone or other air quality impacts of Fee/Fee/Fed wells. All three of the challenged Colorado APD Decisions contribute to Front Range ozone concentrations.

5. The Pawnee National Grassland is another Colorado resource particularly hard-hit by Fee/Fee/Fed well development. This 300-square-mile landscape of interspersed federal public and private lands is a popular northern Colorado recreation destination for residents in the northern Front Range. It contains some of the country's last remaining native shortgrass prairie and is a renowned bird and wildlife viewing destination. Nonetheless, the federal lands in the Pawnee National Grassland are increasingly being drilled and fracked from adjacent private lands via Fee/Fee/Fed wells. Because of PIM 2018-014, the intensifying oil and gas development in and around the Grassland occurs with minimal BLM oversight to reduce harms to wildlife, air and water, dark night skies, and the aesthetic and visual character of the Grassland. Two of the challenged Colorado APD Decisions are located in the Grassland.

6. BLM's abdication of authority over the surface operations for Fee/Fee/Fed wells—a position it adopted in PIM 2018-014 and applied to the three Colorado APD Decisions—is arbitrary, capricious, and contrary to federal law. The Mineral Leasing Act (MLA), Federal Land Policy and Management Act (FLPMA), and their implementing regulations not only authorize but *require* BLM to regulate Fee/Fee/Fed wells and prohibit the exemptions granted by PIM 2018-014. In particular, the MLA requires BLM to "regulate all surface-disturbing activities conducted pursuant to any" federal oil and gas lease. 30 U.S.C. § 226(g). FLPMA further requires BLM to "regulate . . . [the] development of" federal minerals, 43 U.S.C. §§ 1702(e), 1732(b), and to "take any action necessary to prevent unnecessary or

undue degradation of the lands," *id.* § 1732(b). None of these authorities exempt federal mineral development where surface facilities are located on nonfederal lands.

7. In adopting PIM 2018-014, BLM failed to consider these legal authorities, resting instead on an unadorned and untenable disavowal of jurisdiction.

8. Each of the challenged Colorado APD decisions then applied PIM 2018-014, citing that directive as the basis for withholding ordinary environmental and public health mitigation requirements.

9. Accordingly, Petitioner asks this Court to declare that PIM 2018-014 and the Colorado APD decisions are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and to set aside these decisions under the APA.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law.

11. The Court is authorized to award the requested relief under 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 702, and 706.

12. The challenged agency actions are final and subject to judicial review pursuant to 5 U.S.C. §§ 702, 704, and 706.

13. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Respondent Doug Mayes is based in this judicial district and because a substantial part of the events and omissions giving rise to Petitioner's claims occurred in this judicial district.

14. Petitioner has exhausted any and all available and required administrative remedies.

PARTIES

A. Petitioner

15. Petitioner CENTER FOR BIOLIGICAL DIVERSITY (the Center) is a national, nonprofit conservation organization with offices throughout the United States, including in Denver, Colorado. The Center uses science, policy, and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats and climate they need to survive. The organization has advocated for and continues to actively advocate for increased protections for species and their habitats in Colorado, including increased protections of air quality, water quality, and climate stability in Colorado.

16. The Center has over 79,143 members throughout the United States, including in Colorado, Montana, Nevada, New Mexico, Wyoming, Utah, and other states where federal oil and gas deposits are being developed, or may be developed in the future, pursuant to PIM 2018-014. The Center has 3,045 members in Colorado alone. Many of these individuals live, work, and recreate on lands impacted or threatened by Fee/Fee/Fed well development and depend on these areas to further many health, recreational, moral, scientific, spiritual, professional, educational, aesthetic, and other purposes. They intend to continue doing so in the future.

17. Petitioner's members include individuals threatened with harm by the federal agency actions challenged here because their day-to-day lives and recreational activities, including use and enjoyment of federal public lands, occur in areas directly affected by the challenged actions.

18. Among those members are Jeremy Nichols, Polly Reetz, and Robert Ukeiley. Each of these members lives in the Denver metropolitan area or along Colorado's Front Range. These members have a long history recreating in the prairie lands of eastern Colorado, including

the Pawnee National Grassland. They have made regular visits to the Pawnee National Grassland over many years, and they plan to continue such visits in the future. These members have observed and experienced first-hand the negative impacts of oil and gas development on the Pawnee National Grassland and other areas.[2]

B. Petitioner's Members Use and Enjoy Areas Like the Pawnee National Grassland Affected by Fee/Fee/Fed Development

19. Petitioner has members that have for many years been visiting and recreating in areas that are impacted by Fee/Fee/Fed development, and plan to continue doing so in the future. Those areas include places like the Thunder Basin National Grassland in Wyoming and the Pawnee National Grassland in Colorado. The Pawnee National Grassland is particularly hard-hit by the impacts of BLM's approval of Fee/Fee/Fed development, as illustrated by Petitioner's additional challenge in this case to specific APD approvals in that area.

20. Petitioner's members have been regularly visiting the Pawnee National Grassland for many years, and they have concrete plans to continue doing so in the future. These include members who go on annual visits to enjoy the Grassland with friends and/or family, as well as those who participate in volunteer environmental restoration projects at the Grassland. One of Petitioner's members has been regularly visiting the Pawnee National Grassland since the 1970s, including organizing a dedicated group of Audubon society birding enthusiasts and related educational and research activities.

[2] Petitioner will submit sworn declarations from individual members to substantiate the facts alleged here, at the appropriate point in this case. At the pleading stage, a plaintiff need only "clearly allege facts demonstrating each element" of standing, *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 338 (2016), and the court "must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff," *Waller v. City & Cty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019) (citation omitted).

21. Petitioner's members cherish the Pawnee National Grassland for the remoteness and solitude that can be found there. They visit the Grassland because it allows experiences that are closer to nature and further from human development. They enjoy the wide-open scenery of the unbroken prairie landscape and the ability to see for miles. They appreciate observing native prairie flora and listening to the natural soundscape. They value the Pawnee National Grassland as a place to recreate in fresh air and for the opportunity it presents to observe birds and wildlife.

22. Below are two pictures taken by a member of Petitioner on visits to the Pawnee National Grassland, illustrating the natural beauty of the area:

The open Grassland affords views for miles.

Hiking cross country on the Pawnee National Grassland north of Raymer, Colorado.

23. Petitioner's members use and enjoy the Pawnee National Grassland because it is a renowned destination for birding and wildlife viewing and represents one of few remaining and protected native prairie ecosystems. Petitioner's members appreciate opportunities to hear birdsong and to observe species like burrowing owl, mountain plover, lark bunting, longspurs, flycatchers, orioles, and raptors, among others. They also seek out and enjoy viewing wildlife like pronghorn, mule deer, swift fox, badgers, jackrabbits, lizards, and prairie dogs.

24. When Petitioner's members visit the Pawnee National Grassland, their activities include birdwatching, hiking, picnicking, camping, stargazing, and driving backroads to

appreciate scenery and spot wildlife. A typical day at the Grassland includes enjoying the scenic landscape along the network of remote access roads and getting out of the car to explore areas of interest or areas to see birds and wildlife.

25. One route that Petitioner's members often take through the Grassland, following County Roads 127 and 110, is a designated scenic byway that provides access to hiking trails at the Pawnee Buttes, the Grassland's primary topographic landmark. These members also rely on additional roads for access, including County Roads 115, 112, and others. Most of the public lands in the Grassland do not contain maintained trails or signage and exist in a patchwork pattern with private lands; Petitioner's members' exploration of the Grassland involves using maps to follow remote access roads to the sections of public lands to explore and appreciate them. Some members return to special spots by remembering them by unofficial names.

