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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

WESTERN ORGANIZATION OF)
RESOURCE COUNCILS; JEANIE)
ALDERSON; WALLY MCRAE;)
WYOMING OUTDOOR COUNCIL;)
NATURAL RESOURCES DEFENSE)
COUNCIL; and POWDER RIVER BASIN)
RESOURCE COUNCIL,)

Plaintiffs,)

vs.)

KATHLEEN CLARKE, in her official)
capacity as Director, Bureau of Land)
Management; BUREAU OF LAND)
MANAGEMENT; GALE NORTON,)
in her official capacity as Secretary of)
the Department of Interior; and)
DEPARTMENT OF INTERIOR,)

Defendants.)

Case No. _____

COMPLAINT

)

I. INTRODUCTION

1. This action challenges the decisions of the Bureau of Land Management (BLM) approving an 82,000-well oil and gas development project in the Powder River Basin, a common river drainage system that extends from northeast Wyoming into Montana.

2. The project is the largest oil and gas development ever approved by BLM in its history.

3. The proposed project would involve the development of 77,000 coalbed methane (CBM) natural gas wells and over 5,000 new conventional oil and gas wells in the Powder River Basin by 2011. Approximately 65,000 of these wells would be new.

4. In addition to these 82,000 wells, the project would authorize the construction of 26,000 miles of roads and 53,000 miles of pipelines. It would permit up to 4.4 trillion gallons of water to be pumped from the groundwater aquifers in the Basin. It would allow for the excavation of 8000 unlined reservoirs or waste pits to hold some of this produced water, and it would authorize the discharge of the remainder of the water, untreated, directly onto the ground. Up to 300,000 acres of surface resources, including soils and vegetation, will be directly affected.

5. According to BLM, the 12-million-acre project area within the Powder River Basin will be transformed from a rural/pastoral landscape to an industrial zone. Because the vast majority of the federal minerals are located on split-estate lands (federal minerals beneath private surface), this transformation will be occurring on lands that are owned and used by ranchers and farmers.

6. Although the project is occurring within a single geographic basin and involves similar impacts that will effect the entire Basin, the BLM segmented the project, preparing two EISs on proposed CBM development – one for the Montana portion of the Basin and the other for the Wyoming portion. In its haste to authorize this project as a centerpiece of the National Energy Plan, the BLM has violated important environmental protections, approving the project without having thoroughly analyzed its impacts or offered up the required analysis for public input. As a result, BLM’s decisions must be set aside until the agency has properly and fully complied with all applicable environmental laws.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (“NEPA”), and its implementing regulations, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and 28 U.S.C. § 1331 (federal question). An actual, justiciable controversy now exists between Plaintiffs and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. § 701-06.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district; Defendants have offices in this district; a significant portion of the public lands and resources in question are located in this district; and the majority of the environmental impacts resulting from this project will be felt in this district. In addition, Plaintiff Western Organization of Resource Councils (WORC) is principally located in this district (Billings, Montana); Plaintiff Natural Resources Defense Council (NRDC) has an office in this district (Livingston, Montana); and all of the Plaintiffs have members who reside in this district and who will be significantly affected by CBM development occurring in both Montana and Wyoming.

III. PARTIES

9. Plaintiff WESTERN ORGANIZATION of RESOURCE COUNCILS (“WORC”) is an association of grassroots organizations, which, in turn, are composed of affiliated citizens groups. The members of these groups are farmers, ranchers, rural business operators, and working people who seek to protect natural resources, family farms, and rural communities. Headquartered in Billings, Montana, WORC was formed in 1979 to advance the vision of a democratic, sustainable, and just society through community action. WORC’s goals include proper stewardship and conservation of land, air, water, and energy resources, family farms, sustainable agriculture, and just economic and social policies.

10. Over the past five years, WORC staff and its membership have been actively involved in CBM issues. WORC members reside in both Montana and Wyoming, and many of them are the landowners, irrigators, and ranchers who will receive the brunt of CBM impacts. Accordingly, WORC members have been active in promoting a balanced approach to CBM development. Because the project will result in significant impacts in both Montana and Wyoming, WORC and its members have regularly participated in all phases of both the Montana and the Wyoming NEPA processes for the Powder River Basin.

11. Plaintiff JEANIE ALDERSON is a resident of Montana and a member of the Western Organization of Resource Councils. Along with her family, Jeanie Alderson owns and operates the Bones Brothers Ranch located in the Tongue River Watershed near Birney, Montana in the Powder River Basin. Homesteaded in 1888, the ranch consists of over 8,000 acres. Approximately 4900 acres are split estate lands, some of which have been leased by BLM for CBM development. The Aldersons hold water rights on Hanging Woman Creek, a major tributary of the Tongue River that originates in Wyoming, and use its water to irrigate hay meadows that provide winter feed for their cattle. Discharges of water produced from CBM

development upstream in Wyoming will enter Hanging Woman Creek and make its water unusable for irrigation. Impoundments created by the construction of earthen dams across intermittent tributaries of Hanging Woman Creek in Wyoming and Montana will capture natural surface runoff and interfere with the Aldersons' water rights. CBM development on and off the Alderson ranch will dewater a number of wells and springs they use for livestock watering and domestic purposes for decades to come. Roads associated with CBM development and their resulting impacts will disrupt the Alderson family's ranching operations and alter the quality of life they enjoy.

12. Because of the impacts that methane development will have for the Bones Brothers Ranch, Jeanie Alderson, along with other members of her family, has attended public meetings and written comments urging the BLM to protect water quality and quantity in the Basin, as well as to pursue actively measures to mitigate impacts to surface owners. Jeanie Alderson looks to WORC to represent her interests in ensuring that methane development in the Powder River Basin is carried out in an environmentally responsible manner.

13. Plaintiff WALLY MCRAE is a resident of Montana and a member of the Western Organization of Resource Councils. Along with other members of his family, Wally McRae owns and operates the Rocker Six Cattle Company, which is located near Colstrip, Montana in the Tongue River and Rosebud Creek watersheds of the Powder River Basin. Much of the ranch consists of split estate lands.

14. The McRaes depend on wells and springs fed by coal seam aquifers to water their livestock. CBM development in Wyoming and Montana threatens to dry up these resources. The McRaes depend on the waters of the Tongue River and Rosebud Creek for sub-irrigation of hay and alfalfa meadows that provide winter feed for their cattle. This sub-irrigation relies on the shallow alluvial water table from these two waterways to irrigate the root zone of the soils.

