

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SAN JUAN CITIZENS ALLIANCE,
COLORADO ENVIRONMENTAL COALITION,
COLORADO WILD,
OIL AND GAS ACCOUNTABILITY PROJECT, and
THE WILDERNESS SOCIETY,

Plaintiffs,

v.

MARK STILES, in his official capacity as San Juan National Forest Supervisor and BLM
Center Manager of the San Juan Public Lands Center,
RICK CABLES, in his official capacity as Regional Forester of the Rocky Mountain Region of
the U.S. Forest Service,
UNITED STATES FOREST SERVICE,
CHARLES CONNER, in his official capacity as Acting Secretary of the Department of
Agriculture,
UNITED STATES BUREAU OF LAND MANAGEMENT,
and DIRK KEMPTHORNE, in his official capacity as Secretary of the Department of Interior,

Defendants.

COMPLAINT

INTRODUCTION

1. The San Juan National Forest in the southwest corner of Colorado contains stunning scenery, vast stretches of roadless lands, ancient ponderosa pine forests, outstanding wildlife and big game habitat, the largest wilderness in Colorado, and valuable hunting and other recreational opportunities. The Forest's beauty and natural values enhance the quality of life for residents of nearby Durango and Bayfield.

2. Beneath portions of the Forest and neighboring Bureau of Land Management ("BLM"), state and private lands lies natural gas trapped in coal seams, called coalbed methane ("CBM").

3. On April 4, 2007, the U.S. Forest Service (which manages the Forest) and the BLM (which manages federal minerals under the Forest) jointly approved the Northern San Juan Basin Coalbed Methane Project ("the Project"), which authorizes the drilling of approximately 140 natural gas wells and the construction of about 70 miles of roads and pipelines on federal lands. The Project:

- would carve 11 miles of roads and scrape more than two dozen well pads within the HD Mountains Roadless Area, threatening its old growth Ponderosa pine stands, wildlife, and recreational opportunities;
- would likely cause landslides and water pollution; and
- would worsen air pollution throughout the region that already harms people and obscures vistas with haze.

4. The Forest Service and BLM approved the Project notwithstanding: (1) the Forest Service failed to ensure that the Project would comply with the San Juan National Forest's requirements that protect old growth forest, streams, and wildlife, in violation of the National Forest Management Act ("NFMA"); (2) the Forest Service failed to use "best available science"

in evaluating impacts to wildlife, as required by NFMA; (3) the agencies failed to evaluate properly impacts to old growth forest, wildlife, streams, potential wilderness areas, and potential research natural areas, in violation of the National Environmental Policy Act (“NEPA”); (4) the agencies failed to disclose the contribution the Project would have on producing smog-forming chemicals that can harm human health, in violation of NEPA; and (5) the agencies violated the Clean Air Act by failing to protect sensitive public lands, including Mesa Verde National Park and Colorado’s largest wilderness area, from air pollution.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claims occurred within this judicial district; Defendants have offices in this district; the public lands and resources in question are located in this district; the majority of the environmental impacts resulting from this project will impact this district; and Plaintiffs reside in this district.

PARTIES

7. Plaintiff San Juan Citizens Alliance (“Alliance”) is based in Durango, Colorado. The Alliance has over 500 members, many of whom live in La Plata and Archuleta counties. The Alliance is a grass roots organization dedicated to social, economic and environmental justice in the San Juan Basin. The Alliance organizes San Juan Basin residents to protect the region’s water and air, public lands, rural character, and unique quality of life while embracing the diversity of the region’s people, economy and ecology. The Alliance achieves its

organizational purposes, in part, through ensuring the proper implementation of the nation's environmental and land management laws. The Alliance and its members have documented and attempted to reduce the impacts of oil and gas development across the San Juan Basin since 1986, including extensive involvement in management decisions affecting the HD Mountains for over 20 years. The Alliance twice submitted scoping comments on the Project, submitted comments on the Draft Environmental Impact Statement ("DEIS") for the Project, and appealed the Forest Service decisions and actions in the Project Record of Decision ("ROD") to the Regional Forester.

8. Alliance members use lands in the HD Mountains Roadless Area and environs, Mesa Verde National Park, the Weminuche Wilderness Area, La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah for hunting, fishing, hiking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes and intend to continue to do so. They will be harmed by the Project's environmental impacts on these areas. Alliance members live and work in and nearby the Project area and their health and livelihoods could be harmed by the Project.

9. Plaintiff Colorado Environmental Coalition ("CEC") is a Colorado-based conservation organization with three field offices in western Colorado and a main office in Denver. CEC has more than 3,500 individual members and over 90 affiliated organizations. CEC and its members actively participate in public land management planning in Colorado, including seeking to improve oil and gas development on Forest Service and BLM lands. CEC members are concerned with protecting wildlife, scenery, water quality and other values from oil

and gas activities. CEC submitted comments on the DEIS and appealed the Forest Service decisions and actions in the ROD to the Regional Forester. CEC members use lands in the HD Mountains Roadless Area and environs, Mesa Verde National Park, the Weminuche Wilderness Area, La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah for hunting, fishing, hiking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes and intend to continue to do so. CEC members live and work nearby the Project area and their health could be harmed by the Project.

10. Plaintiff Colorado Wild is a non-profit conservation organization based in Durango, Colorado whose primary interests and goals are the protection and restoration of forested wildlife habitat throughout the Southern Rocky Mountains, including the San Juan National Forest and BLM San Juan Public Lands. Colorado Wild's more than 800 members have a great interest in the management of the San Juan National Forest and BLM lands for this purpose. Colorado Wild provided comments on the Project DEIS and appealed the Forest Service decisions and actions in the ROD to the Regional Forester. Colorado Wild members use lands in the HD Mountains Roadless Area and environs, Mesa Verde National Park, the Weminuche Wilderness Area, La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah for hunting, fishing, hiking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes and intend to continue to do so. Colorado Wild members live and work nearby the Project area and their health could be harmed by the Project.

11. Plaintiff Oil and Gas Accountability Project (“OGAP”) is a non-profit organization based in Durango, Colorado with a network of 550 individual and organizational members throughout the United States and Canada. Many OGAP members reside in the San Juan Basin of Colorado. OGAP was founded in 1999 to work with individuals, groups, and communities to prevent and reduce the social, economic and environmental problems caused by oil and gas development. OGAP actively participates in public processes to ensure that oil and gas leasing and development complies with federal law and has participated in the Northern San Juan Basin CBM project. OGAP submitted comments on the DEIS and appealed the Forest Service decisions and actions in the ROD to the Regional Forester. OGAP members use lands in the HD Mountains Roadless Area and environs, Mesa Verde National Park, the Weminuche Wilderness Area, La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah for hunting, fishing, hiking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes and intend to continue to do so. OGAP members live and work nearby the Project area and their health could be harmed by the Project.

12. Plaintiff The Wilderness Society (“TWS”), founded in 1935, works to protect America's wilderness and wildlife and develop a nationwide network of wild lands through public education, scientific analysis and advocacy. TWS has over 6,300 Colorado members and more than 200,000 members nationwide. TWS and its members have worked to protect Colorado public lands, including wilderness and potential wilderness areas like the HD Mountains Roadless Area, from the impacts of oil and gas development. TWS provided comments on the Project DEIS and appealed the Forest Service decisions and actions in the ROD

to the Regional Forester. TWS members use lands in the HD Mountains Roadless Area and environs, Mesa Verde National Park, the Weminuche Wilderness Area, La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah for hunting, fishing, hiking, photography, wildlife viewing, and other recreational, aesthetic, and educational purposes and intend to continue to do so. TWS members live and work nearby the Project area and their health could be harmed by the Project.