26. Much of Petitioner's members' use and enjoyment of the Pawnee National Grassland occurs in the Eastern Unit, which includes the Pawnee Buttes. In particular, their recreation is often concentrated in the southwestern corner of the Eastern Unit, near the towns of Raymer and Keota.

27. In addition to the Pawnee National Grassland, Petitioner also has members who pursue similar recreational activities in other areas impacted by BLM's approval of Fee/Fee/Fed development. For example, the Thunder Basin National Grassland in northeastern Wyoming is also a place that members of Petitioner rely upon for experiences hiking, camping, and viewing birds and wildlife. The Thunder Basin National Grassland also comprises a patchwork of federal public lands and private lands and is a target for oil and gas development. BLM's approval of oil and gas drilling in the Fee/Fee/Fed context there causes and contributes to injuries to Petitioner's members' use and enjoyment of the public lands.

C. PIM 2018-014 Causes Harm to Petitioner's Members

28. As a result of PIM 2018-014, BLM has approved and will continue approving Fee/Fee/Fed wells that will harm Petitioner's members.

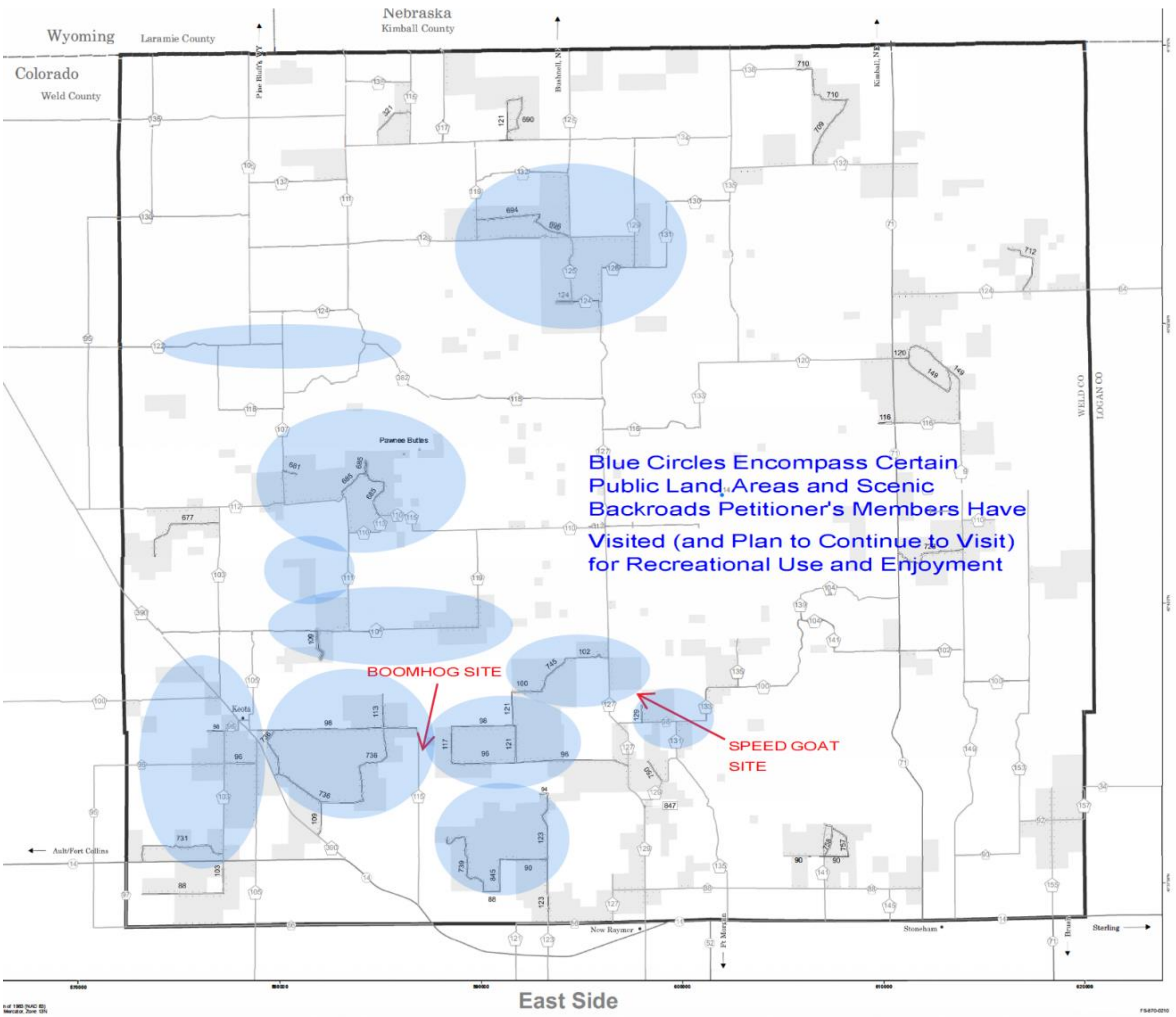
29. Fee/Fee/Fed development that BLM approves under PIM 2018-014 has occurred and will continue to occur in areas where it injures Petitioner's members' use and enjoyment of public lands. Those lands include the Pawnee National Grassland in Colorado, the Thunder Basin National Grassland in Wyoming, and other areas comprising interspersed public and private lands that are targets for oil and gas development through Fee/Fee/Fed wells.

30. In the Pawnee National Grassland, for example, much of the Fee/Fee/Fed development that BLM approves is concentrated in the southwestern corner of the Grassland's Eastern Unit, near the towns of Keota and Raymer. In this same area are some of the largest contiguous sections of federal public lands in the Grassland. For their use and enjoyment, Petitioner's members rely on lands in the Pawnee National Grassland that lie adjacent to Fee/Fee/Fed wells. The impacts of the development that BLM approves under PIM 2018-014 extend into the public lands in the Grassland that Petitioner's members use and enjoy, injuring their experiences there.

31. For example, below is a map with annotations denoting some specific locations Petitioner's members visit at the Grassland. The underlying map is copied from the motor vehicle use map of the Eastern Unit of the Pawnee National Grassland, available on the Forest Service's website. Public land sections within the Pawnee National Grassland are shaded gray. The overlaid blue circles encompass some of the specific areas of federal public lands and scenic backroads that Petitioners' members use and enjoy, and plan to continue to use and enjoy in the future. Interspersed among those areas occur private lands within which BLM has approved and

will continue to approve significant numbers of Fee/Fee/Fed APDs, through which developers tap into federal minerals that lie beneath the Grassland's public land surface. Those developments lie close to the boundaries of the public lands that constitute the Pawnee National Grassland, often merely a half- or quarter-mile away, and their impacts reach into Grassland areas Petitioner's members visit and diminish their experiences there. The development locations for two of the Colorado APD Decisions, discussed below, are also noted on the map.

Figure 1: Map Illustrating Member Use of Pawnee National Grassland



32. Because of PIM 2018-014, BLM's approval of Fee/Fee/Fed development in the Pawnee National Grassland (and elsewhere) injures Petitioner's members by diminishing wildlife viewing opportunities, harming native vegetation and the quality of the environment, and impacting recreational and aesthetic enjoyment through scenic and visual disruptions, light pollution, noise pollution, dust, and heavy truck and equipment traffic.