Discharges of water produced from CBM development upstream threatens this source of irrigation water.

15. Because of the environmental, economic and other impacts of the proposed CBM development, Wally McRae has participated in related BLM activities, including attending public meetings and writing comment letters urging the BLM to protect water quality and quantity in the Basin, as well as actively pursue measures to mitigate impacts to surface owners. Wally McRae along with his family looks to WORC to represent their interests in ensuring that CBM development in the Powder River Basin is carried out in an environmentally responsible manner.

16. Plaintiff WYOMING OUTDOOR COUNCIL (“WOC”) was founded in 1967 and is Wyoming’s largest, non-affiliated conservation group. WOC has over 1,000 members nationwide, most of whom live and recreate in Wyoming. WOC also has members who live and recreate in Montana. WOC’s members are united by a common interest in preserving Wyoming’s quality of life, its clean air and water, its wildlife, and its open spaces. Some of WOC’s members live in the Powder River Basin where the development is slated to occur. These members include ranchers and landowners who own split-estate lands that will be negatively affected by the development’s impacts. In addition, WOC members utilize land, wildlife, and water resources within and near this area for hunting, hiking, fishing, camping, recreational, and aesthetic uses.

17. WOC staff and members have been actively involved in BLM oil and gas activities in this region. They have participated in various NEPA processes associated with both the Montana and Wyoming EISs, submitting comments and attending public meetings. For the Wyoming EIS, WOC was the principal drafter of the Citizen’s Alternative, which was submitted to BLM on several occasions as an effort to properly balance the proposed CBM development

with the protection of the Basin's open spaces, clean water and air, and rural agricultural landscape. WOC's long-standing commitment to environmentally sound oil and gas leasing, exploration, and development throughout Wyoming extends over 15 years. WOC submitted comments on the draft EISs for both states and formally protested the final EISs for both states.

18. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL ("NRDC") is a national non-profit environmental membership organization with more than 400,000 members throughout the United States. NRDC members use and enjoy public lands in and throughout Wyoming and Montana, and in the Powder River Basin region in particular, for a variety of purposes, including: recreation, birding, solitude, scientific study, and aesthetic appreciation. NRDC has had a longstanding and active interest in the protection of the public lands in Wyoming and Montana including decades of committed work on responsible energy development. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of land and wildlife management and resource development issues, including oil and gas extraction.

19. In the past several years, NRDC has extended this commitment to environmentally responsible CBM development in Wyoming, Montana, and other western states. NRDC, both staff and members, were very active in the EIS processes for both the Wyoming and Montana Powder River Basin. For example, NRDC helped draft written comments on the Wyoming EIS and generated 9,000 or more comments on that EIS from its website.

20. Plaintiff POWDER RIVER BASIN RESOURCE COUNCIL (PRBRC) is a grassroots organization of individuals and affiliate groups dedicated to good stewardship of Wyoming's natural resources. Many of PRBRC's members live within the Wyoming and Montana portions of the Powder River Basin and hunt, fish and enjoy the aesthetic beauty of the affected lands and waters. Moreover, many of PRBRC's members are ranchers and agricultural

producers in both states who will be adversely impacted by the environmental harms caused by CBM extraction. PRBRC members and staff were active at all stages of the two EISs in this case, including meeting with Defendants to express concerns and ideas for responsible development and submitting oral and written comments during all phases of the NEPA processes. In addition, PRBRC worked with WOC to develop the Citizen's Alternative for BLM to study in the draft EIS as an approach to protect landowners and the Basin's clean water, air, and natural resources from the impacts associated with the unprecedented oil and CBM gas project being proposed.

21. All Plaintiffs and their members suffer injuries resulting from the BLM's failure or refusal to manage the area in a manner that will preserve all natural resources and protect all human uses in the area. The interests of Plaintiffs and their members have been and will continue to be injured and harmed by BLM's actions and/or inactions as complained of herein, all of which will directly be affected by BLM's approval of the Powder River Basin oil and gas project.

22. Defendant KATHLEEN CLARKE, is Director of the Bureau of Land Management, and is charged with and responsible for the management of BLM lands in accordance with all applicable laws and regulations.

23. Defendant BUREAU OF LAND MANAGEMENT ("BLM") is an agency of the United States, and is charged with managing the public lands and resources of the Powder River Basin in Wyoming and Montana in accordance with federal laws and regulations.

24. Defendant GALE NORTON, is Secretary of the Department of Interior, and is charged with and responsible for the management of BLM lands in accordance with all applicable laws and regulations.

25. Defendant DEPARTMENT OF THE INTERIOR is an executive branch agency of the United States and is charged with managing the public lands under its jurisdiction in accordance with all applicable laws and regulation

IV. STATEMENT OF FACTS

A. The Powder River Basin

26. The Powder River Basin is Montana and Wyoming's corner of the Great Plains. Flanked on the west by the Bighorn Range of the Rocky Mountains and on the east by the Black Hills National Forest, the area was named after the Powder River and is rich in historic and cultural significance. Here, along the Bozeman Trail, American Indians burned a fort in protest of a seemingly endless stream of settlers and Crazy Horse confirmed his reputation as a masterful warrior and tactician. Located at the head of the Powder River drainage is the famous "Hole in the Wall," where outlaws such as Butch Cassidy and the Sundance Kid found refuge.

27. The Powder River Basin is largely pastoral in nature, offering a varied and valued quality of life, including scenic views, open space, recreational opportunities, agricultural range, clean air and water, and wildlife habitat.

28. The intact geographic river drainage of the Basin is served primarily by five major rivers: the Cheyenne, Belle Fourche, Powder, Little Powder and Tongue Rivers. These rivers will all be adversely affected by CBM byproduct water. The Powder, Little Powder, and Tongue Rivers all originate in Wyoming and flow north into the Powder River Basin in Montana and will receive discharges of hundreds of billions of gallons of CBM-produced water over the life of the project.

29. Ranching and agricultural production play a dominant role in how most of the Basin is currently used. Most of the federal lands in the Basin are "split estate" lands. The federal homesteading laws under which they were originally obtained granted title to the surface

estate, while reserving the mineral estate to the federal government. Within the 12-million-acre Powder River Basin, there are approximately 6 million acres of federal minerals, more than 80% of which are overlain by private surface. Consequently, much of the proposed federal development will occur on the Basin's private ranches and farms.