13. Plaintiffs bring this action on behalf of their organizations and their adversely affected members to ensure that Defendants comply with the law prior to authorizing and approving oil and gas development in the Northern San Juan Basin Project area. The above-described educational, scientific, aesthetic, spiritual, conservation, and health and safety interests of Plaintiff organizations and their members have been, are being, and, unless this Court grants the requested relief, will continue to be harmed and irreparably injured by Defendants' actions and inaction.

14. Defendant Mark Stiles is sued in his official capacity as the Forest Supervisor of the San Juan National Forest and Bureau of Land Management Center Manager of the San Juan Public Lands Center. Mr. Stiles is charged with and responsible for the management of the San Juan National Forest lands, BLM lands, and federal minerals in the Project area in accordance with all applicable laws and regulations.

15. Defendant Rick Cables is sued in his official capacity as the Regional Forester for the Rocky Mountain Region of the U.S. Forest Service. The office of the Rocky Mountain Regional Forester is charged, *inter alia*, with rendering decisions on administrative appeals of

decisions made by Forest Supervisors in the Rocky Mountain Region, the region in which the San Juan National Forest is located.

16. Defendant U.S. Forest Service is the agency that administers the surface resources of the natural gas leases on National Forest lands that are part of the Project.

17. Defendant Charles Conner is Acting Secretary of the Department of Agriculture, and is charged with and responsible for the management of National Forest lands in accordance with all applicable laws and regulations. Charles Conner is the Acting Secretary of the department with authority over the Weminuche Wilderness, La Garita Wilderness, San Pedro Parks Wilderness, and Pecos Wilderness Class I areas.

18. Defendant U.S. Bureau of Land Management is the agency that is authorizing oil and gas development in the Northern San Juan Basin Project on both BLM and Forest Service lands.

19. Defendant Dirk Kempthorne is Secretary of the Department of the Interior, and is charged with and responsible for the management of BLM lands in accordance with all applicable laws and regulations. Dirk Kempthorne is the Secretary of the department with authority over the Mesa Verde National Park, Bandelier National Monument, and Canyonlands National Park Class I areas.

STATUTORY BACKGROUND

I. THE NATIONAL FOREST MANAGEMENT ACT

20. Through the National Forest Management Act (“NFMA”), 16 U.S.C. § 1600 *et seq.*, Congress established a two-step process for managing the National Forests. First, NFMA directs the Forest Service to prepare and implement comprehensive land management plans for

each national forest. 16 U.S.C. § 1604(b). These Land and Resource Management Plans (or Forest Plans) determine, among other things, the availability and suitability of lands for resource management, and wildlife and habitat conservation requirements for a fifteen-year period. *Id.* § 1604.

21. Second, the Forest Service implements and permits individual, site-specific projects pursuant to the forest plan's direction. The Forest Service must ensure that site-specific management projects within a National Forest, including oil and gas projects, are consistent with forest plans. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.8(e). In order to demonstrate that the Project will be consistent with the Plan, the Forest Service must confirm and document that the proposed management decisions are consistent with the management direction in the forest plan. Forest Service Manual ("FSM") 1922.41(1). If the Forest Service seeks to approve a project that is inconsistent with the applicable forest plan, it must: (1) amend the plan; (2) modify the action to comply with the plan; or (3) disapprove the action that is inconsistent with the plan. *Id.* at 1926.5

22. NFMA and its regulations require that each forest plan be revised at least every fifteen years. 16 U.S.C. § 1604(f)(5); 36 C.F.R. § 219.10(g). When revising forest plans, the Forest Service must analyze the availability of roadless lands for recommended wilderness or other protective status. 16 U.S.C. § 1604(g)(3)(A); 36 C.F.R. § 219.17 (1982); 36 C.F.R. § 219.9(b)(8) (2000); 36 C.F.R. § 219.27(b) (2000).

23. NFMA regulations must provide for diversity of plant and animal communities. 16 U.S.C. § 1604(g)(3)(B). On April 4, 2007, the date of the Forest Service's Record of Decision approving the Project, regulations issued by the Forest Service in 2000 were in effect.

For site-specific project decisions, the 2000 NFMA Regulations direct that agency officials “consider the best available science in implementing and, if appropriate, amending the current plan.” 36 C.F.R. § 219.35(a), (d).

24. The Forest Service defines Research Natural Areas (“RNAs”) as “ecological areas designated in perpetuity for research and education and/or to maintain biological diversity on National Forest System lands.” FSM 4063. Forest plans shall include analysis of, and recommendations for, the establishment of proposed Research Natural Areas. FSM 4063.03. Where proposals to establish Research Natural Areas arise outside of the forest planning process, the Forest Supervisor shall prepare, as part of an establishment record (FSM 4063), a forest plan amendment in accordance with land management planning regulations (36 C.F.R. § 219.10(f) and FSM 1922.5) and environmental analysis policy and procedures (FSM 1950 and Forest Service Handbook (“FSH”) 1909.15). *Id.*

25. The Project must comply with policy and direction given through the Forest Service Region 2 Soil and Water Conservation Practices Handbook (FSH 2509.25). Final Environmental Impact Statement, Northern San Juan Basin Coal Bed Methane Project (July 2006) (“FEIS”) at 3-179.

II. THE NATIONAL ENVIRONMENTAL POLICY ACT

26. The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. Congress enacted NEPA to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321.

27. NEPA requires that federal agencies prepare and circulate for public review and comment an environmental impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. In an EIS, the federal agency must identify environmental impacts of the proposed action, consider alternative actions and their impacts, and identify all irreversible and irretrievable commitments of resources associated with the proposed action. 42 U.S.C. § 4332(2).

28. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of their actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9. Direct effects are those “which are caused by the action and occur at the same time or place.” 40 C.F.R. § 1508.8(a). Indirect effects are those “caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable.” *Id.* § 1508.8(b). Cumulative impacts are impacts from “past, present and reasonably foreseeable future actions regardless of what agency (federal or non-Federal) or person undertakes such other action.” *Id.* § 1508.7. “Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.*

29. NEPA requires agencies to disclose and analyze measures to mitigate the impacts of proposed actions. 40 C.F.R. §§ 1502.14(f), 1502.16(h). An agency’s analysis of mitigation measures must be reasonably complete in order to properly evaluate the severity of the adverse effects of a proposed project prior to making a final decision.

30. NEPA requires that agencies insure the professional and scientific integrity of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24. NEPA requires that agencies state how alternatives considered in an EIS and decisions based on an EIS

will or will not achieve the requirements of NEPA and other environmental laws and policies.

40 C.F.R. § 1502.2(d).

III. THE CLEAN AIR ACT

A. Ozone Standards.

31. The Clean Air Act requires the Environmental Protection Agency (“EPA”) to set National Ambient Air Quality Standards (“NAAQS”) for pollutants considered harmful to public health and the environment. The EPA sets primary NAAQS to protect public health, including the health of “sensitive” populations such as asthmatics, children, and the elderly. 42 U.S.C. §§ 7409(b)(1)-(2). Compliance with the NAAQS is necessary to comply with the Clean Air Act.

32. The EPA has set NAAQS for six principal pollutants, called “criteria” pollutants, including ozone (O₃). EPA set the primary NAAQS for ozone at 0.080 ppm in 1997. 62 Fed. Reg. 38856 (July 18, 1997). EPA has proposed to lower the primary NAAQS “to a level within the range of 0.070 to 0.075 parts per million (ppm), to provide increased protection for children and other ‘at risk’ populations against an array of O₃-related adverse health effects” 72 Fed. Reg. 37818 (July 11, 2007).

B. The Clean Air Act’s Requirement to Protect Visibility in Class I Areas.

33. The Clean Air Act establishes a program to protect visibility in mandatory federal Class I areas. 42 U.S.C. §§7491, 7492. Mandatory federal Class I areas include national parks (over 6,000 acres), wilderness areas (over 5,000 acres), national memorial parks (over 5,000 acres), and international parks that were in existence as of August 7, 1977.