33. Below, for example, are two pictures taken by one of Petitioner's members while visiting the Pawnee National Grassland, illustrating the negative impact of oil and gas development as apparent from access roads and public lands Petitioner's members use and enjoy:

Visible flaring and air-quality impacts from oil and gas infrastructure.

Oversized truck clogging small, gravel Grassland roads and kicking up substantial dust.

i. Impacts to Birding and Wildlife Viewing Opportunities

34. BLM's Fee/Fee/Fed approvals cause Petitioner's members to encounter less wildlife and fewer birds in areas they recreate, including the Pawnee National Grassland and Thunder Basin National Grassland, because these developments lead to direct mortality, avoidance of habitat, decreased fitness and survival, breeding interference, nest abandonment, and other impacts.

35. Oil and gas development displaces and reduces wildlife populations including greater sage-grouse, raptors, and other migratory birds, as well as mule deer and pronghorn. Petitioner's members have themselves observed that it is more difficult to encounter birds and wildlife in areas of public lands that are nearby oil and gas developments.

36. The impacts from oil and gas development can extend for miles beyond the immediate well site. Ungulates, for example, have been shown to avoid habitat over a mile from

drilling sites, and the zone of effects on birds like sage grouse is significantly wider. For example, research has shown that drilling within four miles of a sage-grouse lek leads to sage-grouse declines, and that effects may extend much further from development sites. Species like pronghorn, mule deer, and sage-grouse are highly mobile and occupy large areas, commonly moving tens of miles between seasonal habitats; thus, impacts that diminish smaller areas of habitat negatively affect the species' presence across the wider home range.

37. The U.S. Forest Service, which administers National Grasslands like the Pawnee National Grassland, has itself observed and predicted bird and wildlife population declines due to oil and gas development, degrading recreational experiences like birdwatching.

38. Fee/Fee/Fed developments also harm Petitioner's members' ability to appreciate and enjoy areas like the Pawnee National Grassland by posing risks to the native plant and insect populations and the ecological quality of nearby public lands. The disturbed areas contribute to the spread of non-native and invasive species. The developments' water use contributes to diminishment of water tables in surrounding areas. And native plant species are sensitive to the effects of air pollution such as the ozone generated by oil and gas development. These air pollution effects also harm birds and insects, including important pollinators.

ii. Impacts to Scenic and Aesthetic Enjoyment

39. BLM's approval of Fee/Fee/Fed developments also harms Petitioner's members' aesthetic and recreational enjoyment of areas like the Pawnee and Thunder Basin National Grasslands by impairing the natural scenery and the ability to appreciate the beauty of the native ecosystems. The intrusion of oil and gas infrastructure into natural surroundings—drill rigs, pumpjacks, storage tanks, widened roads, pipelines, and powerlines—is apparent from areas Petitioner's members visit and diminishes their ability to use and enjoy these landscapes.

40. The openness of the natural prairie environment and the ability to see for miles is part of the value of places like the Pawnee National Grassland and why Petitioner's members visit and appreciate the landscape. Many of the sections of public lands that constitute the Grassland are small sections, often little more than a mile wide. Yet Petitioner's members have observed that oil and gas infrastructure within about a mile significantly diminishes the natural setting and sense of place out in the Grassland, and visible impacts are readily apparent and disruptive even from a couple of miles away.

41. At night, project lighting and flares are visible for even greater distances. BLM has acknowledged in previous analyses that oil and gas flares are visible approximately 15 miles away at night. And the skyglow from these light sources can be noticeable even if there is no direct line of sight from the well pad.

42. Fee/Fee/Fed developments approved by BLM (like the Colorado APD decisions challenged here and discussed below) often lie within a mile or less of areas that Petitioner's members recreate, meaning that the visual impacts of these developments extend far enough to harm these members' experiences there.

iii. Impacts from Noise

43. The noise from Fee/Fee/Fed operations, as well as the truck and equipment traffic to service them, also impairs Petitioner's members' recreational and aesthetic enjoyment. Project noise travels for miles in the Grasslands' open terrain and reaches areas of public lands that Petitioner's members use and enjoy, diminishing their experiences there.

44. The noise from a heavy truck or a pneumatic drill can be around 90 dBA[3] at a distance of 50 feet, and various other equipment for typical well development creates noises from 80 to 90 dBA at a distance of 50 feet. Flaring can be much louder.

45. BLM has noted in previous analyses that noises from point sources decrease 6 dBA for each doubling of distance away from the source, so a 90 dBA noise at 50 feet will not dissipate to under 36 dBA (the typical background noise level in a sparsely populated area) until nearly 5 miles away. Noises from typical activities at the drilling sites of Fee/Fee/Fed developments can be detectible at five miles away, readily noticeable from over three miles away, and still twice as loud as the natural soundscape at over a mile.

46. Such noise intrudes upon the natural quiet of the Grasslands and makes it harder to hear birds and wildlife.

iv. Impacts from Truck Traffic

47. The heavy truck and equipment traffic required to service Fee/Fee/Fed operations further diminishes Petitioner's members' recreational enjoyment of places like the Pawnee National Grassland. The roads that these members rely upon to travel through the Grassland—to reach hiking destinations, to watch for birds and wildlife, and to appreciate the remoteness and scenery—are the same roads receiving heavy truck traffic for Fee/Fee/Fed developments approved by BLM. The incessant oil and gas truck traffic spoils the feeling of solitude and poses safety hazards as members travel on the Grasslands' remote backroads. It also kicks up significant amounts of dust that leads to unsightly haze, generates unhealthy airborne particulate matter, and disrupts birds and wildlife.

[3] dBA denotes "A-weighted decibels," a measure reflective of relative loudness as perceived by the human ear.

v. Impacts through Avoidance

48. The above-described impacts injure Petitioner's members in part by causing them to avoid areas they might otherwise recreate in search of less impaired locations elsewhere, as well as to curtail activities due to pollution risks.

vi. Impacts to Health and Safety

49. PIM 2018-014 also causes harm to Petitioner's members' health. BLM's approval of Fee/Fee/Fed developments leads to increased emissions of harmful air pollutants.

50. Fee/Fee/Fed operations are a major source of pollutants like particulate matter ($PM_{2.5}$ and PM_{10}) and volatile organic compounds (VOCs), which pose health risks to Petitioner's members while recreating in the Grasslands.

51. Particulate matter, generated in significant amount by oil and gas developments, is a pollutant associated with a host of serious health impacts like decreased lung function and cardiovascular conditions. The EPA recognizes that exposure to $PM_{2.5}$ at any concentration poses health risks and considers it a pollutant with no evidence of a threshold at which exposure is safe.

52. Particulate matter is also a primary driver of unsightly haze, which detracts from the clear skies and open views in the Grasslands.

53. Oil and gas operations are also a significant source of ozone-causing pollutants, such as nitrogen oxides and volatile organic compounds. Exposure to ground-level ozone is associated with a number of adverse human health impacts, including coughing and sore throats, difficulty breathing, and long-term lung damage. The EPA has recognized that ground-level ozone presents health risks at any level, with no lower threshold that is truly safe.

54. Ozone is the primary component of smog, which can blur the clear blue skies around the Grasslands and detracts from scenic enjoyment.

55. Fee/Fee/Fed operations contribute to unhealthy ozone levels in the Denver Metro/North Front Range "severe" ozone nonattainment area, an area that includes where Petitioner's members live and recreate.