B. Coalbed Methane Development

30. Coalbed methane is natural gas that is trapped in underground coal seams by water pressure. CBM development involves impacts typical of all oil and gas production, such as the construction of roads and well pads. Because of the technology required to extract CBM, however, this type of development causes a number of different impacts as well.

31. For CBM to be released from the coal, the water must be removed. This “dewatering” process requires drilling a well and pumping large amounts of water from the ground. This dewatering process produces on average from 13,000 to 17,000 gallons of water per day, per well. Approximately 4.4 trillion gallons of water are expected to be pumped from the ground as a result of CBM development in the Basin. It is this dewatering process that produces the most significant impacts unique to CBM production.

Subsurface Water Concerns

32. CBM production can cause significant impacts to underground aquifers. In the Basin, CBM wells range from 350 feet in depth to up to 2,000 feet. Most wells are drilled to depths of 1,000 feet or less. As a result, these gas wells are drilled to the same aquifers used for domestic and agricultural purposes. As the coal seams are dewatered, so are the aquifers. In the Powder River Basin, CBM wells have caused water wells of landowners and ranchers to lose hydraulic pressure and in some cases go dry.

33. BLM predicts that many underground aquifers will take decades to partially “recharge,” or be replenished, through infiltration. BLM also predicts that full recharge may take more than 100 years. This is a major concern as Montana and Wyoming enter their fourth consecutive year of serious drought. Accordingly, the proposed dewatering jeopardizes water supplies on a large scale in the short and long term.

34. The dewatering process can cause methane migration. Methane gas can be lethal. Once coal seams are dewatered, methane is free to migrate to the surface. The BLM admits that, due to the shallow depth of CBM wells, migration is a serious concern for landowners. BLM advises residents of the Powder River Basin to monitor their basements for possible methane accumulation and explosion. In addition, methane migration can pose a risk to soils, vegetation, and burrowing mammals.

35. Dewatering can also result in subsidence, or the partial collapse or compaction of underground areas such as aquifers. Underground water aquifers are sometimes an important structural component of the geology. This is particularly true where the coal seams and aquifers are shallow. Subsidence has been documented in other areas where CBM is found.

Surface Water Concerns

36. CBM production also has unique and significant aboveground impacts involving both water quality and quantity. CBM-produced water in the Basin is typically high in salinity (total dissolved solids including all salts) and sodicity (the ratio of sodium to magnesium and calcium). Water that is high in salinity and sodicity can negatively affect soils and plant life and, therefore, is often not suitable for irrigation.

37. BLM projects that CBM development in the Basin will pump trillions of gallons of subsurface water to the surface. Each well is expected to produce 13,000 to 17,000 gallons

per day. BLM proposes to dispose of this water in one of two ways: 1) infiltration pits (or reservoirs) and 2) direct discharge onto the ground or into ephemeral drainages. Approximately 8000 unlined pits will be excavated to hold this water. Water in these pits that does not evaporate will gradually soak back into the water table and/or underground aquifers. The chemistry of this water as it sits in the infiltration pits could change, as pollutants in the pits are concentrated through evaporation of the water. An additional issue is that reclaiming these 8000 pits at the end of the project may pose problems, since they will contain concentrated salt deposits that will have been accumulating for over 15 years.

38. The other primary method of handling the CBM water will be through direct discharge onto the ground surface. This water will not be treated for salinity or sodicity before being discharged. Surface disposal of large quantities of water will cause soil erosion and will kill native vegetation. Much of this water will enter the ephemeral and intermittent drainages of the Basin, which in turn flow to perennial rivers and their tributaries. Constant discharge of large quantities of water will alter the ecology of this western watershed by providing regular flows in drainages that are, by nature, ephemeral or intermittent.

39. The combination of methods proposed for handling the CBM water will lead to a significant amount of this water entering these perennial rivers. When discharged in huge quantities to area streams, this produced water is expected to affect the quality of water in those streams. Therefore, water from the perennial rivers in the Basin may not be suitable for irrigation. In addition, the chemistry of CBM water poses threats to aquatic life, including fisheries.

Air Quality

40. Each CBM well has a submersible pump to accomplish the dewatering process. These submersible pumps are powered by diesel and gas-fired generators. These generators

cause negative impacts to air quality. In addition, thousands of miles of aboveground powerlines are needed to provide the required power, increasing the industrialization of the Powder River Basin.

C. Chronology of BLM Actions

41. Despite the fact that the Powder River Basin is a single geographic area with a common air shed and river drainage system, the BLM decided to prepare two environmental impact statements (EISs) for the Basin – one for Wyoming and one for Montana.

Selection of the Wyoming EIS Contractor

42. In Wyoming, BLM was the lead agency for the Powder River Basin CBM EIS.

43. In May of 2000, many of the CBM operators in the Powder River Basin, including but not limited to Lance Oil and Gas Company, Barrett Resources Corporation, Devon Energy Corporation, Yates Petroleum Corporation, Pennaco Energy and CMS Oil and Gas (“CBM Companies”), took the initiative to find a third party contractor for the Wyoming EIS and solicited bids. The EIS Request for Proposal was drafted by and distributed to potential third-party contractors by Western Gas Resources, Inc., also a Powder River Basin CBM company.

44. In June of 2000, Greystone Environmental Consultants submitted a bid for preparation of the EIS to Western Gas Resources.

45. On June 26, 2000, Western Gas Resources informed BLM that a committee of CBM “industry representatives” had reviewed Greystone’s EIS bid and recommended “that the Bureau of Land Management select and award this project to Greystone.”

46. On July 10, 2000, the BLM Buffalo field office acting manager wrote Western Gas Resources and stated that the agency “concur[red] with your recommendation that Greystone Environmental Consultants be awarded the contract.”

47. On July 19, 2000, Western Gas Resources wrote Greystone to inform the company that it had been awarded the EIS contract.

48. Prior to and at the time of Western Gas Resources was selecting and recommending Greystone to be the EIS contractor, Greystone stated that it “provides environmental services to support all oil and gas industry business units and all phases of oil and gas projects. We facilitate projects by ensuring all regulatory requirements are met and unnecessary obstacles are effectively avoided.” Regarding CBM, Greystone stated that it “provides complete environmental permitting and compliance services for coal-bed methane development projects. On both government and/or fee ownership, we assist companies and agencies to plan each project in order to minimize environmental effects and related permit requirements and expedite acquisition of all necessary authorizations.”

