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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

ENVIRONMENTAL DEFENSE, NATIONAL )  
WILDLIFE FEDERATION, NATIONAL PARKS )  
CONSERVATION ASSOCIATION, and )  
MONTANA ENVIRONMENTAL INFORMATION )  
CENTER )

Plaintiffs, )

vs. )

GALE NORTON, in her official capacity as Secretary )  
of the DEPARTMENT OF THE INTERIOR; )  
KATHLEEN CLARKE, in her official capacity as )  
Director, BUREAU OF LAND MANAGEMENT; )  
MARTIN OTT, in his official capacity as the )  
Montana Director, BUREAU OF LAND )  
MANAGEMENT; and Robert Bennett, in his )  
official capacity as the Wyoming Director, )  
BUREAU OF LAND MANAGEMENT )

Defendants. )  
\_\_\_\_\_ )

Cause No. \_\_\_\_\_

COMPLAINT

## **I. INTRODUCTION**

1. Plaintiffs Environmental Defense, National Wildlife Federation, National Parks Conservation Association, and Montana Environmental Information Center, on behalf of themselves, members and staff, challenge (1) the failure of the Secretary of the U.S. Department of the Interior (“Secretary”) to perform statutory duties to protect air quality and air quality related values in national parks and wilderness areas that are classified by law as Class I areas when the Secretary, acting through the Bureau of Land Management (“BLM”), approved amendments to the Buffalo and Platte River Resource Management Plans in Wyoming and the Powder River and Billings Resource Management Plans in Montana (collectively referred to as “RMP Amendments”) for the Powder River Basin Oil and Gas Project (“Oil and Gas Project”), (2) the failure of the Secretary to prepare an Environmental Impact Statement that fully discloses the cumulative adverse impacts of emissions from such Oil and Gas Project on such Class I areas and the public health consequences of increased exposure to harmful pollutants, (3) the failure to describe reasonable mitigation measures that are available to prevent such significant adverse impacts as required by the National Environmental Policy Act (“NEPA”), and (4) the failure to provide an opportunity for the public and agencies with expertise to review and comment on the analysis of cumulative air quality impacts before issuance of a final EIS.
2. This action arises from the Secretary’s approval of RMP Amendments that violate the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701 *et seq.*, the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et*

- seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, and the Secretary’s failure to perform the mandatory duty imposed by the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 *et seq.*, to protect air quality and air quality related values in national parks and wilderness areas designated as Class I areas.
3. Class I areas are areas of national natural, scenic, recreational, or historic value for which the CAA provides special protection. Class I areas include National Parks over 6,000 acres and Wilderness Areas over 5,000 acres in existence on August 7, 1977. See 42 U.S.C. 7472.
  4. The RMP Amendments approved by the Secretary are based upon a reasonably foreseeable development scenario of over 100,000 oil and gas wells, the majority of which will be coal-bed methane wells, in the Buffalo and Platte River Resource Management Areas in northeast Wyoming and in the Powder River and Billings Resource Management Areas in south central Montana.
  5. The number of oil and gas wells authorized by the RMP Amendments have been determined by BLM to emit air pollutants in quantities sufficient to adversely affect air quality, visibility and other air quality related values in some of the nation’s premier national parks and wilderness areas in the northern Rocky Mountains and northern Great Plains, and to create significant risks of adverse health effects to people residing, working, recreating or traveling in the Oil and Gas Project region.
  6. To enforce the protections established by FLPMA, the Clean Air Act, and NEPA for these national parks and wilderness areas, the Plaintiffs seek declaratory and injunctive relief to prohibit the Secretary from authorizing oil and gas

development under the RMP Amendments until limitations on the emissions of air pollutants sufficient to ensure the protection of air quality and air quality related values, including visibility, have been adopted as part of the RMP Amendments.