34. The Clean Air Act “declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which

impairment results from manmade air pollution.” 42 U.S.C. § 7491(a)(1). The Act states “the terms ‘visibility impairment’ and ‘impairment of visibility’ shall include reduction in visual range and atmospheric discoloration.” 42 U.S.C. § 7491(g)(6). “Visibility impairment” “mean[s] any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.” 40 C.F.R. § 51.301.

35. The Clean Air Act imposes on “the Federal Land Manager and the Federal official charged with direct responsibility for management of such lands an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a Class I area.” 42 U.S.C. § 7475(d)(2)(B). The Act declares that the Secretary of the Department with authority over a federal Class I area is the “federal land manager” for such lands. 42 U.S.C. § 7602(i).

STATEMENT OF FACTS

36. The Northern San Juan Basin Coalbed Methane Project will occur on San Juan National Forest and BLM lands in the southwest corner of Colorado near the town of Bayfield. It will involve the construction of roads, pipelines, well pads, compressor stations and other infrastructure associated with industrial drilling activity on wilderness-quality lands in the HD Mountains roadless area and adjacent lands, and in sensitive watersheds including Archuleta Creek, Deep Canyon, and Ignacio Creek. The removal of water required for coalbed methane extraction may cause gas to seep into residences and water wells near a geologic formation known as the Fruitland Outcrop. Air pollution will worsen smog in the San Juan Basin and will worsen haze that impairs visibility in nearby Mesa Verde National Park and the Weminuche Wilderness Area.

I. THE SAN JUAN NATIONAL FOREST AND ITS MANAGEMENT

37. The Forest Service issued a Land and Resource Management Plan for the San Juan National Forest in 1983 (“Forest Plan”). The Forest Service amended the Forest Plan to change timber harvest prescriptions in 1992.

38. The Forest Plan provides Management Direction in terms of both Forest Direction and Management Area Direction. Forest Direction consists of goals, objectives and management requirements applicable to the entire Forest. Management Area Direction contains management requirements specific to individual areas within the Forest, and are applied in addition to the Forest Direction management requirements.

39. The San Juan National Forest Plan is currently being revised. Under NFMA, the Forest Service was required to revise the 1983 Forest Plan by 1998. The scoping for the San Juan Forest Plan Revision – 64 Fed. Reg. 51504 (September 23, 1999) – predated scoping for the Northern San Juan Basin Project by over half a year. 65 Fed. Reg. 16762 (April 4, 2000).

A. Forest Plan Requirements Protecting Old Growth Forest and Wildlife Habitat.

40. Parts of the Project will involve construction through and damage to old growth forest stands. The Forest Plan requires that the Forest Service “[m]aintain structural diversity of vegetation on units of land 5,000 to 20,000 acres in size, or fourth order watersheds, that are dominated by forested ecosystems.” Amended Forest Plan at III-11. To implement this general direction, the Plan requires that “[i]n forested areas of a unit, 5 percent or more should be in old growth.” *Id.*

41. The Forest Plan designated management indicator species (“MIS”), including Abert’s squirrel, Bald eagle, beaver, black bear, brown trout, deer mouse, elk, green-tailed

towhee, hairy woodpecker, mallard, Merriam's turkey, mountain bluebird, mule deer, and northern goshawk.

42. Parts of the Project will involve road use, construction and other development within areas designated by the Forest Plan as 4B, which places “[m]anagement emphasis ... on the habitat needs of one or more management indicator species.... The goal is to optimize habitat capability, and thus numbers of the species.” *Id.* at III-140. In these areas, “[r]ecreation and other human activities are regulated to provide optimum habitat for the selected species.” *Id.* To meet this prescription, the Forest Service must “[m]aintain habitat capability at a level at least 80 percent of potential capability” in 4B management areas. *Id.* at III-145. Further, the Forest Service in 4B areas must maintain at least 90 percent of the habitat needed to support the State population goals for commonly hunted, fished, or trapped species such as elk and black bear. *Id.*

43. Other parts of the Project will involve road use, construction and other development within areas designated by the Forest Plan as 5B, which places “[e]mphasis ... on big game winter range in forested areas.” *Id.* at III-159. The Forest Plan requires that the Forest Service “[p]rovide big-game forage and cover, and habitat,” by, among other things, “[m]aintain[ing] habitat capability at a level at least 80 percent of potential capability” for big game. *Id.* at III-164 – III-165. In addition, in 5B areas, the Forest Plan requires the agency to “[m]aintain habitat effectiveness during winter of at least 90 percent” for big game species, which include deer, elk, mountain goat and bighorn sheep. *Id.* at III-159, III-165.

44. Parts of the Project will also involve road use, construction and other development within areas designated by the Forest Plan as 6B, which places “[e]mphasis ... on livestock grazing.” *Id.* at III-179. The Forest Plan requires that the Forest Service “[m]aintain

habitat capability for management indicator species” by “[m]aintain[ing] habitat capability at 60 percent of potential capability” for such wildlife. *Id.* at III-184.

B. Forest Plan Provisions Protecting Water Quality and Riparian Areas.

45. The Forest Plan requires that the Forest Service “improve or maintain water quality to meet State water quality standards,” and that increased sediment yields may not exceed threshold limits. *Id.* at III-47.

46. The Forest Plan contains provisions for the protection of riparian (streamside) areas (known as 9A management areas) that include the following:

- “Prevent stream channel instability, loss of channel cross-sectional areas, and loss of water quality resulting from activities that alter vegetative cover.” (*id.* at III-259)
- “Proposed new land-use facilities (roads, campgrounds, buildings) will not normally be located within floodplain boundaries for the 100-year flood.” (*id.*)
- “Locate mineral removal activities away from the waters edge or outside of the riparian area” (*id.* at III-262)
- “Locate roads and trails outside riparian areas unless alternative routes have been reviewed and rejected as being more environmentally damaging” (*id.* at III-263).

II. SENSITIVE AREAS OF THE NATIONAL FOREST THREATENED BY THE PROJECT

A. The HD Mountains Roadless Area.

47. The Project will involve the construction of roads, well pads, pipelines and other industrial facilities inside the HD Mountains Roadless Area. *See* Figure 1, on following page. The HD Mountains Roadless Area is located in the San Juan National Forest approximately 25 miles east of Durango.