56. This pollution injures Petitioner's members through risks to their health and because it hinders opportunities to appreciate, work in, or recreate in the outdoors, both around these members' homes and where they travel to recreate, such as at the Grassland.

vii. PIM 2018-014 Causes and Contributes to the Impacts, and Its Vacatur Would Redress Harm to Petitioner

57. PIM 2018-014 causes and contributes to the injuries to Petitioner's members described above because it prevents BLM from reducing the harmful effects of Fee/Fee/Fed wells. As explained below, PIM 2018-014 prevents BLM from imposing environmental safeguards that would otherwise reduce air pollution, wildlife, scenic, noise, or other impacts.

58. Vacatur of PIM 2018-014 would eliminate BLM's sole justification for withholding its ordinary environmental mitigation, reclamation, and bonding requirements to Fee/Fee/Fed wells. Were it not for PIM 2018-014, BLM could and would apply at least some of these measures to Fee/Fee/Fed wells in the Grasslands, reducing harm to Center members. Examples of standard BLM mitigation measures that, pursuant to PIM 2018-014, are not being applied to Fee/Fee/Fed wells include wildlife protections, erosion and runoff controls, water conservation and recycling requirements, air pollution reduction measures, controls on handling and storage of toxic wastewater, project-related traffic restrictions, and noise controls.

59. In the absence of PIM 2018-014, BLM's approvals would provide greater reclamation assurance through bonding requirements as well as the agency's enforcement

capacity. In contexts not limited by PIM 2018-014, mitigation and reclamation measures often imposed by BLM for oil and gas drilling approvals provide environmental and health protections that go above and beyond those available under state-level permitting regimes alone.

60. Unless PIM 2018-014 is held unlawful by this Court, BLM will continue implementing PIM 2018-014 in approving Fee/Fee/Fed wells in areas Petitioner's members use and enjoy, causing further such harms. The requested relief would remedy those harms by allowing BLM to impose restrictions on surface operations for Fee/Fee/Fed wells to avoid and mitigate the harmful impacts to viewsheds, air quality, water, wildlife, native vegetation, and other natural resources that Petitioner's members use and enjoy. Moreover, simply requiring BLM to properly consider its authority, regardless of the outcome, would itself redress the Petitioner's injuries. *See FEC v. Akins*, 524 U.S. 11, 25 (1998) (confirming that redressability in a case asserting an agency "misinterpreted the law" does not require plaintiff to establish that agency will reach different result on remand).

61. Apart from this action, Petitioner and its members have no adequate remedy at law to address the foregoing injuries to their interests.

D. The Colorado APD Decisions Cause Harm to Petitioner's Members

62. Petitioner's members are also injured by each of the three challenged Colorado APD Decisions, described in detail in the Factual Background below.

63. The activities of Petitioner's members occur in areas in which the adverse effects of each Colorado APD decision extend. The environmental impacts of the Colorado APD decisions would diminish these members' use and enjoyment of such areas. For example, the development locations of the challenged Boomhog and Speed Goat APD decisions abut public

lands used by Petitioner's members. The map above at ¶ 31 illustrates the adjacency of such locations.

64. The Boomhog site lies alongside County Road 115, which Petitioners' members use for access to areas of the National Grassland. The Boomhog site is situated between two large units of public lands in the Grassland that Petitioner's members use and enjoy, within a half-mile of each unit on either side.

65. The Speed Goat site, similarly, lies alongside County Road 127, which is part of a designated scenic byway and a primary route Petitioners' members use to explore the grassland and access areas of public lands. The Speed Goat site lies within a quarter-mile of two Grassland sections that Petitioner's members use and enjoy. The Grassland area to the north of Speed Goat is particularly scenic, containing rocky topography, more plant diversity, and a clear view of the Pawnee Buttes off in the distance. Oil and gas development at the Speed Goat site mars what would otherwise be a wide-open view between the two areas of public lands.

66. The development location of the Dittmer APD decision is near the Weld County line as one heads north out of the Denver area and toward the Grassland. Although the area around the Dittmer site is more developed and is a location Petitioner's members visit more in passing, the visual impacts of added oil and gas development diminish members' appreciation for the environment while traveling from Denver's urban area to the more rural parts of Weld County to experience Colorado's prairies. Moreover, the Dittmer site is located within and will contribute to the unhealthy ozone concentrations in the Denver Metro/Northern Front Range ozone nonattainment area, where Petitioner's members live, work, and recreate.

67. Petitioner’s members visit the areas adjacent to and affected by the Colorado APD decisions to appreciate expansive views and natural scenery at the Grassland, to search for and observe birds and wildlife and native plants, and to hike in fresh air.

68. But the proximity of the Colorado APD decisions to areas Petitioner’s members use and enjoy means that visual impacts like those described above—including dust, scenic degradation, noise, and light pollution—are readily apparent from adjacent Grassland areas and injure recreational experiences there.

69. The Colorado APD decisions will also contribute to the depletion and displacement of wildlife for miles beyond the immediate well-site, and will impair experiences of birdwatching and appreciating native ecosystems.

70. The Boomhog and Speed Goat projects also lie alongside and will introduce heavy truck traffic on the same scenic roads that Center members depend upon to traverse the Pawnee National Grassland, deterring wildlife, creating noise audible in nearby Grassland areas, generating unsightly and unhealthy dust, and posing safety hazards to members.

71. Fear of these impacts may cause members to simply avoid public lands around the challenged Colorado APD locations entirely. Already, Petitioner’s members have had to change visitation patterns after past drilling developments, to seek out areas of the Grassland that are quieter and with less impacts on the natural environment. The challenged Colorado APD decisions threaten these members with further such harm; they may cause Petitioner’s members to change their visitation patterns because of diminished experiences in adjacent Grassland areas they would otherwise visit.

72. Thus, each Colorado APD Decision is likely to harm Petitioner’s members’ continued use and enjoyment of specific areas near the drilling sites, including by detracting

from the natural scenery; diminishing opportunities to view bird, wildlife, insect, and plant species they enjoy seeing; risking their exposure to unhealthy air pollution or the visual impacts of smog and haze; increasing light pollution and diminishing enjoyment of dark night skies; threatening contamination of water; and increasing heavy truck traffic, dust, noise, odors, and other intrusions that impair their aesthetic and recreational enjoyment.

73. Each Colorado APD Decision will also impact Petitioner's members' use and enjoyment of areas far beyond each drilling site. The light pollution from project equipment and flaring can be seen for many miles during evening and nighttime hours, and the intense noise from drilling, fracking, and flaring also can be heard for miles around in a rural setting. Likewise, the drill rigs, traffic, infrastructure, and other visual intrusions from each Colorado APD Decision are likely to be visible for great distances around each well pad. Petitioner's members are likely to experience the dust, nuisance, and safety hazards of the flow of oil and gas trucks necessary for the development, maintenance, and operation of the wells approved in each Colorado APD Decision.

74. Furthermore, each of the challenged APDs is located within and contributes to the Denver metro/northern Front Range "severe" ozone nonattainment area, where Center members live. Because Petitioner's members live, work, commute, recreate, and otherwise spend time in areas where each Colorado APD Decision will contribute harmful air pollutants like ozone precursors, these actions pose health risks to Petitioner's members, who will breathe this air while recreating or going about daily life, as well as create unsightly smog and deter outdoor recreation.