49. Upon information and belief, Greystone had an expectation to do consulting work for CBM operators, including but not limited to the CBM Companies that were involved in its selection as contractor for the EIS. Upon information and belief, this work would include contracts relating to future CBM activities that will directly result from the approval of the Wyoming CBM EIS and the 24,000 federal CBM drilling permits estimated in Wyoming. Upon information and belief, Greystone has a financial or other interest in the outcome of the CBM EIS project.

The Scoping Process and Draft Environment Impact Statements

50. On June 21, 2000, BLM announced its intent in the Federal Register to prepare an EIS for the Wyoming portion of the Powder River Basin. At that time, BLM stated that it would study a maximum of 30,000 CBM wells and 3,000 oil wells to be drilled by 2010 as the reasonably foreseeable development (RFD) scenario.

51. As of June, 2000, the BLM had already made public an RFD scenario for the Wyoming portion of the Powder River Basin, completed in or near October 1999. The 1999 forecast had two scenarios for the area: 1) 50,000 CBM wells by 2010 and 81,000 total CBM wells in the foreseeable future; and 2) the “high” scenario of up to 80,000 CBM wells by 2010 with a total of 139,000 in the foreseeable future. Also around late summer or fall of 2000, industry and BLM were predicting up to 10,000 CBM wells in the Montana portion of the Basin.

52. Plaintiffs participated in the scoping process, raising for the first of many times a number of concerns that BLM never addressed. Plaintiffs argued that the BLM should prepare one EIS on CBM development in the entire Powder River Basin. Plaintiffs also requested that BLM analyze a full range of reasonable alternatives for the proposed action. Specifically, Plaintiffs asked BLM to consider different methods of handling CBM produced water, such as reinjection and/or desalinization of the water, and different measures to reduce impacts to landowners, particularly on split estate lands. Plaintiffs urged BLM to conduct a full and thorough analysis of all direct, indirect, and cumulative impacts in both Wyoming and Montana, including the impacts of the proposed project on water supplies and water quality. Finally, Plaintiffs argued that the BLM should conduct a proper study of issues relating to air quality and to consider mitigation of these impacts.

53. Region 8 of the U.S. Environmental Protection Agency (EPA) submitted scoping comments in August of 2000 in response to BLM’s notice regarding a Wyoming EIS. EPA expressed many of the same concerns raised by Plaintiffs. For example, EPA stated that BLM should be preparing a single EIS on CBM development in the area because the Powder River Basin is a single watershed and because BLM was predicting significant and simultaneous CBM development in the Montana portion of the Basin. EPA also criticized BLM for improperly limiting the range of alternatives being considered.

54. On November 21, 2000, BLM announced its intent to amend the Buffalo Resource Management Plan (RMP), the land use plan governing the Wyoming portion of the Powder River Basin. This amendment was to cover CBM, its impacts, and a reasonably foreseeable development scenario for CBM, none of which had been analyzed or authorized under the existing 1985 Buffalo RMP. In January of 2001, Plaintiffs submitted comments on specific issues for BLM to consider in the Buffalo RMP amendment process.

55. In December, 2000, BLM announced its intent to prepare a separate EIS to analyze 10,000 CBM wells by 2010 in the Montana portion of the Basin. It also announced its intention to amend the two governing land use plans for the lands involved, the Powder River and Billings RMPs. This amendment would consider CBM impacts and the 10,000 well RFD scenario.

56. Plaintiffs participated in the scoping process for the Montana EIS and RMP amendments. Plaintiffs specifically questioned BLM's decision to move forward with two EISs, rather than a single EIS for the entire Basin. In addition, Plaintiffs expressed concern about the need to provide adequate protection for landowners and their water rights, the importance of studying and utilizing the best technologies to reduce the impacts from the massive dewatering, and the potential for violations of the Clean Water and Clean Air Acts.

57. Plaintiffs, both staff and members, traveled to Washington D.C. in September 2001, prior to the release of the draft EISs, to meet with Interior and BLM personnel. At this meeting, Plaintiffs expressed their concerns about CBM development and their views on key concepts for a balanced development proposal for the upcoming DEIS. Plaintiffs explained, *inter alia*, that the concepts would be incorporated in a Citizen's Alternative that they were in the process of drafting. BLM specifically asked for a copy of the completed Citizen's Alternative.

58. On October 16, 2001, Plaintiffs WOC and PRBRC submitted to BLM the completed Citizen's Alternative, which detailed major concerns and specific ideas for responsible CBM development. Plaintiffs met with BLM on October 25, 2001, to discuss the contents of the 40-page proposal and their inclusion as an alternative in the draft EIS. The Citizen's Alternative contained information on landowner protections; alternative technologies; effective inspection, enforcement and monitoring; phased development; and water quality protection.

59. On February 4, 2002, the BLM's Washington Office issued a directive to all of its field offices concerning the need to expedite the revision of time-sensitive plans under the administration's National Energy Plan. The directive identified "high priority" plans and ordered "all levels" of the BLM organization "to support expedited completion of those plans" by specified deadlines. The primary goal was "timely completion of legally sustainable" energy-related RMP amendments. The Wyoming Buffalo RMP was listed as a time sensitive plan and placed on a fast-track for completion by September 2002; the Montana Powder River and Billings RMPs were also listed as time sensitive plans, and had completion deadlines of June 2002.

60. In January and February of 2002, BLM released the draft EISs on CBM development in the Powder River Basin. The Wyoming EIS (which dealt with amendment of the Buffalo RMP) contained two "action" alternatives. Both of these action alternatives allowed the highest number of CBM wells requested by industry (51,000) and relied on direct discharge and infiltration pits for handling the produced water, without treatment for salt content. The Wyoming DEIS failed to mention the Citizen's Alternative or any of its concepts. The draft EIS on development in the Montana portion of the Basin (which addressed amending the Powder River and Billings RMPs) contained four action alternatives, all of which analyzed a

development scenario of 18,300 wells. The Montana DEIS failed to analyze alternatives based on different levels of development or based on phased development.

61. Plaintiffs, their members, and/or staff provided BLM with oral and written comments on both EISs during the comment periods. Both comment periods ended on or about the same day – May 15, 2002.

62. With respect to both the Wyoming and Montana draft EISs, Plaintiffs continued to raise, among other things, many of the concerns advanced at the scoping phase. Because of their concern about the cumulative effects in both states, Plaintiffs continued to argue that BLM's decision to prepare two EISs for the single basin was improper. Plaintiffs also maintained that BLM's draft EIS had failed to look at a full range of reasonable alternatives, including available measures for handling produced water. Finally, Plaintiffs criticized the BLM's flawed assumptions, analysis, and predictions of impacts, particularly to air and water, and its inadequate analysis of impacts and issues relating to split-estate surface owners.