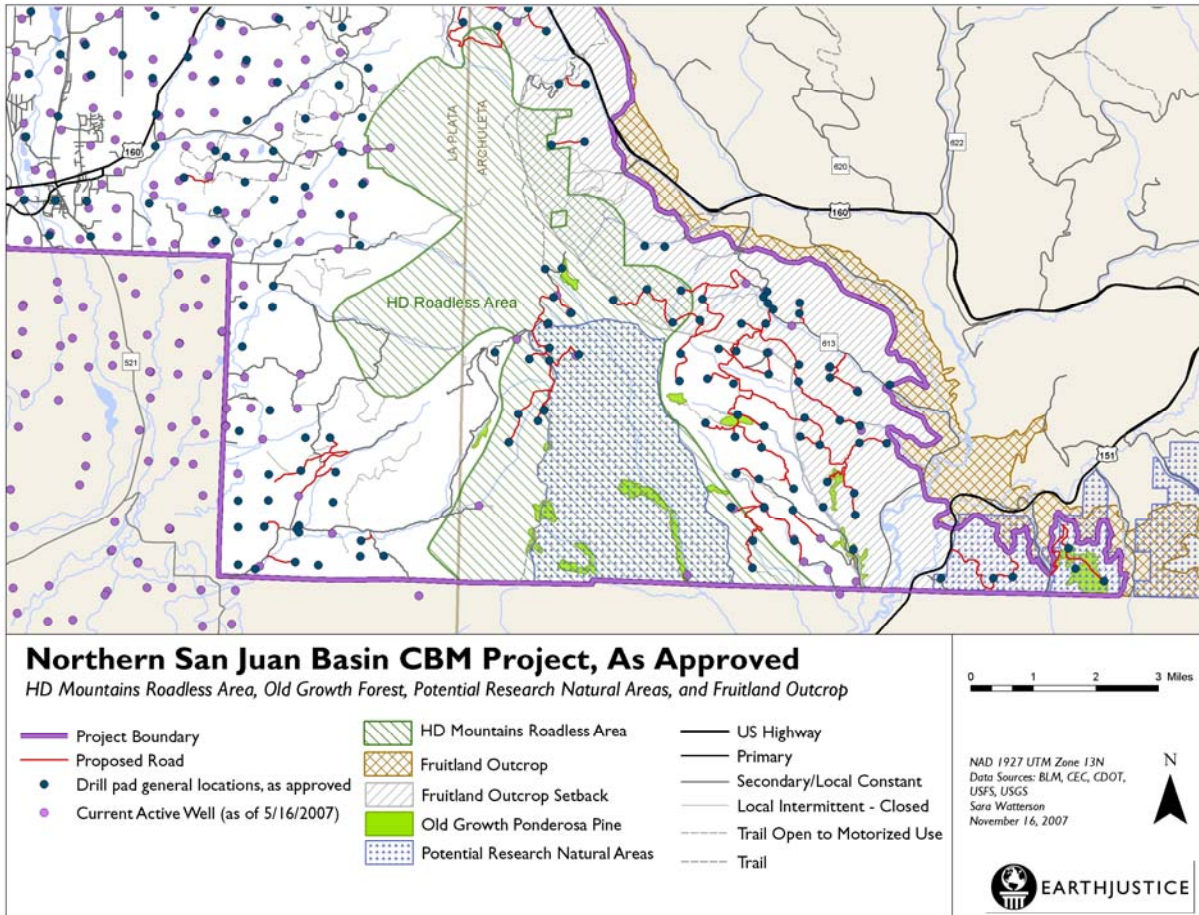


Figure 1. The Northern San Juan Basin CBM Project, as Approved.

48. The HD Mountains Roadless Area and surrounding forest lands possess some of the highest quality old growth ponderosa pine left in the San Juan Mountains. The HD Mountains contain many watersheds that are sensitive to erosion due to local geology, erosive soils, steep slopes, and arid conditions. The HDs provide prime habitat for a wide range of species including migratory songbirds, mule deer, elk, wild turkeys and black bears. The HDs also provide recreational opportunities for local residents, hunters, horseback riders, and backpackers.

49. The HD Mountains Roadless Area meets the Wilderness Act's requirements for wilderness, including roadlessness, naturalness, special ecological values, and outstanding opportunities for solitude and primitive recreation. 16 U.S.C. § 1131.

50. The Forest Service identified the boundaries of the HD Mountains Inventoried Roadless Area ("IRA") during the agency's second Roadless Area Review and Evaluation ("RARE II") process in the late 1970s. The IRA encompasses 20,010 acres of roadless lands.

51. As part of the ongoing Forest Plan revision process started in 1999, the Forest Service may modify boundaries of IRAs and determine whether those areas should be recommended for designation as Wilderness. 64 Fed. Reg. 51504, 51510 (September 23, 1999). The boundaries of the HD Mountains Roadless Area, as defined by the Forest Service for use in its current and ongoing Forest Plan Revision, encompass 27,296 acres, significantly more roadless National Forest lands than does the Inventoried Roadless Area identified by the RARE II process. Within the most recently-identified HD Mountains Roadless Area boundaries, the Project approves the construction of 11 miles of road and 27 well pads.

B. The Archuleta, Deep Canyon, and Ignacio Creek Potential Research Natural Areas.

52. The Project area also encompasses three potential Research Natural Areas studied by the Colorado Natural Heritage Program ("CNHP") under contract to the San Juan National Forest - Archuleta Creek, Deep Canyon, and Ignacio Creek.

53. The Forest Service contracted with CNHP to determine the suitability of these areas as RNAs during revision of the Forest Plan. The specific areas and boundaries for evaluation were selected by the San Juan National Forest. These potential RNAs include unique

ecosystems nowhere else represented among designated RNAs in the San Juan National Forest nor within the Forest Service's Rocky Mountain Region.

54. The ongoing Forest Plan Revision begun in 1999 will consider designation of new RNAs. 64 Fed. Reg. 51504, 51510 (September 23, 1999).

III. THE PROJECT'S AIR POLLUTION

55. The Project will create air pollution through, *inter alia*, drilling rig exhaust, well production equipment exhaust, pipeline compression engine exhaust, and exhaust from construction and maintenance vehicles.

56. Air pollution caused by the Project will not be confined to the area of construction. Air moves and so does air pollution. The Project's air pollution will impact the greater San Juan Basin area, and spread to adjacent protected areas, including Mesa Verde National Park and the Weminuche Wilderness area in the San Juan National Forest.

A. Background – Air Pollution in and around the Project Area.

57. The San Juan Basin, where this Project will take place, encompasses a population of approximately 175,000 people and an area of roughly 16,000 square miles straddling the Colorado-New Mexico border. The Basin already contains 26,000 oil and gas wells that create air pollution in the region, and in recent years the Department of the Interior and U.S. Forest Service have approved projects that will add an additional 12,000 wells in and around the Basin. See Figure 2, on following page.

58. The San Juan Basin is also polluted by some of the dirtiest coal-fired power plants in the nation, including the nearby San Juan and Four Corners plants, which, in 2006 pumped over 71,000 tons of nitrogen oxides (“NO_x”) into the atmosphere.