75. A favorable ruling in this case would partially or wholly redress these harms to Petitioner's members. Vacatur of the Colorado APD decisions would redress the harms to Center

members by prohibiting the federal mineral extraction from proceeding, eliminating the harms attributable to the federal APDs at these locations. Moreover, if BLM had properly considered its authority to regulate the surface operations of Fee/Fee/Fed wells, it would likely have conditioned the issuance of the Colorado APD Decisions on mitigation measures that diminish their harm to Petitioner's members. Such measures could include, for example, buffer zones around bird nesting sites; requirements for wildlife habitat surveys, monitoring, and mitigation; timing restrictions and other limitations on operational practices like truck and equipment traffic; noise and dust abatement measures; restrictions to mitigate water and air pollution; sound barriers; time-of-day restrictions; reclamation obligations; limitations on siting, paint color, and other factors contributing to visual impacts; and more.

E. Respondents

76. Respondent DOUG MAYES is sued solely in his official capacity as Field Manager of the Royal Gorge Field Office of the Bureau of Land Management. Mayes is responsible for managing public lands and resources under BLM authority, including those in the Royal Gorge Field Office, in accordance with federal law and regulations.

77. Respondent BUREAU OF LAND MANAGEMENT is the agency within the U.S. Department of Interior responsible for carrying out the Department's legal obligations and authority as to the development of federal oil and gas resources.

LEGAL BACKGROUND

78. BLM oversees more than 245 million acres of federal surface land and 700 million subsurface acres of federal mineral estate, including for oil and gas development. Congress has delegated to BLM, through the Secretary of Interior, authority over these resources

pursuant to a patchwork of statutes, including the MLA and FLPMA. Congress's authority for these delegations of power, in turn, is the Property Clause of Article IV the U.S. Constitution.

79. The following sections describe the source and extent of BLM authority over Fee/Fee/Fed wells:

F. Property Clause of the U.S. Constitution

80. The Property Clause of Article IV of the U.S. Constitution declares that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, sec. 3, cl. 2.

81. Federal mineral estate is property belonging to the United States.

82. The Property Clause vests Congress with essentially two kinds of power: "proprietary" and "sovereign." *See Light v. United State*s, 220 U.S. 523, 536–38 (1911).

83. The proprietary power encompasses the right to "prohibit absolutely or fix the terms on which [federal] property may be used." *Id.* at 536. This power is "without limitations" and Congress is free to fashion whatever limits it chooses "consistent with its views of public policy[.]" *United States v. City of San Francisco*, 310 U.S. 16, 29–30 (1940). It includes the right to condition the use of federal property on the developer's agreement to engage in, or refrain from, certain activities on private lands. *See id.*; *Federal Power Comm'n v. Idaho Power Co.*, 344 U.S. 17 (1952) (both upholding a federal land use condition affecting nonfederal property).

84. The sovereign power encompasses the right to "legislat[e] for the protection of the public lands." *Camfield v. United States*, 167 U.S. 518, 525–26 (1897). This power also permits regulation of private activities on nonfederal property that affect public lands. *See id.* at 528 (holding that the Property Clause permits federal regulation of fences built on private land adjoining public land); *United States v. Alford*, 274 U.S. 264, 267 (1927) ("Congress may

prohibit the doing of acts upon privately owned lands that imperil" public lands); *Kleppe v. New Mexico*, 426 U.S. 529, 538 (1976) ("the Property Clause is broad enough to reach beyond territorial limits.").

85. Congress has delegated its Property Clause authority to the Secretary of Interior through a patchwork of statutes. In addition to specific delegations under the MLA and FLPMA described below, Congress has broadly charged the Secretary with "perform[ing] all executive duties . . . anywise respecting . . . public lands," 43 U.S.C. § 2, and supervising all "public business relating to . . . [p]ublic lands, including mines[.]" 43 U.S.C. § 1457. Congress further authorized the Secretary to "enforce and carry into execution, by appropriate regulations, every part of the provisions of . . . [the Title dealing with public lands] not otherwise specifically provided for." 43 U.S.C. § 1457c. These enactments vest the Secretary of Interior with "plenary authority" over the public lands and minerals. *Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 336 (1963); *see also Boesche v. Udall*, 373 U.S. 472, 476 (1963).

G. Federal Land Policy and Management Act (FLPMA)

86. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701–87, vests in the Secretary of Interior general management authority over the public lands. *Id.* § 1732.

87. The Secretary has delegated this authority to the BLM. Dep't of Interior, 235 Departmental Manual 1 (Oct. 5, 2009); Dep't of Interior, 235 Departmental Manual 3 (May 27, 1983).

88. The term "public lands" as used in FLPMA includes any interest in land owned by the United States, including federal mineral estate. 43 U.S.C. § 1702(e); 43 C.F.R. § 5400.0-5.

89. FLPMA provides that the Secretary "shall regulate the use, occupancy, and development of the public lands." 43 U.S.C. § 1732(b).

90. FLPMA provides that the Secretary "shall" manage public lands "for multiple use and sustained yield." *Id.* § 1732(a). Its definition of "multiple use" calls for "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily the combination of uses that will give the greatest economic return or the greatest unit output." *Id.* § 1702(c).

91. FLPMA further directs that the Secretary "shall" take any action necessary to prevent "unnecessary or undue degradation" of public lands. *Id.* § 1732(b).

92. It announces a broader policy that public lands and minerals be managed "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values." 43 U.S.C. § 1701(a)(8).

93. FLPMA also authorizes the Secretary of Interior to "issue regulations necessary to implement the provisions of [FLPMA] with respect to the management, use, and protection of the public lands." *Id.* § 1733(a).

94. Pursuant to FLPMA, BLM has issued general regulations governing leases, easements, and permits to use public lands. *See* 43 C.F.R. pt. 2920. They require BLM to include terms and conditions in every lease and permit that "[m]inimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment," "[p]rotect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes," "[r]equire the use to be located in an

area which shall cause least damage to the environment," and "[o]therwise protect the public interest." *Id.* § 2920.7(b)(2)–(3), (c)(4)–(6).

H. Mineral Leasing Act (MLA)

95. Congress has repeatedly directed the Secretary of Interior to oversee the development of federal oil and gas deposits, including through the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. §§ 181–287, and the Mineral Leasing Act for Acquired Lands of 1947 (MLAAL), 30 U.S.C. §§ 351–59 (extending MLA to acquired land).

96. The Secretary fully delegated this authority to BLM for onshore minerals on federal lands. *See* 48 Fed. Reg. 8,803, 8,983 (Mar. 2, 1983); Dep't of Interior, 235 Departmental Manual 1.1 (Oct. 5, 2009).

97. Pursuant to this delegated authority, BLM has promulgated regulations under the MLA governing onshore oil and gas operations. 43 C.F.R. pt. 3160.

98. The MLA authorizes the Secretary of the Interior to offer certain federal minerals for lease, including oil and gas. 30 U.S.C. § 226.

99. In particular, the MLA provides that the Secretary of Interior "shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of surface resources." 30 U.S.C. § 226(g). Congress did not confine this duty to activities on federal surface.

100. Leaseholders must submit an Application for Permit to Drill (APD) "for each well" proposed to be drilled into a lease, 43 C.F.R. § 3162.3-1(c), and "[n]o drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the [APD]." *Id.*

101. A "complete" APD must include a "surface use plan of operations." *Id.* § 3162.3-1(d)(2).

102. Each well must be drilled at a location that has been "surveyed" and "approved or prescribed" by BLM. *Id.* § 3162.3-1(a).

103. BLM has broad discretion to attach terms and conditions, known as "Conditions of Approval," to an approved APD. In addition to those provided for in the lease itself, BLM may subject an APD to any "reasonable measures . . . to minimize adverse impacts to other resource values, land uses or users" as well as "restrictions deriving from specific, nondiscretionary statutes." *Id.* § 3101.1-2.