63. In addition, as part of their DEIS comments, Plaintiffs submitted to BLM a publication entitled "Doing it Right: A Blueprint for Responsible Coal Bed Methane Development in Montana." Plaintiff WORC, through both staff and members, contributed significantly to developing this publication.

64. Thousands of Plaintiffs' members submitted comments on the two EISs, specifically endorsing the concepts embraced in both the Citizen's Alternative and Doing it Right.

65. In preparing comments on the draft EISs, Plaintiffs worked together to engage professionals and expert scientists to submit detailed analyses on a number of critical issues, including: the feasibility and availability of reasonable alternatives not studied by BLM; more

protective water handling options; the protection of water and air resources; wildlife concerns; and issues concerning soils, vegetation, methane migration and aquifer recharge.

66. Numerous federal agencies submitted comments on these draft EISs in which they criticized the BLM's decision not to prepare a single EIS. The Fish and Wildlife Service specifically recommended a combined EIS to achieve a consistent "region-wide approach to the avoidance and minimization of impacts." FWS noted that strong similarities including common impacts, "methods of implementation, timing, geography and similar . . . species" warranted one EIS, not two.

67. Similarly, the National Park Service stated: "It is likely that both of these projects should be considered as one, both legally, and insofar as evaluating air quality impacts. If that is true, then separation of the projects and exclusion of NPS from the DEIS process in MT may be fatal flaws for both of these project DEISs."

68. Pursuant to its statutory duty under NEPA to assess the adequacy of EISs, EPA submitted detailed comments on the draft EISs. In its comments on both the Wyoming and Montana EISs, EPA criticized the BLM's decision to proceed with two separate EISs and again recommended a common watershed approach. In both sets of comments, EPA noted the numerous inconsistencies and discrepancies that had resulted from the BLM's segmentation of this project. The agency also criticized both documents for the inadequate range of alternatives considered, the inadequate assessment of environmental impacts, and the failure to present a proposed action that did not violate applicable federal law.

69. EPA gave the Wyoming project its lowest ranking, "Environmentally Unsatisfactory," stating that its review had "identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality." EPA specifically found that the Wyoming draft EIS was

environmentally unsatisfactory because of “impacts to irrigated agriculture” from the proposed alternative, stating that the Tongue and Belle Fourche Rivers would no longer support irrigation.

70. EPA determined that the Montana draft EIS was “inadequate” because the draft EIS did not present “sufficient information to understand the impacts of the preferred alternative.” EPA stated that the basis for its low rating was “the lack of specifically identified, economically and technically feasible water management practices that are adequate to assure attainment of water quality standards under the Clean Water Act.”

71. EPA deemed both drafts inadequate, giving both its lowest ranking (3 on a scale of 1 to 3) for the integrity of their respective analyses of impacts. In both cases it found that the documents were so deficient in their treatment of impacts, alternatives, and mitigation of potential environmental harms that they were inadequate for purposes of NEPA review. In order to remedy the failing of both drafts, EPA determined that a new supplemental or revised draft should be issued, containing the proper range of alternatives that would fully address and mitigate impacts.

From the DEIS to the FEIS: Plaintiffs’ Efforts to Reach a Compromise With BLM

72. During and after the comment period on the two draft EISs, Plaintiffs, both staff and members, actively engaged in a dialogue with BLM to reach an acceptable proposal for CBM development in the Powder River Basin that could be reviewed in supplemental EISs.

73. In April, 2002, BLM’s Director Clarke and her staff traveled to the Powder River Basin to meet with Plaintiffs to hear their concerns. Numerous staff and members of WORC and PRBRC attended this meeting. At this meeting Plaintiffs hand-delivered to Director Clarke a letter with specific concerns and proposals for responsible development.

74. On June 13, 2002, NRDC and WOC sent Defendant Clarke a letter concerning the Wyoming and Montana EISs in which they emphasized the need for the BLM to analyze more

alternatives to balance energy production against other resources in a supplemental EIS. Plaintiffs expressed interest in working with BLM in developing a responsible plan for proceeding with development in the entire Basin. BLM did not respond to the letter.

75. On July 30, 2002, both staff and members of all Plaintiffs traveled to Washington, D.C. to meet with Defendant Clarke, her staff, and Interior Department officials about the Powder River Basin CBM project and EISs. At that meeting, Plaintiffs again detailed their concerns and specific proposals for mitigating impacts of the project on the Basin's environment and its landowners. Plaintiffs also hand-delivered a letter to Defendant Clarke in which they summarized their major concerns.

76. On July 31, 2002, an Interior Department official, Patricia Morrison, Deputy Assistant Secretary for Lands and Minerals, wrote each of the Plaintiffs expressing the desire of Interior and BLM to work on an acceptable CBM plan for the entire Powder River Basin. On August 28, 2002, Plaintiffs responded to this expression of interest with a letter reiterating their concerns about the project and indicating their willingness to work with industry as well as Interior and BLM to address these concerns.

77. On August 19, 2002, Plaintiffs also sent Defendant Clarke and Assistant Secretary Morrison additional information on specific proposals for mitigating impacts of CBM. Specifically, Plaintiffs sent information about aggressive water treatment technologies being developed to remove harmful salts from CBM-produced water at very low costs. Among the technologically and economically feasible technologies was one developed by a Montana company that would remove sodium ions from the water to make it suitable for agricultural uses.

78. On September 11 and 12, 2002, staff and members of WORC and PRBRC participated in a CBM tour with BLM officials of the Powder River Basin in both Wyoming and Montana. During this meeting tour, Plaintiffs repeated their interest in reaching agreement on a

plan for responsible CBM development in the Basin. They again presented many ideas for reducing impacts identified by BLM in its draft EISs.

79. In late September 2002, staff and members of WORC and PRBRC met with Deputy Assistant Secretary Morrison and an official of BLM's Wyoming staff in Buffalo Wyoming. Again, Plaintiffs raised their concerns, issues and proposals for responsible development.

80. On October 1, 2002, Defendant Clarke responded to a letter from the Chair of PRBRC. At that time, she encouraged all Plaintiffs "to work collaboratively with BLM to develop acceptable solutions to resource management issues within the Powder River Basin." She assured Plaintiffs that BLM was committed to developing an alternative to proceed with extraction in an "environmentally responsible manner."