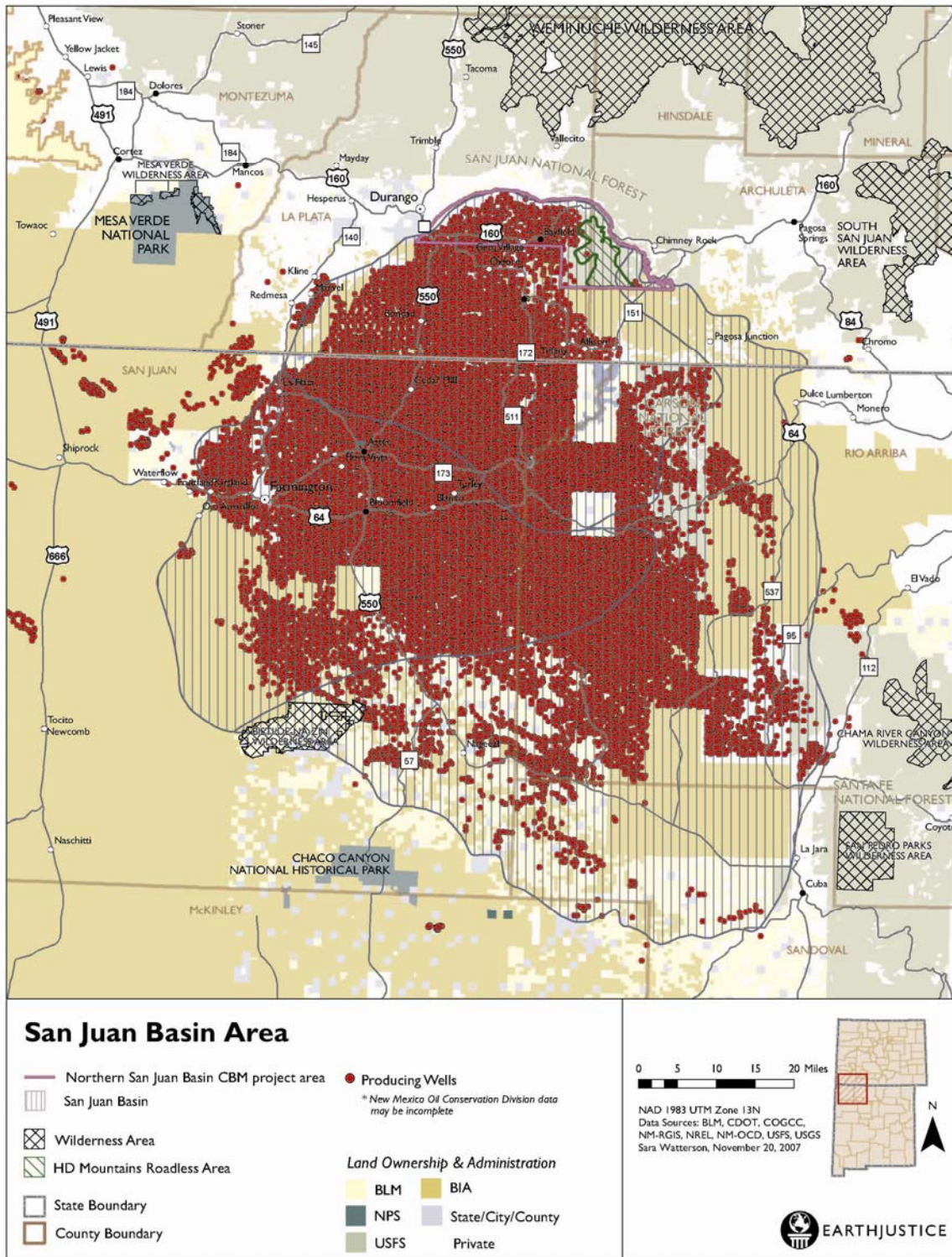


Figure 2. The San Juan Basin Area.

59. Pollutant emissions from these and other sources have already impacted air quality in the region. Ozone levels are high – at levels that impair health – in the region, and they are in danger of exceeding standards set by the EPA. Visibility is impaired in nearby National Parks and Wilderness Areas.

60. Ozone is a photochemical oxidant and the major component of smog. Ozone is not emitted directly into the air but is formed through chemical reactions between NO_x and volatile organic compounds (“VOCs”), designated by the EPA as ozone precursors, in the presence of sunlight. *See* 40 C.F.R. § 52.21(b)(1)(ii) as amended, 70 Fed. Reg. 71,612 (Nov. 29, 2005).

61. Nitrogen oxides are a group of highly reactive gases containing nitrogen and oxygen in varying amounts. They include nitrogen dioxide (“ NO_2 ”), a brownish, highly reactive gas. NO_2 itself can harm people by irritating the lungs, causing bronchitis and pneumonia, and lowering resistance to respiratory infections.

62. There are numerous sources of NO_x emissions associated with the Project, including drill rig engines, well-head compressor engines, centralized compressor stations, gas processing plants, glycol dehydrators, and separators, as well as tailpipe emissions from the increased vehicular traffic needed to construct, operate and maintain each well and the associated production facilities.

63. VOCs are a group of organic chemical compounds that have high enough vapor pressure under normal conditions to significantly vaporize and enter the atmosphere. VOCs include aldehydes, ketones, and aromatic compounds such as benzene, toluene, and xylene.

Engines associated with the Project – including well-head compressors, other compressors, and vehicles – will produce VOCs.

64. Ozone is a powerful respiratory irritant that can cause reduced lung function, greatly increasing the risk of asthma attacks and the need for medical treatment and hospitalization. The EPA cautions that ground-level ozone, even at very low levels, triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. Repeated exposure to ozone can cause permanent lung damage.

65. Ozone primary NAAQS are currently set at 80 parts per billion (“ppb”), or 0.080 parts per million (“ppm”), for an 8-hour average concentration. EPA set the current ozone NAAQS in 1997. Today – a decade later – EPA and public health and medical experts agree that this level is too high to protect public health, including the health of sensitive populations such as asthmatics, children, and the elderly. *See* 72 Fed. Reg. 37,818 (July 11, 2007).

66. Monitoring shows that areas in the San Juan Basin and vicinity are close to exceeding the current ozone NAAQS and are consistently exceeding the range of new standards proposed by EPA, scientists, and doctors.

67. In addition to causing health problems, air pollution has degraded visibility throughout the San Juan Basin and beyond with haze. Under current conditions, Ship Rock, located 45 miles from Mesa Verde National Park’s Far View Visitor Center, can be seen from the Visitor Center in bright clarity only about half of the time. During the period 1994 to 2003, there was a statistically significant degradation in visibility during hazy days in Mesa Verde National Park.

68. Haze is caused when sunlight encounters tiny pollution particles in the air that absorb or scatter light. More pollutants mean more absorption and scattering of light, which reduce the clarity and color of what observers can see.

69. NO_x, VOCs and sulfur dioxide (“SO₂”) cause haze. Nitrogen oxides and VOC gases emitted into the atmosphere cause the formation of smog. NO_x can also form nitrate compounds which scatter the transmission of light and thereby contribute to visibility reduction. VOC gases can convert into carbon particles, which contribute significantly to visibility impairment. Sulfate particles formed from SO₂ in the air are also a major cause of reduced visibility.

B. Sensitive Areas Threatened by the Project’s Air Pollution.

1. Mesa Verde National Park.

70. Mesa Verde National Park, located 15 miles northwest of the San Juan Basin, is the premier archeological park in the United States and a World Heritage Site. It is also a Class I area for purposes of the Clean Air Act. The cultural and natural resources in the Mesa Verde region are significant both nationally and internationally. Mesa Verde National Park was established in 1906 to preserve sites built by Ancestral Puebloans, an ancient Native American culture that lived on the mesa tops and in the canyon alcoves. Today, 24 Native American nations regard Mesa Verde as the home of their ancestors.

71. The Park’s mission includes preserving and protecting from injury and spoliation sites, artifacts and other works of Ancestral Puebloan peoples; managing and protecting the pristine character of designated wilderness on 8,100 acres; and protecting the scenery of Point Lookout.

72. Two trails inside the Park – the Point Lookout and the Knife Edge trail – provide excellent views of adjacent valleys.

2. The Weminuche Wilderness Area.

73. Almost a half million acres in size, the Weminuche is Colorado’s largest wilderness area. It is located 10-20 miles north of the San Juan Basin. The area contains the headwaters of dozens of major streams and rivers and encompasses broad and diverse environments. The Weminuche experiences hundreds of thousands of recreational visitor days each year. The Continental Divide Trail runs through the heart of the area for approximately 80 miles. The Weminuche is also a Class I area for purposes of the Clean Air Act.

3. Other National Park, Monument and Wilderness Areas.

74. The Project would also likely contribute to haze pollution in other Class I areas, including the La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah. These areas are all within 65 miles of the Basin except for Canyonlands, which is less than 110 miles from the Basin.

IV. THE NORTHERN SAN JUAN BASIN PROJECT

75. The Forest Service and Bureau of Land Management jointly issued a Record of Decision (“ROD”) for the Project on April 4, 2007. The ROD selected Alternative 7, with minor modifications, which authorizes approximately 140 natural gas wells to be drilled on 130 well pads, as well as the construction of about 70 miles of roads and pipelines, on federal lands. FEIS at Table 2-7; ROD.

A. The Project's Impacts to Sensitive Resources.

1. Old Growth Ponderosa Pine Forest Stands

76. Although the San Juan National Forest Plan requires that in “forested areas of a unit, 5 percent or more should be in old growth,” old growth ponderosa pine stands represent only 3.8 percent of the total area of ponderosa pine on National Forest lands in the Project area. Forest Plan at III-11; FEIS at 3-231.

77. The Final EIS indicates that the approval of Alternative 7 will result in the destruction of old growth forest, including some of the rarest, oldest trees. This destruction of old growth would move the Project area further away from the 5 percent standard for old growth that the Project area is currently not meeting.

78. The Forest Service admits that the destruction of old growth permitted by the ROD would result in a “deviation” from the Forest Plan standard. ROD at 17.