## **II. PARTIES**

7. The Defendant Gale Norton is the Secretary of the U.S. Department of the Interior. The Secretary is responsible for the management and oversight of the public lands, including the development of oil and gas resources on lands under her jurisdiction in accordance with all applicable laws.
8. Defendant Kathleen Clarke is the Director of the U.S. BLM. The Defendant Martin Ott is the Director of the Montana BLM. The Defendant Robert Bennett is the Director of the Wyoming BLM. BLM is the agency within the U.S. Department of the Interior that manages, subject to the direction and supervision of the Secretary, approximately 262 million acres of federal public lands and an additional 300 million acres of split-estate subsurface mineral resources, including the oil and gas mineral resources, such as coal-bed methane, in the Buffalo and Platte River Resource Management Areas in Wyoming and in the Powder River and Billings Resource Management Areas in Montana.
9. These Defendants are collectively referred to as the “Secretary” or “BLM”.
10. Plaintiff Environmental Defense is a nonprofit organization representing more than 400,000 members nationwide. Environmental Defense is dedicated to protecting the environmental rights of all people, including future generations. Among these rights are access to clean air and water and a flourishing ecosystem.

11. Environmental Defense members live, work, recreate and travel in areas shown to be affected by emissions from the Oil and Gas Project authorized by the RMP Amendments, including, but not limited to, the land within the Buffalo and Platte River Resource Management Areas in Wyoming and the Powder River and Billings Resource Management Areas in Montana. Members residing, working, traveling and recreating in areas affected by emissions are likely to be exposed to levels of air pollutants known to be harmful to human health. These members are harmed by the failure of Defendants to disclose these likely adverse health effects, the failure to consider mitigation measures adequate to prevent harmful exposures to these air pollutants, and the omission from the RMPs of measures that will provide for compliance with applicable national ambient air quality standards.
12. Environmental Defense members also live near, visit, enjoy, and recreate at the national park or wilderness areas that BLM found will be adversely affected by air pollution from oil and gas well development activities authorized under the RMP Amendments. Environmental Defense members have aesthetic, educational, economic, health, and spiritual interests that will be adversely affected by the impairment of visibility in national park and wilderness areas that BLM predicts will result from the oil and gas development authorized by Secretary in the RMP Amendments.
13. The use and enjoyment by members of Environmental Defense of the air, including visibility and other air quality related values in these national parks and wilderness areas has been and will continue to be adversely affected by the approval by the Secretary of the level of oil and gas development authorized by

the RMP Amendments. The RMP Amendments authorize a level of development that has been shown by an analysis prepared by BLM to result in expected emissions of air pollutants that will cause or contribute to the deterioration of air quality and air quality related values in violation of federal law. These members use, enjoy and benefit from these lands by visiting, fishing, hunting, rafting, and hiking on the lands and waters that will be adversely affected by the emission of air pollutants from the Oil and Gas Project. Their enjoyment and benefits from use of these lands will be adversely affected by air pollutants emitted from the oil and gas development authorized by the RMPs.

14. Kevin McMahon is a member of Environmental Defense and a member of the Rocky Mountain Regional Advisory Board of Environmental Defense. Mr. McMahon resides in Johnson County, Wyoming, where he engages in rigorous physical activity including running, cross-country skiing, horseback riding, hiking and biking. He also engages in horseback riding in both Campbell County, Wyoming, and Sheridan County, Wyoming. Mr. McMahon's use and enjoyment of the air and other resources in Johnson, Campbell, and Sheridan Counties have been and will continue to be adversely impacted by the approval by the Secretary of coal mining on federal lands that has resulted in violations of national ambient air quality standards and will further be harmed by the addition of air pollution expected to be emitted by the Oil and Gas Project approved by the RMP Amendments. The "Final Air Quality Assessment" of emissions from the Oil and Gas Project demonstrate that residents living in Johnson, Campbell, and Sheridan Counties, where the greatest air pollutant concentrations from the Project are

expected to occur, will be exposed to levels of particulate matter in excess of levels shown to be associated with adverse health effects. As a result, Mr. McMahon will be exposed to increased risks of adverse health effects associated with such pollutants and may experience such adverse health effects. Mr. McMahon also regularly visits, and will continue to visit, Grand Teton National Park, Yellowstone National Park, Teton Wilderness Area, and Washakie Wilderness Areas to hike, mountain climb, take photographs, cross-country ski, and enjoy the clear air and grand scenic vistas. Mr. McMahon's use and enjoyment of these national parks and wilderness areas will be adversely affected by the impairment of visibility in national park and wilderness areas that BLM predicts will result from the oil and gas development authorized by the RMP Amendments. See "Declaration of Kevin McMahon" [A true and correct copy attached as Exhibit A].