81. On October 25, 2002, WOC met with Interior and BLM in Washington, D.C. to reiterate concerns about the draft EISs and to urge development of a balanced development plan for CBM in the Powder River Basin. On that day, WOC again forwarded information to BLM and Interior concerning available technologies for treating CBM-produced water and improving protections for split-estate lands.

82. Although Plaintiffs expended considerable effort to work collaboratively on an acceptable plan with BLM, the agency never responded with anything more than empty assurances that the BLM was interested in addressing the Plaintiffs' concerns.

The FEISs, Protests and Records of Decisions

83. On January 17, 2003, BLM announced the availability of both the Wyoming and Montana final EISs (FEISs). It provided a 30-day period ending on February 18, 2003, in which to protest the final EISs to Defendant Clarke.

84. Both final EISs referenced identical technical reports regarding surface water impacts, ground water modeling, and air impacts for the entire Powder River Basin. None of these reports had been provided with or included in either draft EIS.

85. The new technical reports included 420 pages of new modeling and information on air issues, including emissions from a proposed 500-megawatt coal-fired power plant in the Basin. BLM knew of these emissions long before the release of the draft EISs, but did not assess them in the draft. Using a new air quality model, BLM presented a substantially new air quality analysis for the Montana portion and, based thereon, a new conclusion that there would be significant air quality impacts within that state.

86. Prior to the release of the final EISs, the National Park Service reviewed a preliminary final EIS for the Wyoming portion of the Basin and took special note of the new air document and modeling. The National Park Service again requested that BLM proceed with a supplemental draft EIS, rather than issue a final EIS.

87. The final EIS for Wyoming also included wholly new information on biodiversity, ecological functions and habitat fragmentation that is relevant to the assessment of impacts. This information suggested that Wyoming development could cause such significant impacts to BLM sensitive species that listing for protection under the Endangered Species Act might be required.

88. The new information BLM provided also included 500 miles of additional roads; and 300 miles of additional pipelines. New and significant information was added regarding key assumptions about the two primary water-handling options and how much water would enter into surface waters and the amount of water that would serve to recharge depleted aquifers.

89. Despite all of its new information, including that provided by Plaintiffs and their experts, BLM did not significantly alter its preferred alternatives. It still proposed development

of 77,000 CBM wells in the Powder River Basin based on the same mitigation analyzed in the draft EIS. In particular, BLM still intended to handle most of the produced water by discharging it, untreated, either directly onto the ground or into unlined infiltration pits. The final EISs failed to address information provided to BLM concerning available alternative technologies to treat the produced water. They failed properly to account for salt accumulation in soils. They continued to include many scientifically unsound assumptions concerning water quality impacts.

90. On February 11, 2002, prior to the close of the protest period, Plaintiffs wrote Director Clarke regarding the new information. They specifically noted that this new information warranted supplemental EISs in order to provide an adequate opportunity for the public to respond. BLM did not answer this letter.

91. The final EIS on CBM development for the Wyoming portion of the Powder River Basin considered only two “action” alternatives, both of which involved the same number of wells, essentially the same water handling methods, miles of roads, pipelines, and powerlines and other infrastructure. It did not evaluate other available alternatives, including feasible and available alternative methods for handling the CBM water such as injection, reverse osmosis and nanofiltration. Means to mitigate serious impacts to landowners’ existing water wells, soils, vegetation, weed infestation, noise and air pollution, surface water quality and aquifer depletion were not thoroughly analyzed in the range of alternatives in the EISs. In addition, no alternatives were developed that looked at different levels of mitigation, directional drilling, timing or spacing of operations, fewer than industry’s highest number of requested wells, or differing levels of safeguards for split-estate landowners.

92. While Montana did partially address well spacing and directional drilling alternatives, the Montana EIS, like the Wyoming EIS, did not evaluate other available alternatives. For example, the Montana EIS did not consider feasible and available alternative

methods for handling the CBM water such as injection, reverse osmosis and nanofiltration. Similarly, the Montana EIS did not consider different levels of development (i.e., different numbers of wells) or different timing of development.

93. The final EISs for both Montana and Wyoming did not adequately address, or give a “hard look” at, a number of important impacts associated with the Project. For example, BLM did not adequately analyze the amount of recoverable CBM reserves for the either the Wyoming or Montana portion of Basin. As a result, BLM’s estimates of recoverable reserves ranged from 13 trillion cubic feet of gas up to 28 trillion cubic feet. Without a better understanding of recoverable reserves, BLM could not accurately analyze the number of likely wells required for development or the level of impacts associated with this development.

94. BLM did not adequately analyze the surface impacts associated with this development. For example, in the Wyoming FEIS, BLM analyzed the impacts of only 35,000 well pads, even though 51,000 wells are anticipated. BLM’s assumption that multiple wells will be drilled from some well pads is not explained or supported in the FEIS.

95. Similarly, the Wyoming FEIS did not give the required “hard look” at the amount of produced water that is likely or the impacts resulting from that water. BLM’s assumptions regarding the amount and quality of produced water that is likely are flawed because they are based on a small number of producing wells in one area of the Basin. There is no evidence that the averages associated with those wells is consistent across the Basin, and BLM has made no effort to study the volumes of produced water that are likely in other areas of the Basin.

96. In addition, BLM’s assumptions regarding disposal of this produced water are flawed. For example, BLM has assumed that 10% to 20% of produced water will be injected back into the aquifer, even though BLM at the same time has stated that reinjection is not feasible in the Basin.

97. In addition, BLM has assumed that much of the water would be passively treated or would be placed in infiltration pits, these assumptions are not consistent with actual practices, as permitted by the Wyoming Department of Water Quality and carried out by industry. Because a much higher percentage of water than anticipated is likely to be discharged onto the surface untreated, BLM has failed to analyze the reasonably foreseeable impacts of this surface discharge.

98. BLM has also underestimated the number of infiltration pits that would be required to handle produced water during the early years of production (when water production is at its highest) by basing its assumptions on the average water discharge over the life of the well.

99. Finally, BLM has erroneously based its assumptions on the infiltration rate – or the rate at which water will soak back into the aquifers from the infiltration pits – on two sets of monitoring wells in on small area of the Basin. There is no evidence that the infiltration rates will be consistent across the Basin or that the infiltration rates in this part of the Basin are representative of the infiltration rate for the rest of the Project area. BLM has provided no analysis of infiltration rates in any other areas of the Basin.