79. The Forest Service identified several mitigation measures to reduce impacts to old growth forests, but the measures are so conditional it is impossible to tell whether they will reduce impacts at all. *See, e.g.*, FEIS at 3-265 (“Avoid old growth ponderosa pine stands wherever possible, and minimize impacts to individual large, old trees when avoidance is not possible;” “Protect snags and down-dead logs to the extent possible” (emphasis added)).

80. In analyzing the extent to which the Project may fragment old growth ponderosa pine forest stands, the Forest Service states that “[t]he extent of these potential impacts would depend on the size and configuration of the impacted old growth stand and the location of the impacting structure. Steps would be taken to avoid old growth stands where terrain limitations do not create unacceptable tradeoffs.” *Id.* at 3-253. The FEIS fails to disclose how impacts

would differ depending on stand size and configuration, or to explain what types of “unacceptable tradeoffs” might require destruction of old growth rather than avoidance.

81. The Forest Service admits that it is “unknown” whether a measure to avoid old growth would be effective, and in one place it admits that avoidance is impossible, and thus that such mitigation measure would be completely ineffective. *Id.* at 3-253.

2. Streams and Riparian Areas.

82. The ROD approves 6 miles of road construction in the “watershed influence zone” and 7 miles of pipeline construction on landslide hazard areas or pre-existing landslides on Forest Service land. Much of this construction will occur near and adjacent to streams and riparian areas, which the Forest Service must manage pursuant to prescriptions for 9A management areas. *Id.* at 3-137, 3-162.

83. This construction threatens to pollute streams and riparian areas with sediment from erosion and landslides, particularly where road cuts, pipelines, and drill pads may be constructed on steep slopes and/or erosive soils. Landslides create large amounts of sediment that may enter streams directly, especially in steep, dissected terrain. In addition, surface-disturbing activities, such as construction of well pads, roads, and pipelines reduce vegetative cover in the watershed. This loss of cover increases erosion potential and, consequently, sediment loads in surface streams.

84. The Forest Service admits that the Project “may not conform to Direction and standards” in the Forest Plan or to Forest Service policy as contained in the Region 2 Soil and Water Conservation Practices Handbook (FSH 2509.25). *Id.* at 3-179. The FEIS identifies numerous construction activities authorized by the ROD that could violate multiple Plan

standards. *Id.* at 3-179 to 3-181. For example, under the preferred alternative, “[n]ew road and pipeline construction in Lange Canyon over steep, dissected landslide terrain ... poses a high risk of pipeline failure which can result in substantive negative watershed impacts.” *Id.* at 3-180. The Forest Service admits that this action “may conflict” with Forest Plan standards for 9A management areas, including those requiring the Forest Service to “[p]revent stream channel instability, loss of channel cross-sectional areas, and loss of water quality resulting from activities that alter vegetative cover” and to “[i]mprove or maintain water quality to meet State water quality standards.” *Id.*

85. The agency also admits that the construction of roads, wells, pipelines, and/or a compressor station in Zabel Canyon, in the Goose Creek watershed, in the water influence zone of Fosset Gulch Creek, and adjacent to Pole Creek may similarly violate Forest Plan standards, including those discussed in Paragraph 84 above, that protect streams and floodplains. *Id.* at 3-180. The Forest Service admits that this construction may violate other standards, including those that require that: (1) “[p]roposed new land-use facilities ... will not normally be located within floodplain boundaries for the 100-year flood;” (2) the Forest Service “[l]ocate mineral removal activities away from the waters edge or outside of the riparian area;” and (3) the Forest Service “[l]ocate roads and trails outside riparian areas unless alternative routes have been reviewed and rejected as being more environmentally damaging.” *Id.* at 3-181.

86. The Forest Service identified several mitigation measures to reduce impacts to riparian areas, but the measures are so conditional that it is impossible to tell whether they will reduce impacts at all. *See, e.g., id.* at 3-169, 3-171 (for “new well pads on terrain steeper than 20 percent with erosive soils,” operators should “[l]imit fill slope length, to the extent possible, to

less than 10 feet or maintain slopes at or less than a 3:1 slope” and should “[a]void crossings of stream, wetland, and riparian areas during construction of infrastructure (pipelines, roads, and power lines) to the extent practicable.” (emphasis added)).

3. Wildlife Habitat.

87. Construction and operation of Project-related facilities will fragment habitats in the Project area. Further, in response to increased human activity, equipment operation, vehicular traffic, and noise associated with all phases of gas development and operations, wildlife may avoid these activities and prefer other locations. This avoidance would result in the under-utilization of otherwise suitable habitats; therefore, the effectiveness of these habitats in supporting wildlife would be diminished. Similarly, the displacement of wildlife from disturbed areas may lead to the overuse of suitable habitats in undisturbed areas, increasing competition for limited resources. Wildlife distribution patterns would be altered.

88. The Project area contains 12,000 acres of lands designated by the Forest Plan as Management Area 4B. Roads and well pads are approved in 4B areas. FEIS at 3-296. The Forest Service guesses that such areas currently “most likely ... provide[] habitat at 80 percent” for management indicator species required in 4B areas under the Forest Plan. *Id.* (emphasis added). The Forest Service provided no analysis to support this guess. Despite the fact that the Forest Service only guesses that the 4B areas now provide habitat at 80 percent for management indicator species, and that the Forest Service approved roads and drill pads in such areas, the agency concludes that 4B areas would continue to provide for 80 percent habitat capability for management indicator species. *Id.*

89. The Forest Service failed to provide any analysis or determination as to whether 4B management areas within the Project area are providing at least 90 percent of the habitat needed to support the State population goals for commonly hunted, fished, or trapped species such as elk and black bear. The Forest Service failed to provide any analysis of whether the 4B management areas would meet the 90 percent habitat standard during or following the Project.

90. Because the Forest Service did not determine the level of habitat capability for the 4B areas impacted by the Project, and did not determine whether 4B management areas within the Project area were providing at least 90 percent of the habitat needed to support the State population goals for each management indicator species, the Forest Service failed to provide evidence that the Project will comply with Forest Plan standards and guidelines for the protection of wildlife habitat in 4B areas.

91. The Project requires road construction and road use through lands designated by the Forest Plan as 5B Management Areas. The Forest Service concluded, with no supporting analysis, that the Forest would “[m]aintain habitat capability at a level at least 80 percent of potential capability” for big game “in the 5B area under all of the alternatives,” including the alternative adopted in the Project ROD. Forest Plan at III-165 (Plan standard); FEIS at -3-297 & App. J at 202 (re: project compliance).

92. The Forest Service admits that it “did not ... address” whether the Forest would meet the Forest Plan requirement that the agency “[m]aintain habitat effectiveness during winter of at least 90 percent” for big game species in 5B areas. Forest Service, Recommendation Memorandum for Northern San Juan Basin Coal Bed Methane (July 5, 2007) (“Appeal Decision”) at 5.

93. The Project area contains 6,000 acres of lands designated by the Forest Plan as Management Area 6B. Road construction and use will occur on these lands. FEIS at 3-295. The Forest Service determined that 6B management areas “may not be meeting the 60-percent habitat potential guideline for hairy woodpecker, and bluebird,” two management indicator species, and “[f]urther field investigation would be conducted to determine whether the 6B area is currently meeting the 60-percent habitat potential guideline.” *Id.* at 3-296.