15. Farwell Smith is a member of Environmental Defense and an Advisory Trustee for Environmental Defense. Mr. Smith resides in Montana and has visited, and plans to continue visiting, Yellowstone National Park, North Absaroka Wilderness Area, Grand Teton National Park and Bridger Wilderness Area to hike, fish, horse-pack, enjoy the clear air and the grand scenic vistas. Mr. Smith's use and enjoyment of these national park and wilderness areas will be adversely affected by the acid deposition in sensitive lakes in the Bridger Wilderness Area and the impairment of visibility in these national parks and wilderness areas that BLM predicts will result from the oil and gas development authorized by the

RMP Amendments. See “Declaration of Farwell Smith” [A true and correct copy attached as Exhibit B].

16. Michael Yokell is a member of Environmental Defense and a member of the Rocky Mountain Regional Advisory Board of Environmental Defense. Mr. Yokell regularly visits, and will continue to visit, Grand Teton National Park to mountain climb, hike, and cross-country ski. Mr. Yokell’s use and enjoyment of this national park will be adversely affected by the impairment of visibility in this national park that BLM predicts will result from the oil and gas development authorized by the RMP Amendments. See “Declaration of Michael Yokell” [A true and correct copy attached as Exhibit C].
17. Doris McDill is a member of Environmental Defense who lives in Custer, South Dakota. She regularly visits, and will continue to visit, Wind Cave National Park and she periodically visits, and will continue to visit, Badlands Wilderness Area to enjoy hiking, wildlife, the scenic vistas, and the air quality. Ms. McDill’s use and enjoyment of these national park and wilderness areas will be adversely affected by the impairment of visibility in these national park and wilderness areas that BLM predicts will result from the oil and gas development authorized by the RMP Amendments. See “Declaration of Doris McDill” [A true and correct copy attached as Exhibit D].
18. Environmental Defense’s organizational purposes are adversely affected by the unlawful approval by the Secretary of the RMP Amendments that will allow expected emissions of air pollutants from the Oil and Gas Project to degrade the



air, visibility, grand scenic vistas, waters, and wildlife of the national parks and wilderness areas included in the air quality analysis.

19. Plaintiff National Wildlife Federation (“NWF”) is the nation’s largest conservation advocacy and education organization. Founded in 1936, NWF is a non-profit, tax-exempt corporation with its headquarters in Reston, Virginia. NWF has nine regional offices, including offices in Boulder, Colorado and Missoula, Montana. NWF’s mission is to educate, inspire, and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the Earth’s environment in order to achieve a peaceful, equitable, and sustainable future.
20. National Wildlife Federation members live, work, recreate and travel in areas shown to be affected by emissions from the Oil and Gas Project authorized by the RMP Amendments, including, but not limited to, the land within the Buffalo and Platte River Resource Management Areas in Wyoming and the Powder River and Billings Resource Management Areas in Montana. Members residing, working, traveling and recreating in areas affected by emissions are likely to be exposed to levels of air pollutants known to be harmful to human health. These members are harmed by the failure of Defendants to disclose these likely adverse health effects, the failure to consider mitigation measures adequate to prevent harmful exposures to these air pollutants, and the omission from the RMPs of measures that will provide for compliance with applicable national ambient air quality standards.
21. National Wildlife Federation members also live near, visit, enjoy, and recreate at the national park or wilderness areas that BLM found will be adversely affected

by air pollutants expected to be emitted from oil and gas well development activities authorized under the RMP Amendments. National Wildlife Federation members have aesthetic, educational, economic, health, and spiritual interests that will be adversely affected by the impairment of visibility in national park and wilderness areas that BLM predicts will result from the air pollutants to be emitted from the oil and gas development authorized by the Secretary in the RMP Amendments.