104. In addition to such Conditions of Approval, leaseholders are required by regulation to "conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality," *id.* § 3162.5-1(a), and to "exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources," *id.* § 3162.5-1(b).

105. The MLA also requires the Secretary to collect a bond sufficient "to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease." *Id.*

106. BLM regulations similarly require every lease operator to post a bond sufficient to ensure "complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations[.]" *Id.* § 3104.1(a).

107. BLM regulations further specify that the operator must "reclaim the disturbed surface" upon the conclusion of operations. *Id.* § 3162.5-1(b); *see also id.* § 3162.3-4 ("Upon the removal of drilling or producing equipment from the site of a well which is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations shall be reclaimed in accordance with a plan first approved or prescribed by the authorized officer.").

108. None of the aforementioned regulations are limited to impacts or activities on federal lands or the leasehold itself, as are other sections of this same subchapter. *See, e.g.*, *id.* § 3163.1 (imposing a penalty for unapproved "surface disturbance on Federal or Indian surface"); *id.* § 3162.3-3 (imposing requirements for surface disturbance "on the leasehold"); *id.* § 3104.1(a) (specifying requirement applicable to "the lease area").

109. In addition to these specific directives, the MLA broadly authorizes BLM to "prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes" of the Act. 30 U.S.C. § 189. The MLA's purposes include protecting "the interests of the United States," safeguarding "the public welfare," and conservation of surface resources. *Id.* §§ 187, 226.

I. Onshore Order 1

110. BLM regulations authorize the BLM Director to issue Onshore Oil and Gas Orders when necessary to implement and supplement the regulations found in part 3160. 43 C.F.R. § 3164.1. Onshore Oil and Gas Orders are binding. *Id.*

111. Onshore Order 1 has been in effect since October 21, 1983, and was most recently revised in 2017. *See* Onshore Oil and Gas Order 1, 72 Fed. Reg. 10,308, 10,331 (Mar. 7, 2007); 82 Fed. Reg. 2906 (January 10, 2017) (amendment).

112. Onshore Order 1 provides that a complete APD package "must contain . . . a Surface Use Plan of Operations." 72 Fed. Reg. at 10,329.

113. It also prohibits operators from "commenc[ing] either drilling operations or preliminary construction activities before the BLM's approval of the APD" and provides that "[d]rilling without approval or causing surface disturbance without approval is a violation of 43 CFR 3162.3–1(c) and is subject to a monetary assessment under 43 CFR 3163.1(b)(2)."

114. Onshore Order 1 confirms that BLM, in determining the bond amount, "may consider impacts of activities on . . . non-Federal lands required to develop the lease that impact lands, waters, and other resources off the lease[.]" 72 Fed. Reg. at 10,333.

115. It further requires operators to "conduct operations to minimize adverse effects to surface and subsurface resources, prevent unnecessary surface disturbance, and conform with currently available technology and practice" and provides that "[i]f historic or archaeological materials are uncovered during construction, the operator must immediately stop work that might further disturb such materials [and] contact the BLM."

J. BLM Standard Lease Forms

116. In addition to these sources of statutory, and regulatory authority, BLM retains broad contractual rights under the standard terms of its oil and gas leases to regulate the manner in which the leased minerals are developed.

117. Section 6 of BLM's standard lease form requires the leaseholder to "conduct operations in a manner that minimizes adverse impacts to the land, air, and water, to cultural, biological, visual, and other resources, and to other land uses or users." It permits BLM to impose "reasonable measures deemed necessary . . . to accomplish the intent of this section."

118. Section 12 of the standard lease form requires the leaseholder, at the conclusion of operations, to "reclaim the land."

119. Whereas the standard lease form elsewhere uses the term "leased lands" and "leased premises" when specifying provisions applicable to the lease surface itself, these operational and reclamation requirements are not limited to operations on the lease surface.

FACTUAL BACKGROUND

A. OIL AND GAS DEVELOPMENT IN NORTHEASTERN COLORADO'S FRONT RANGE AND PAWNEE NATIONAL GRASSLAND

120. Most of Colorado's oil and gas development occurs in Denver Basin field of northeastern Colorado, a region spanning from the Front Range to the surrounding eastern plains.

121. The Front Range is a densely populated urban corridor along the eastern face of the Rockies, containing Colorado's largest cities like Denver and Colorado Springs. Ozone concentrations in the Front Range have for decades exceeded the health-based ozone standard of 70 parts per billion. The U.S. Environmental Protection Agency has designated the region as a nonattainment area for ozone.

122. Ground-level ozone is the primary component of smog and a harmful air pollutant. It is created when volatile organic compounds ("VOCs") and nitrogen oxides ("NOx")—known as "ozone precursors"—react in the presence of sunlight. Oil and gas development creates emissions of ozone-producing pollutants from equipment engines, storage tanks, vehicle traffic, and other means. The Environmental Protection Agency has found that the oil and gas industry is the largest industrial source of VOC emissions.

123. Exposure to ozone at any concentration poses adverse health risks, including to heart and lung function. *See Clean Wisconsin v. EPA*, 964 F.3d 1145, 1156-57 (D.C. Cir. 2020) ("More ozone is more ozone, and there is no 'threshold concentration below which' ground-level

ozone is 'known to be harmless.'") (quoting *Am. Trucking Ass'ns, Inc. v. EPA*, 283 F.3d 355, 360 (D.C. Cir. 2002)); *see also* NAAQS for Ozone, 62 Fed. Reg. 38,856, 38,863 (July 18, 1997)).

124. Another area in the crosshairs of Colorado oil and gas development is the Pawnee National Grassland, a 300-square-mile landscape of interspersed federal public and private lands just an hour's drive from Denver. The Grassland encompasses 193,060 acres of public lands spread out across two administrative units. The surface public lands of the National Grassland system are administered by the U.S. Forest Service, but it is BLM that manages, leases, permits, and regulates the federal minerals underlying these lands. *See* 30 U.S.C. §§ 181 et seq.

125. The Grassland consists of wide-open and gently rolling grassland plains, interspersed with small canyon and rock formations. The twin Pawnee Buttes, iconic topographic features that punctuate the eastern unit, were once used as an important landmark for Native Americans and settlers. The Grassland is one of the best-preserved shortgrass prairie ecosystems in the country and supports abundant wildlife species, including pronghorn, mule deer, prairie dogs, swift foxes, coyotes, and as many as 300 unique species of birds. The abundance of wildlife attracts birders and other wildlife enthusiasts from around the world, including large numbers from the northern Front Range area.

126. Despite its ecological significance, the Pawnee National Grassland has been experiencing a surge of oil and gas development over the past two decades. Prompted by this increase, the Forest Service in 2014 initiated an analysis of oil and gas leasing on the Grassland. It concluded this process with a 2015 decision to impose a "No Surface Occupancy" stipulation on all new leases issued in the Grassland, attempting to protect the Grassland's resources by redirecting development to private inholdings.

127. A consequence of the Forest Service's decision to shift oil and gas development infrastructure off the Grassland surface, while continuing to allow leasing of the underlying federal minerals, has been a surge in Fee/Fee/Fed wells in and around the Pawnee National Grassland. Pursuant to PIM 2018-014, these Fee/Fee/Fed wells are developed with minimal federal oversight. Although not located on federal surface, these wells nonetheless continue to harm the Grassland by polluting the airshed; depleting water supplies; disturbing bird and wildlife populations; and introducing noise, light, fumes, dust, and traffic that interfere with the Grassland's natural setting and feeling.