94. The Forest Service admits that “many wildlife mitigation measures were written with equivocal or conditional language in the FEIS.” Appeal Decision at 16. The language of the stipulations themselves makes it simply impossible to estimate their efficacy in mitigating impacts. For example, mitigation for Abert’s squirrel is to “[m]inimize impacts to squirrel nesting habitat to the extent practical....” FEIS at 3-289. For hairy woodpecker and bluebird, mitigation requires the protection of all large-diameter trees “where possible.” *Id.* at 3-290. For Merriam’s turkey, a mitigation measure would “limit the extent of vegetation clearing” “if possible.” *Id.*

4. Potential Wilderness and Potential Research Natural Areas.

95. The Forest Service refused to analyze whether to amend the Plan to recommend the HD Mountains roadless area for wilderness designation and failed to analyze the Project’s effects on its suitability for wilderness designation in the future. The Forest Service stated that “it is outside of the scope of the EIS to analyze and address wilderness suitability.” FEIS App. O at 318.

96. The Forest Service refused to analyze whether to amend the Plan to designate Research Natural Areas and failed to analyze the Project’s effects on the suitability of certain

lands for RNA designation in the future. The Forest Service states that the Project EIS does not evaluate research natural area suitability.

B. Air Pollution.

1. Ozone Pollution.

97. The Project will produce both precursors of ozone pollution - NO_x and VOCs. The Project will require the use of numerous sources of NO_x emissions, including drill rig engines, well-head compressor engines, centralized compressor stations, gas processing plants, glycol dehydrators, and separators, as well as tailpipe emissions from the increased vehicular traffic needed to construct, operate and maintain each well and the associated production facilities. Engines associated with the Project – including well-head compressors, other compressors, and vehicles – will also produce VOCs.

98. The EIS and ROD contain no analysis of the Project’s contribution to ozone pollution.

2. Air Pollution Impacts on Haze in Class I Areas.

99. The agencies attempted to evaluate visibility impacts to only two Class I airsheds: Mesa Verde National Park and the Weminuche Wilderness Area. For these two areas, the Project is predicted to cause significant adverse impacts to visibility and other air-quality related values, including nitrogen deposition in Grizzly Lake in the Weminuche Wilderness Area.

100. Although other Class I airsheds could be degraded by the Project – including the La Garita Wilderness in Colorado, the San Pedro Parks Wilderness, Bandelier National Monument, and Pecos Wilderness Area in New Mexico, and Canyonlands National Park in Utah – the agencies failed to analyze impacts to visibility in these areas.

101. The Project's air quality analysis lacks scientific integrity, which causes it to underestimate visibility impacts. The analysis utilized improper assumptions concerning, *inter alia*, buffers around sources and Class I receptors and background ammonia levels, and also failed to accurately compare modeled visibility impacts to natural background conditions.

V. THE PLAINTIFFS' ADMINISTRATIVE APPEAL

102. All Plaintiffs appealed the April 4, 2007 ROD to the Regional Forester in a timely manner on May 21, 2007. That appeal, which raised all of the claims alleged against the Forest Service in this Complaint, was denied by the Deputy Regional Forester for Resources, Richard C. Stem, on July 5, 2007. That decision constitutes the final administrative determination of the Department of Agriculture. Plaintiffs thus have exhausted their administrative remedies and have no other adequate remedy at law.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

NFMA - Failure to Comply with Forest Plan Standard that Protects Old Growth

103. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

104. Forest Service decisions must be consistent with Forest Plan standards and guidelines. 16 U.S.C. § 1604(i).

105. The San Juan National Forest Plan requires that in "forested areas of a unit, 5 percent or more should be in old growth."

106. Old growth ponderosa pine stands in the Project area represent only 3.8 percent of the total area of ponderosa pine on National Forest lands in the Project area. The Forest Service

admits that by permitting the destruction of old growth, the Project will move the Forest further from compliance with the Plan's requirements.

107. The Forest Service violated NFMA by approving a Project that will violate Forest Plan standards and guidelines requiring that in "forested areas of a unit, 5 percent or more should be in old growth." 16 U.S.C. § 1604(i). Accordingly, the Forest Service's decision to approve the Project is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

SECOND CAUSE OF ACTION

NEPA - Failure to Analyze and Disclose Impacts to, and Effectiveness of Mitigation Measures for, Old Growth

108. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

109. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of its actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9.

110. NEPA requires that agencies insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24.

111. NEPA requires that agencies propose and analyze the effectiveness of mitigation measures. 40 C.F.R. §§ 1502.14(f) and 1502.16(h).

112. The Forest Service violated NEPA by failing to analyze and disclose the impacts of the proposed action on old growth ponderosa pine forest stands.

113. The Forest Service violated NEPA by failing to analyze and disclose to the public the effectiveness of mitigation measures proposed to ameliorate impacts to old growth ponderosa pine forest stands.

114. The Forest Service's approval of the Project in the absence of an EIS that analyzes and discloses the impacts to old growth forest and that analyzes and discloses the effectiveness of mitigation measures to ameliorate impacts to old growth forest violated NEPA and was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2).

THIRD CAUSE OF ACTION

NFMA - Failure to Comply with Forest Plan Standards and Guidelines that Protect Wildlife

115. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

116. Forest Service decisions must be consistent with Forest Plan standards and guidelines. 16 U.S.C. § 1604(i).

117. The Forest Plan requires that in 4B management areas, the Forest Service must maintain habitat capability at a level at least 80 percent of potential capability for management indicator species.

118. The Forest Service violated NFMA by failing to provide a reasoned analysis or basis for a decision that the Project will be consistent with Forest Plan standards that require the agency to maintain habitat capability at a level at least 80 percent of potential capability for management indicator species in 4B management areas.

119. The Forest Plan requires that in 4B management areas, the Forest Service must maintain at least 90 percent of the habitat needed to support the State population goals for commonly hunted, fished, or trapped species such as elk and black bear.

120. The Forest Service violated NFMA by failing to determine whether the Project would be consistent with the Forest Plan standards that require the agency to maintain at least 90 percent of the habitat needed to support the State population goals for commonly hunted, fished, or trapped species such as elk and black bear in 4B management areas

121. The Forest Plan requires that in 5B management areas, the Forest Service maintain habitat capability at a level at least 80 percent of potential capability for big game.

122. The Forest Service violated NFMA by failing to provide a reasoned analysis or basis for a decision that the Project will be consistent with Forest Plan standards that require the agency to maintain habitat capability at a level at least 80 percent of potential capability for big game in 5B management areas.

123. The Forest Plan also requires that in 5B management areas, the Forest Service must maintain habitat effectiveness during winter of at least 90 percent for big game.

124. The Forest Service violated NFMA by failing to determine whether the Project would be consistent with the Forest Plan standards that require the agency to maintain habitat effectiveness during winter of at least 90 percent for big game in 5B management areas.

125. The Forest Plan requires that in 6B management areas, the Forest Service must maintain habitat capability at 60 percent of potential capability for management indicator species.

126. The Forest Service violated NFMA by failing to provide a reasoned analysis or basis for a decision that the Project will be consistent with Forest Plan standards that require the agency to maintain habitat capability at 60 percent of potential capability for management indicator species, including bluebird and hairy woodpecker, in 6B management areas.

127. By failing to ensure that the Project will be consistent the above-described Forest Plan standards and guidelines for wildlife habitat in 4B, 5B, and 6B management areas, the Forest Service has violated NFMA. 16 U.S.C. § 1604(i). Accordingly, the Forest Service's decision to approve the Project is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

FOURTH CAUSE OF ACTION

NEPA - Failure to Analyze and Disclose Impacts to, and Effectiveness of Mitigation Measures for, Wildlife

128. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

129. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of its actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9.

130. NEPA requires that agencies insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24.

131. NEPA requires that agencies propose and analyze the effectiveness of mitigation measures. 40 C.F.R. §§ 1502.14(f), and 1502.16(h).

132. The Forest Service violated NEPA by failing to analyze and disclose to the public impacts to, and the effectiveness of mitigation measures proposed to ameliorate impacts to, wildlife.

133. The Forest Service's approval of the Project in the absence of an EIS that analyzes and discloses impacts to, and the effectiveness of mitigation measures proposed to ameliorate impacts to, wildlife violated NEPA and was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2).