22. The use and enjoyment by members of National Wildlife Federation of the air, including visibility and other air quality related values in these national parks and wilderness areas has been and will continue to be adversely affected by the approval by the Secretary of the level of oil and gas development authorized by the RMP Amendments. The RMP Amendments authorize a level of development that has been shown by an analysis prepared by BLM to result in expected emissions of air pollutants that will cause or contribute to the deterioration of air quality and air quality related values in violation of federal law. These members use, enjoy and benefit from these lands by visiting, fishing, hunting, rafting, and hiking on the lands and waters that will be adversely impacted by the emission of air pollutants from the Oil and Gas Project. Their enjoyment and benefits from use of these lands will be adversely affected by air pollutants emitted from the oil and gas development authorized by Secretary in the RMPs.
23. National Wildlife Federation's organizational purposes are adversely affected by the unlawful approval by the Secretary of the RMP Amendments that will allow expected emissions of air pollutants from the Oil and Gas Project to degrade the

air, visibility, grand scenic vistas, waters, and wildlife of the national parks and wilderness areas included in the air quality analysis.

24. Plaintiff National Parks Conservation Association (“NPCA”) is a nonprofit corporation organized under the laws of the District of Columbia. NPCA maintains regional offices in several states including two offices in Montana and one in Wyoming. NPCA has over 300,000 members residing in the United States and abroad, including 1,324 members in Montana, 418 members in North Dakota, 494 in South Dakota, and 679 in Wyoming. NPCA exists to promote its members’ interest in protecting, preserving, and enhancing the United States National Park System, including the ecosystems and natural resources contained therein. NPCA is the only nongovernmental nonprofit citizen organization in the United States dedicated solely to protecting and improving the National Park System. Through participation in numerous legislative, administrative, and judicial proceedings, including proceedings relating to threatened parks, NPCA has demonstrated its strong interest in protecting and preserving the National Park System. NPCA achieves its organizational purpose, in part, through proper implementation of the nation’s environmental laws, including the Clean Air Act, NEPA and the National Parks Organic Act.

25. NPCA members live, work, recreate and travel in areas shown to be affected by emissions from the Oil and Gas Project authorized by the RMP Amendments, including, but not limited to, the land within the Buffalo and Platte River Resource Management Areas in Wyoming and the Powder River and Billings Resource Management Areas in Montana. Members residing, working, traveling

and recreating in areas affected by emissions are likely to be exposed to levels of air pollutants known to be harmful to human health. These members are harmed by the failure of Defendants to disclose these likely adverse health effects, the failure to consider mitigation measures adequate to prevent harmful exposures to these air pollutants, and the omission from the RMPs of measures that will provide for compliance with applicable national ambient air quality standards.

26. NPCA members also live near, visit, enjoy, and recreate at the national parks and wilderness areas that BLM found will be adversely affected by air pollutants emitted from oil and gas well development activities authorized under the RMP Amendments. NPCA members have aesthetic, educational, economic, health, and spiritual interests that will be adversely affected by the impairment of visibility in national park and wilderness areas that BLM predicts will result from the air pollutants emitted from the oil and gas development authorized by the Secretary in the RMP Amendments.

27. The use and enjoyment by members of NPCA of the air, including visibility and other air quality related values in these national parks and wilderness areas, has been and will continue to be adversely affected by the approval by the Secretary of the level of oil and gas development authorized by the RMP Amendments. The RMP Amendments authorize a level of development that has been shown by an analysis prepared by BLM to result in expected emissions of air pollutants that will cause or contribute to the deterioration of air quality and air quality related values in violation of federal law. These members use, enjoy and benefit from these lands by visiting, fishing, hunting, rafting, and hiking on the lands and

- waters that will be adversely affected by the emission of air pollutants from the Oil and Gas Project. Their enjoyment and benefits from use of these lands will be adversely affected by air pollutants emitted from the oil and gas development authorized by Secretary in the RMPs.
28. NPCA's organizational purposes are adversely affected by the unlawful approval by the Secretary of the RMP Amendments that will allow expected emissions of air pollutants from the Oil and Gas Project to degrade the air, visibility, grand scenic vistas, waters, and wildlife of the national park and wilderness areas included in the air quality analysis.
29. Plaintiff Montana Environmental Information Center ("MEIC") is a Montana non-profit public benefit corporation pursuant to § 35-2-101, *et. seq.*, MCA, with over 4,000 members state and nationwide, and at all times pertinent hereto, has had its principal office in Helena, Lewis and Clark County, Montana. MEIC has been in existence for over twenty-eight years, and strives to protect the air, water, and lands of Montana from pollution and to preserve Montana's quality of life. MEIC and its members have a further interest in participating in governmental decisions, in disseminating relevant information about those decisions to the general public, and in insuring that all laws and procedures that protect the interests of its members are complied with.
30. MEIC members live, work, recreate and travel in areas shown to be affected by emissions from the Oil and Gas Project authorized by the RMP Amendments, including, but not limited to, the Powder River and Billings Resource Management Areas in Montana. Members residing, working, traveling and