B. BLM'S ADOPTION OF PIM 2018-014

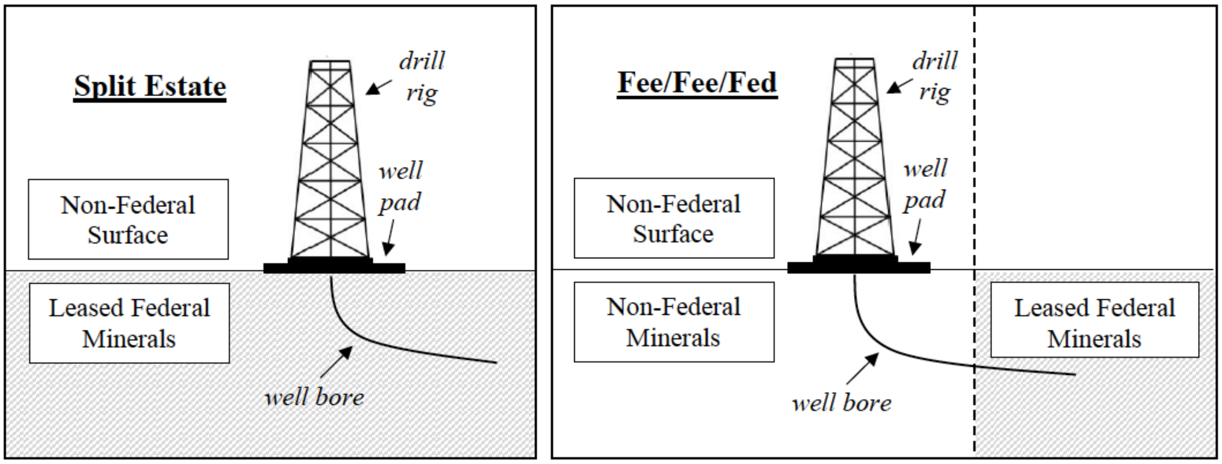
128. BLM issued Permanent Instruction Memorandum (PIM) 2018-04, entitled "Directional Drilling Into Federal Mineral Estate From Well Pads on Non-Federal Locations," on June 12, 2018. *See* https://www.blm.gov/policy/pim-2018-014. The document states that it supersedes prior Instruction Memorandum (IM) 2009-078.

129. Brian C. Steed, then-BLM Deputy Director of Policy and Programs, signed PIM 2018-014.

130. PIM 2018-014 provides directions to BLM staff regarding APD processing for "wellbores that produce Federal minerals from well pads that are located on . . . lands where both the surface and the mineral estate are not owned or managed by the United States." These wells are commonly referred to as "Fee/Fee/Fed" wells, with "Fee" referring to non-federal ownership.

131. Fee/Fee/Fed wells differ from "split-estate" wells, in which the drill site is located on non-federal surface directly overlying federal minerals.

Figure 2: Split Estate and Fee/Fee/Fed Development



132. PIM 2018-014 states that "BLM's regulatory jurisdiction is limited to Federal lands (including minerals). . . . BLM's jurisdiction extends to surface facilities on entirely non-Federal lands solely to the extent of assuring production accountability for royalties from Federal and Indian oil and gas (including prevention of theft, loss, waste, and assuring proper measurement)."

133. It further asserts that BLM lacks authority "to require mitigation of surface disturbances on non-Federal lands."

134. As to bond requirements, PIM 2018-014 states that "bonds for Fee/Fee/Fed wells should be used to address downhole concerns only" and that "BLM does not have authority to require a bond to protect non-Federal surface owner interests."

135. PIM 2018-014 further provides that a Surface Use Plan of Operations (SUPO) is not required for Fee/Fee/Fed wells, and that if submitted, BLM will not enforce its provisions. Relatedly, it asserts that "BLM has no jurisdiction to require an APD before an operator may begin pad and road construction or drilling on the non-Federal land," and that an "APD approval is necessary before an operator may drill into the Federal mineral estate itself."

136. PIM 2018-014 contains no analysis of the applicable legal authorities or explanation of how its terms are consistent with them.

137. PIM 2018-014 contravenes the federal laws cited above; misconstrues the scope of BLM jurisdiction over Fee/Fee/Fed wells; and improperly exempts both BLM and lease operators of various bonding, reporting, and operational requirements for Fee/Fee/Fed projects.

138. In authorizing Fee/Fee/Fed wells, including the Colorado APD Decisions challenged here, BLM staff treat PIM 2018-014 as binding and cite it as the basis for excluding surface use plans of operation, mitigation, bonding, reclamation, reporting, and other requirements that are ordinarily required for development of federal minerals.

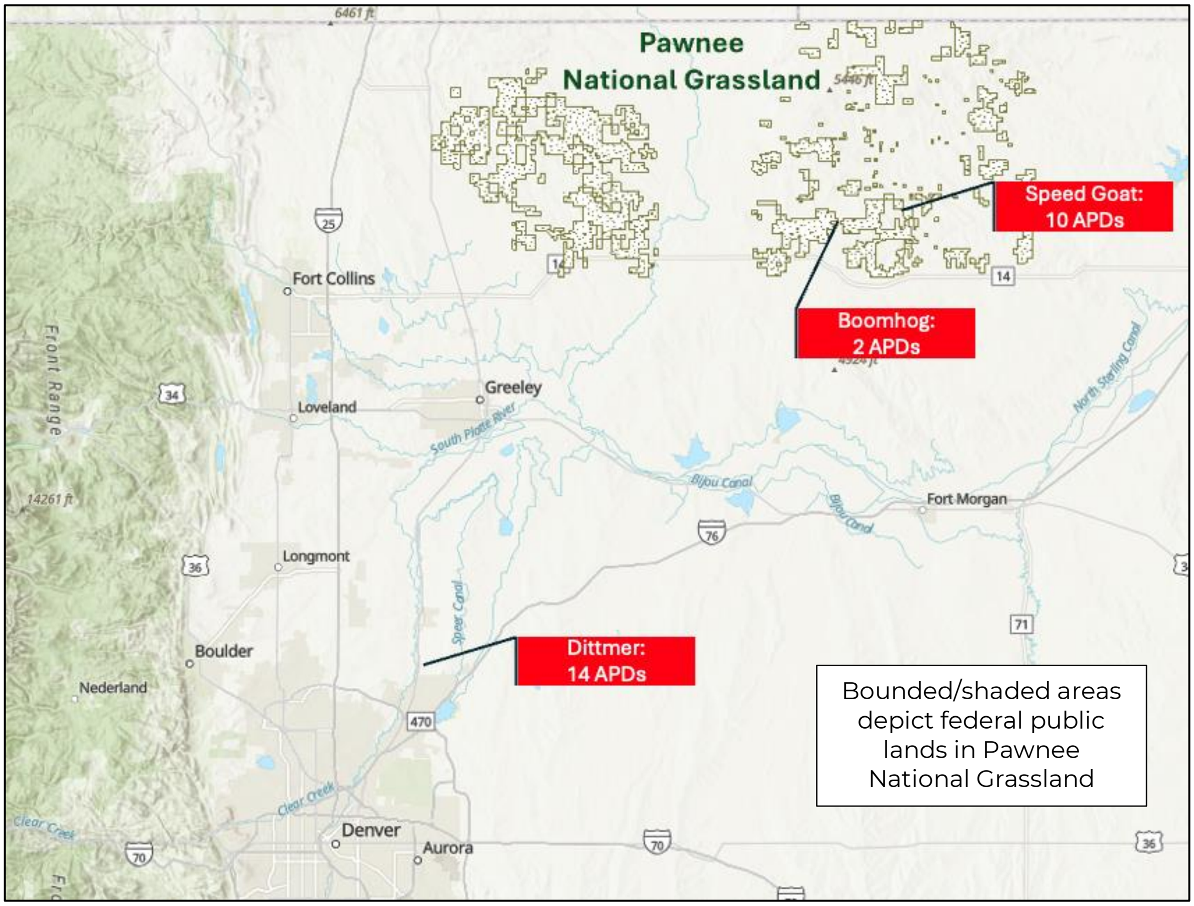
C. CHALLENGED COLORADO APD DECISIONS

139. Colorado has one of the highest proportions of Fee/Fee/Fed wells in the nation. From 2021 to 2023, the share of BLM-approved oil and gas wells in Colorado involving a Fee/Fee/Fed scenario ranged from 50% to 80%, far above the percent in most states.