100. The Wyoming final EIS also failed to provide a “hard look” at the impacts of this Project on wildlife. Although the draft EIS had identified 16 species that might be significantly affected by the Project, the final EIS reduced that number to three with no explanation. The Project was not materially changed, and the final EIS does not describe any mitigation measures or other reasons for reducing the impacts to the species originally listed.

101. The final EISs for both Montana and Wyoming also fail to address the cumulative impacts of the Project. Neither document quantified the impacts of combined CBM development in both Wyoming and Montana. For example, neither EIS examined the

cumulative impacts of the Project on wildlife, many of which exist in both states and are affected by development on both sides of the political boundary. Neither EIS examined the cumulative impacts of groundwater pumping on shared aquifers or water sources. Neither EIS examined the cumulative effect in the watershed of discharging water high in sodicity and salinity in the Wyoming part of the Basin or analyzed what affect this discharge might have on other projects if the Wyoming discharges diminish the capacity of the surface tributaries and rivers to dilute and assimilate other downstream discharges that are similarly high in sodicity and/or salinity.

102. In addition, neither EIS adequately examined the cumulative impacts of this combined Project in conjunction with other projects that have cumulative or synergistic effects in the same region. Examples of projects that are likely to cumulatively affect the resources at stake in the Powder River Basin include: proposed pipeline projects; existing and proposed coal mines and power plants in the Powder River Basin; proposed power plants near Roundup, Broadview, and Miles City, Montana; and the proposed Tongue River Railroad.

103. On February 18, 2003, Plaintiffs submitted their joint Protests on the FEISs to Director Clarke. In both Protests, Plaintiffs argued that BLM was required to prepare supplemental documents that would remedy the inadequacies of the drafts and present new information for public review and analysis. In addition, the Plaintiffs raised a number of key complaints that had consistently been raised throughout the NEPA process. For example, the Plaintiffs continued to assert that the BLM had illegally failed to prepare a single EIS for the Powder River Basin drainage system. Plaintiffs also maintained that BLM had improperly failed to analyze a reasonable range of alternatives, including available alternatives for handling produced water. Finally, Plaintiffs continued to assert that BLM had failed to assess and adequately describe the direct, indirect, and cumulative impacts of proposed development.

104. Upon information and belief, on or about April 29, 2003, BLM responded to Plaintiffs' Protests; by regulation, this was the final agency action by Defendants on the CBM project approvals and RMP amendments.

105. On April 30, 2003, BLM signed Records of Decisions (RODs) authorizing the federal component of the 82,000 well project in the Powder River Basin. The RODs did not sufficiently address or correct the deficiencies in the FEISs or the issues raised in Plaintiffs' protests. In addition, the RODs illegally deferred the bulk of impact analyses to state agencies and relied on unproven assumptions and untested mitigation measures in allowing the project to move forward. BLM admitted that its assumptions were speculative and "may or may not be correct" and that the effectiveness of the mitigation measures it adopted for the project had not been determined.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

*Failure to Prepare a Single Environmental Impact Statement
In Violation of 42 U.S.C. § 4332(2) and 5 U.S.C. § 706(2)*

106. Plaintiffs incorporate herein by reference paragraphs 1-105 above.

NEPA directs federal agencies to prepare an environmental impact statement ("EIS") on major proposals that may have significant environmental impacts. 42 U.S.C. § 4332 (2). *See also* 40 C.F.R. Part 1500, § 1500.1. Under NEPA, the actions that must be considered within a single EIS include (1) "connected actions," which are defined as interdependent with or automatically triggered by, the proposed action; (2) "cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts," and (3) "similar actions," which may involve common timing or geography. 40 C.F.R. § 1508.25(a). For EISs covering broad actions such as the present case, the proposal must be properly defined by, e.g., evaluating the proposal geographically "including actions occurring in the same general location, such as body

of water [or] region.” 40 C.F.R. §§ 1502.4(a) and (c)(1). This is especially true when considering cumulative or similar actions in a single statement is the “best way to assess combined impacts ... or reasonable alternatives.” *Id.* § 1508.25(a) (3).

107. Because the Powder River Basin is a single geographic region and a common river drainage system and because the CBM development proposals are similar actions with cumulative effects across the region, BLM was required to analyze the entire project in Montana and Wyoming in a single EIS.

108. The BLM’s failure to prepare a single EIS on CBM development in the Powder River Basin violated NEPA, 42 U.S.C. § 4233, and its implementing regulations. *See, e.g.*, 40 C.F.R. §§ 1405.4(a) and (c)(1); 1508.25(a); 1508.25(b)(3) and (c); 1508.7. Accordingly, BLM has acted arbitrarily and capriciously and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(a).

SECOND CAUSE OF ACTION

Failure to Supplement the Montana and Wyoming Draft Impact Statements In Violation of NEPA Implementing Regulations and 5 U.S.C. § 706(2)

109. Plaintiffs incorporate herein by reference paragraphs 1-108 above.

110. NEPA directs that the draft version of an EIS “must fulfill and satisfy to the fullest extent possible the requirements” applicable for final statements. 40 C.F.R. § 1502.9(a). If a draft statement is “so inadequate as to preclude meaningful analysis,” an agency “shall prepare and circulate a revised draft,” *id.*, or a supplement. In addition, agencies are required to prepare supplements to either draft or final statements if the agency “makes substantial changes in the proposed action that are relevant to environmental concerns,” or there is “significant new ... information relevant to environmental concerns and bearing on the proposed action or its impacts.” *Id. at* § 1502.9(c)(1)(i), (ii).

111. The Environmental Protection Agency deemed both draft EISs inadequate for purposes of NEPA review. Likewise, the National Park Service recommended preparation of a supplemental draft EIS for Wyoming in order to rectify insurmountable deficiencies in the original draft EIS. The final EISs for both Wyoming and Montana contained significant new information about the nature of the project, as well as the environmental impacts that might result. In Wyoming, BLM revealed that the proposed action would result in an additional 500 miles of improved roads and 300 miles of new pipelines over the numbers presented in the draft EIS. In the Montana EIS, the number of proposed wells for authorization rose substantially, from 10,000 to 26,000. In addition, the final EISs were released with new technical reports or studies on air quality impacts, water impacts, and impacts to biodiversity. Although none of this information had been previously released to the public for review and comment, BLM refused to supplement its draft EISs or prepare new draft EISs.

112. BLM's failure to supplement either of its final EISs or prepare new draft EISs violated NEPA, 42 U.S.C. § 4233, and its implementing regulations. See, e.g., 40 C.F.R. §§ 1502.9(a) and (c)(1)(i), (ii). Accordingly, BLM has acted arbitrarily and capriciously and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(a).