FIFTH CAUSE OF ACTION

NFMA - Failure to Comply with Forest Plan Standards and Guidelines that Protect Streams and Riparian Areas

134. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

135. Forest Service decisions must comply with Forest Plan standards and guidelines. 16 U.S.C. § 1604(i).

136. The Forest Plan requires that the Forest Service "improve or maintain water quality to meet State water quality standards," and that increased sediment yields may not exceed threshold limits.

137. The Forest Plan contains provisions for the protection of riparian (streamside) areas (known as 9A management areas) that include the following:

- "Prevent stream channel instability, loss of channel cross-sectional areas, and loss of water quality resulting from activities that alter vegetative cover."
- "Proposed new land-use facilities (roads, campgrounds, buildings) will not normally be located within floodplain boundaries for the 100-year flood."

- “Locate mineral removal activities away from the waters edge or outside of the riparian area”
- “Locate roads and trails outside riparian areas unless alternative routes have been reviewed and rejected as being more environmentally damaging”

138. The Forest Service admits that it has failed to ensure that the Project will be consistent with the above-described Forest Plan standards and guidelines for protecting water quality and riparian areas.

139. By failing to ensure that the Project will be consistent with the above-described Forest Plan standards and guidelines, the Forest Service has violated NFMA. 16 U.S.C. § 1604(i). Accordingly, the Forest Service’s decision to approve the Project is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

SIXTH CAUSE OF ACTION

NEPA - Failure to Analyze and Disclose Impacts to, and Effectiveness of Mitigation Measures for, Streams and Riparian Areas

140. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

141. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of its actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9.

142. NEPA requires that agencies insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24.

143. NEPA requires that agencies propose and analyze the effectiveness of mitigation measures. 40 C.F.R. §§ 1502.14(f), and 1502.16(h).

144. The Forest Service violated NEPA by failing to analyze and disclose to the public impacts to, and the effectiveness of mitigation measures proposed to ameliorate impacts to, streams and riparian areas.

145. The Forest Service's approval of the Project in the absence of an EIS that analyzes and discloses impacts to, and the effectiveness of mitigation measures proposed to ameliorate impacts to streams and riparian areas violated NEPA and was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2).

SEVENTH CAUSE OF ACTION

NFMA – Failure to Use the Best Available Science in Analysis of Management Indicator Species

146. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

147. NFMA regulations in force at the time of the ROD require that agency officials “consider the best available science in implementing and, if appropriate, amending the current plan.” 36 C.F.R. § 219.35(a), (d) (2000).

148. The Forest Service admits that it did not utilize the “best available science” standard in the 2000 NFMA regulations in analyzing impacts to management indicator species. The Forest Service admits that the ROD does not address the “best available science” standard.

149. The Forest Service's decision to authorize the Project without using the “best available science” standard in the 2000 NFMA regulations concerning management indicator

species as required by NFMA and its implementing regulations is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

EIGHTH CAUSE OF ACTION

NEPA – Failure to Analyze and Disclose Impacts to Wilderness Character and Potential Research Natural Areas

150. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

151. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of its actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9.

152. NEPA requires that agencies insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24.

153. The Forest Service failed to disclose the direct, indirect and cumulative impacts of the Project on the wilderness character of forest lands although it is currently amending its Forest Plan to consider protection of lands with wilderness character.

154. The Forest Service failed to disclose the direct, indirect and cumulative impacts of the Project on potential research natural areas on forest lands although it is currently amending its Forest Plan to consider protecting lands as research natural areas.

155. The Forest Service's approval of the Project in the absence of an EIS that discloses the impacts of the Project on wilderness character and on potential natural research areas as required by NEPA was arbitrary, capricious, an abuse of discretion, not in accordance with law, and not supported by substantial evidence in the record. 5 U.S.C. § 706(2).

NINTH CAUSE OF ACTION

NEPA - Failure to Analyze and Disclose Impacts from the Project's Ozone Pollution

156. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

157. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of its actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9.

158. NEPA requires that agencies state how alternatives considered in an EIS and decisions based on an EIS will or will not achieve the requirements of NEPA and other environmental laws and policies. 40 C.F.R. § 1502.2(d).

159. NEPA requires that agencies insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24.

160. The Forest Service and BLM violated NEPA by failing to provide any analysis of direct, indirect, and cumulative impacts to public health from the Project's contribution to ground-level ozone pollution. The agencies violated NEPA by failing to properly determine whether the Project would result in non-compliance with Clean Air Act ozone standards. The agencies violated NEPA by failing to insure the scientific integrity of their assessment of the impacts from the Project's contribution to ground-level ozone.

161. The Forest Service and BLM's decision to authorize the Project in the absence of an EIS that analyzes and discloses the Project's impacts from ground level ozone, and to determine whether it will comply with the Clean Air Act, as required by NEPA, is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance

of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

TENTH CAUSE OF ACTION

NEPA – Failure to Analyze and Disclose Impacts of Air Pollution on Class I Airsheds Including National Parks and Wilderness

162. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

163. NEPA requires federal agencies to consider and disclose to the public all direct, indirect, and cumulative impacts of its actions. 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9.

164. NEPA requires that agencies state how alternatives considered in an EIS and decisions based on an EIS will or will not achieve the requirements of NEPA and other environmental laws and policies. 40 C.F.R. § 1502.2(d).

165. NEPA requires that agencies insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. 40 C.F.R. § 1502.24.

166. Defendants' decision to authorize the Project without analyzing and disclosing the direct, indirect and cumulative effects of the Project on air pollution in all Class I airsheds likely to be affected, and means to mitigate those impacts, violates NEPA and is therefore arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

ELEVENTH CAUSE OF ACTION

Clean Air Act – Failure to Prevent Haze Pollution in National Parks and Wilderness

167. Plaintiffs restate and incorporate by reference every allegation of paragraphs 1-102, above.

168. Acting Secretary Conner and Supervisor Stiles have violated the Clean Air Act by failing to protect the air quality related values of the Weminuche Wilderness Class I area from degradation by the Project. 42 U.S.C. § 7475(d)(2)(B). Acting Secretary Conner has failed to protect the air quality related values of the La Garita Wilderness, San Pedro Parks Wilderness, and Pecos Wilderness Class I areas from degradation by the Project. *Id.*

169. Secretary Kempthorne has violated the Clean Air Act by failing to protect the air quality related values of the Mesa Verde National Park, Bandelier National Monument, and Canyonlands National Park Class I areas from degradation by the Project. *Id.*

170. Defendants' decision to authorize the Project in violation of the Clean Air Act is arbitrary and capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against all Defendants and provide the following relief:

1. Declare that the Forest Service violated, and continues to violate, NFMA, NEPA, and the Clean Air Act upon authorizing the Northern San Juan Basin Project;
2. Declare that the BLM violated, and continues to violate, NEPA and the Clean Air Act upon authorizing the Northern San Juan Basin Project;
3. Order, through an injunction, the Forest Service and BLM to rescind the Record of Decision approving the Project;
4. Order, through an injunction, the Forest Service to comply with NFMA and the Forest Plan by ensuring that any and all Project activities will comply with Forest Plan Standards and Guidelines before approving and proceeding with any aspect of the Project;
5. Order, through an injunction, the Forest Service to comply with NFMA and use the best available science before approving and proceeding with any aspect of the Project;
6. Order, through an injunction, the Forest Service and BLM to comply with NEPA by analyzing and disclosing to the public all environmental impacts of the Project, and the efficacy of mitigation of those impacts, before approving and proceeding with any aspect of the Project;
7. Order, through an injunction, the Forest Service and BLM to comply with the Clean Air Act before approving and proceeding with any aspect of the Project;
8. Award Plaintiffs costs and reasonable attorneys' fees, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other statute; and

9. Provide such other relief as the Court deems just and proper.

Respectfully submitted January 23, 2008,

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