140. Northeastern Colorado has a higher proportion of Fee/Fee/Fed development than any other significant oil producing region in the country. Nearly every BLM-approved APD in Colorado's Front Range and eastern plains entails a Fee/Fee/Fed well.

141. Plaintiff here challenges three recent decisions by Defendants BLM and Field Manager Keith Berger approving a total of 26 Applications for Permit to Drill (APDs) federal oil and gas resources in northeastern Colorado from Fee/Fee/Fed wells. These APD decisions each applied PIM 2018-014 as the basis for withholding any mitigation measures pertaining to the surface operations and exemplify the harms from the ongoing application of this directive in Colorado.

Figure 3: Map of Colorado APD Decisions



i. *Bison Operating IV Boomhog 8-59 2 APDs*

142. On April 11, 2024, BLM issued a decision approving two APDs submitted by Bison IV operating LLC.

143. Bison IV's APDs involves two wells located on the same pad in Weld County, Colorado, named the "Boomhog Federal 8-59" pad.

144. The Boomhog Federal 8-59 well pad is located on a narrow strip of private land sandwiched between two large areas of federal public lands within the eastern section of the Pawnee National Grassland. The location is about 5 miles east of Keota and about 8.5 miles south-southeast of the Pawnee Buttes trail. The well pad sits just north of Wildhorse Creek. The well site is located within a half mile of the areas of federal public lands to both its east and west,

along a primary route for public access to one of the largest sections of public lands in the National Grassland.

145. BLM's approval of the two APDs allows Bison Operating to drill, complete, and operate horizontal oil and gas wells that will enter and draw from federal minerals that lie beneath the federal public lands just to the east of the private parcel on which the Boomhog pad sits.

146. Because of the Fee/Fee/Fed context of the Boomhog APDs, in its decision authorizing them, BLM cited PIM 2018-014 and disclaimed its authority "to impose certain mitigation measures (as COAs to the approved APD) pertaining to the surface management of the well site."

ii. Speed Goat Fed 3432, Speed Goat Fed 3435

147. On May 10, 2024, BLM approved ten APDs submitted by Verdad Resources LLC.

148. Verdad Resources' application for ten APDs relates to drilling from two well pads, named Speed Goat Fed 3432 and 3435. These well pads are located about 6.8 miles east-northeast of the Boomhog location described above. The Speed Goat wells are also within the boundaries of the eastern unit of the Pawnee National Grassland. The well site is less than a quarter mile, to the north and to the east, from areas of federal public lands in the National Grassland.

149. BLM's approval of the ten Speed Goat APDs allows Verdad Resources to drill, complete, and operate horizontal oil and gas wells that will enter and draw from federal minerals that lie beneath the federal public lands just to the east of the private parcel on which the Speed Goat wells sits.

150. Because of the Fee/Fee/Fed context of the Speed Goat APDs, in its decision authorizing them, BLM relied on PIM 2018-014 to disclaim authority over the surface operations for these wells.

iii. <u>Incline Dittmer 01-14 APDs</u>

151. On May 22, 2024, BLM approved fourteen APDs submitted by Incline Energy Partners LP.

152. Incline Energy's application relates to drilling from one well pad, named Dittmer, near the southern boundary of Weld County and just outside of Brighton, Colorado. The 14 Dittmer APDs occupy an area nearby denser human communities and development on the edge of the Denver metropolitan area.

153. BLM's approval of the fourteen Dittmer APDs allows Incline Energy to drill, complete, and operate horizontal oil and gas wells that will enter and draw from federal minerals to the east of the private parcel on which the Dittmer well sits.

154. On information and belief, the decision approving the Dittmer APDs relied on PIM 2018-014 to disclaim authority over the surface operations for these wells.

<u>FIRST CLAIM FOR RELIEF</u>

PIM 2018-014 Is Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law in Violation of the APA

155. Petitioner realleges and incorporates by reference all preceding paragraphs.

156. The APA requires courts to "hold unlawful and set aside" final agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

157. Respondent BLM's issuance of PIM 2018-014 constitutes a final agency action reviewable under the APA.

158. PIM 2018-014 is arbitrary capricious, and not in accordance with the MLA, MLAAL, FLPMA, their implementing regulations, and other laws governing public lands and minerals. As more fully explained above, PIM 2018-014 improperly disclaims BLM's authority and duty to impose bonding, reclamation, operational, and reporting requirements for Fee/Fee/Fed wells.

159. PIM 2018-014 is also arbitrary and capricious. In promulgating PIM 2018-014, BLM offered no reasonable explanation for how its provisions comply with federal law, instead resting on bare and legally erroneous assertions about the scope of its jurisdiction. BLM failed to explain how PIM 2018-014 is consistent with its duties and authority under the MLA, MLAAL, FLPMA, and other relevant authorities.

160. Finally, BLM failed to reconcile PIM 2018-014 with its own past and present practices and interpretations of its authority under the MLA, MLAAL, and FLPMA.

161. For the foregoing reasons, PIM 2018-014 must be held unlawful and set aside under 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

The Colorado APD Decisions Are Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law in Violation of the APA

162. Petitioner realleges and incorporates by reference all preceding paragraphs.

163. The APA requires courts to "hold unlawful and set aside" final agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

164. Respondents' decisions approving the APDs described above—the two Boomhog APDs, the ten Speed Goat APDs, and the fourteen Dittmer APDs (collectively, the "Colorado APD Decisions")—constitute final agency actions subject to judicial review under the APA.

165. The Colorado APD Decisions are arbitrary, capricious, and otherwise not in accordance with the MLA, MLAAL, FLPMA, their implementing regulations, and other laws governing public lands and minerals. As more fully explained above, the decisions are based on an erroneous view of BLM's legal authority and duty to impose mitigation, bonding, reclamation, operational, reporting, and other requirements.

166. Accordingly, the APD decisions must be held unlawful and set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court grant the following relief:

(1) Declare, hold and adjudge that PIM 2018-014 and the Colorado APD Decisions are arbitrary, capricious, an abuse of discretion, or not in accordance with the MLA, MLAAL, FLPMA, APA, and/or their implementing regulations;

(2) Vacate and set aside PIM 2018-014 and the Colorado APD Decisions;

(3) Enter such preliminary and/or permanent injunctive relief as Petitioner may pray for hereafter;

(4) Award Petitioner's costs and attorney fees incurred in pursuing this action, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable provisions; and

(5) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 11th day of June 2025,

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2025, a copy of this filing, with attachments, was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ *Andrew Hursh*
Andrew Hursh