THIRD CAUSE OF ACTION

*Failure to Analyze the Full Range of Reasonable Alternatives in
Both the Montana and Wyoming Environmental Impact Statements
In Violation of 42 U.S.C. § 4332(E) and 5 U.S.C. § 706(2)*

113. Plaintiffs incorporate herein by reference paragraphs 1-112 above.

114. NEPA requires federal agencies, including the BLM, to “study, develop, and describe appropriate alternatives to recommend course of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E).

115. The alternatives analysis is the “heart” of a NEPA document, and the statute’s implementing regulations direct BLM to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. In addition, BLM is required to include in the range of alternatives “appropriate mitigation measures not already included in the proposed action” and a “means to mitigate adverse environmental impacts.” 40 C.F.R. §§ 1502.14(f); 1502.16(h).

116. As set forth above, BLM’s final EISs for both Montana and Wyoming did not consider a reasonable range of alternatives to the proposed action. Specifically, BLM failed to consider a number of alternatives that are feasible and that would meet the project’s purpose and need, including alternatives that: utilized available methods for handling CBM-produced water; considered different spacing and phasing of development; considered different levels of overall development and wells; or that analyzed different mitigation scenarios for a full range of landowner and resource protections.

117. This failure to consider a full range of reasonable alternatives violated NEPA, 42 U.S.C. § 4332, and its implementing regulations. See, e.g., 40 C.F.R. §§ 1502.14; 1502.16(h). Accordingly, BLM acted arbitrarily and capriciously and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(a).

FOURTH CAUSE OF ACTION

*Failure to Analyze Fully the Likely Direct, Indirect and Cumulative Impacts of CBM Development in the Montana and Wyoming Environmental Impact Statements
In Violation of 42 U.S.C. § 4332(E) and 5 U.S.C. § 706(2)*

118. Plaintiffs incorporate herein by reference paragraphs 1-117 above.

119. NEPA requires federal agencies, including BLM, to detail the environmental impact of major Federal actions in an EIS in order to take a “hard look” at the consequences of a

proposed action. 42 U.S.C. § 4332(C)(i). The Act's implementing regulations require that an EIS discuss, analyze and evaluate the direct and indirect environmental effects of the alternatives, including the proposed action, as well as means to mitigate adverse environmental consequences (if not included in the alternatives). 40 C.F.R. §§ 1506.16(a), (b), (h). Cumulative impacts must also be addressed. *See* 40 C.F.R. §§ 1508.7, 1508.8.

120. Neither the EIS for CBM development in the Montana portion of the Powder River Basin nor the EIS for the Wyoming portion adequately discuss, analyze and evaluate the serious environmental consequences of the proposed development activities to water quality and quantity, to air quality, to aquifer recharge, to aquatic and terrestrial wildlife, to vegetation and soil loss, to likely weed infestation and control, or to existing ranching operations in the Basin.

121. Neither the EIS for CBM development in the Montana portion of the Powder River Basin nor the EIS for the Wyoming portion adequately analyze the cumulative impacts of the proposed development in combination with all past, present, ongoing, and reasonably foreseeable related activities in the Basin. In further violation of NEPA, BLM failed adequately to describe the affected environment by not conducting inventories of wildlife species and locations, soil types, and other existing conditions. 40 C.F.R. § 1502.15. This failure thoroughly to document existing conditions distorted BLM's analysis of the likely impacts of the CBM proposal in violation of NEPA.

122. BLM further violated NEPA by basing the majority of its impacts analysis on flawed assumptions, scientifically unsound data, and guesswork regarding the significance and likelihood of some of the impacts, in violation of 40 C.F.R. § 1502.24.

123. Accordingly, Defendants have violated NEPA, 42 U.S.C. § 4332, and its implementing regulations, and have acted arbitrarily and capriciously and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(a).

FIFTH CAUSE OF ACTION

Failure to Avoid Conflicts of Interest in Preparing the Wyoming Environmental Impact NEPA's Implementing Regulations and 5 U.S.C. § 706(2).

124. Plaintiffs adopt and incorporate paragraphs 1-123 of this complaint herein.

125. NEPA's implementing regulations require that "any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency." 40 C.F.R. § 1506.5(c).

126. The regulations also require that the third party contractor must be "chosen solely by the lead agency . . . to avoid any conflict of interest," 40 C.F.R. § 1506.5(c), and that the chosen contractor cannot have any "financial or other interest in the outcome of the project." *Id.* The Council on Environmental Quality interprets "financial or other interest in the outcome of the project" broadly and includes "any financial benefit such as the promise of future construction or design work on the project." Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations at 17a, 46 Fed. Reg. 18026 (1981).

127. Because CBM operators, rather than BLM, were chiefly responsible for the selection of Greystone as a third-party contractor and because BLM knew, or should have known, that Greystone had a financial conflict of interest, BLM violated NEPA's implementing regulations in relying on Greystone as its EIS contractor. 40 C.F.R. § 1506.5(c). Accordingly, BLM has acted arbitrarily and capriciously and contrary to law in violation of the APA, 5 U.S.C. § 706(2)(a).

VI. PRAYER FOR RELIEF

1. WHEREFORE, Petitioners/Plaintiffs respectfully request that the Court grant the following relief:

(1) Declare that the BLM's actions are in violation of the National Environmental Policy Act and its implementing regulations, as set forth above; and

(2) Declare unlawful and set aside BLM's decision approving the amendment of the Resource Management Plans in Montana and Wyoming until such time as the Defendants have complied with the National Environmental Policy Act; and

(3) Order BLM to comply with the National Environmental Policy Act by preparing a new single draft Environmental Impact Statement for the entire CBM project in the Powder River Basin that properly gives a "hard look" at the direct, indirect, and cumulative impacts of CBM development in Montana and Wyoming; and

(4) Award preliminary and permanent injunctive relief preventing amendment of the Resource Management Plans in Montana and Wyoming and preventing any further CBM development in the Powder River Basin until such time as the Secretary and the BLM have complied with the National Environmental Policy Act; and

(5) Declare unlawful and set aside BLM's decision to approve any further CBM development until such time as it has fully complied with the National Environmental Policy Act and has properly amended its Resource Management Plans; and

(6) Retain jurisdiction of this action to ensure compliance with its decree;

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

(8) Granting such other and further relief as is proper.

Dated this 1st day of May, 2003.

Respectfully submitted,

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*Admission Pro Hac Vice Pending