recreating in areas affected by emissions are likely to be exposed to levels of air pollutants known to be harmful to human health. These members are harmed by the failure of Defendants to disclose these likely adverse health effects, the failure to consider mitigation measures adequate to prevent harmful exposures to these air pollutants, and the omission from the RMPs of measures that will provide for compliance with applicable national ambient air quality standards.

31. MEIC members also live near, visit, enjoy, and recreate at the national parks or wilderness areas that BLM found will be adversely affected by air pollutants emitted from the oil and gas well development activities authorized under the RMP Amendments. MEIC members have aesthetic, educational, economic, health, and spiritual interests that will be adversely affected by the impairment of visibility in national park and wilderness areas that BLM predicts will result from the oil and gas development authorized by the Secretary in the RMP Amendments.
32. The use and enjoyment by members of MEIC of the air, including visibility and other air quality related values in these national parks and wilderness areas has been and will continue to be adversely affected by the approval of the level of oil and gas development authorized by the RMP Amendments. The RMP Amendments authorize a level of development that has been shown by an analysis prepared by BLM to result in expected emissions of air pollutants that will cause or contribute to the deterioration of air quality and air quality related values in violation of federal law. These members use, enjoy and benefit from these lands by visiting, fishing, hunting, rafting, and hiking on the lands and waters that will

be adversely affected by the emission of air pollutants from the Oil and Gas Project. Their enjoyment and benefits from use of these lands will be adversely affected by air pollutants emitted from the oil and gas development authorized in the RMPs.

33. MEIC's organizational purposes are adversely affected by the unlawful approval of the RMP Amendments that will allow expected emissions of air pollutants from the Oil and Gas Project to degrade the air, visibility, grand scenic vistas, waters, and wildlife of the national parks and wilderness areas included in the air quality analysis.
34. The Secretary's a) unlawful approval of RMP Amendments that violate the requirements of FLPMA and the Clean Air Act, and b) the violations of NEPA by unlawfully failing to disclose all significant adverse effects, unlawfully refusing to perform a comprehensive analysis of the cumulative impacts of air pollutants emitted from the project together with air pollutants from all other existing and reasonably foreseeable sources of emissions, unlawfully omitting consideration of reasonable mitigation measures that could prevent the significant adverse impacts of air pollutants emitted from the Oil and Gas Project, and unlawfully depriving plaintiffs of an adequate opportunity to comment on the cumulative impact analysis prior to approval of the RMP amendments, have adversely affected and will continue to adversely affect the above described use and enjoyment of the air, grand scenic vistas, land, waters, and other resources in national parks and wilderness areas, and interfere with the exercise procedural rights and other protections established by law to the detriment of members of Environmental

Defense, NWF, NPCA, and MEIC unless such illegal actions are vacated by this Court.

### **III. JURISDICTION AND VENUE**

35. Jurisdiction for judicial review of the Secretary's failure to comply with duties imposed by the Clean Air Act to prevent the significant deterioration of air quality and to prevent adverse effects to air quality related values in national parks and wilderness areas lies in the district courts pursuant to the APA. 5 U.S.C. §§ 702-704.
36. Jurisdiction for judicial review of the Secretary's failure to comply with duties imposed by the Federal Land Management Policy Act to only approve resource management plans ("RMPs") that provide for compliance with federal air pollution standards and provisions of the Clean Air Act that protect air quality related values in national parks and wilderness areas lies in the district courts pursuant to the APA. 5 U.S.C. §§ 702-704.
37. Jurisdiction for judicial review of the Secretary's failure to comply with the requirements for the preparation of an environmental impact statement ("EIS") to disclose fully the cumulative environmental impacts of emissions of air pollutants from activities related to the development of coal bed methane on federal lands under the National Environmental Policy Act ("NEPA"), and to consider alternatives that would prevent violations of federal air pollution standards and protections for air quality related values in national parks and wilderness areas, lies in the district courts pursuant to the APA. 5 U.S.C. §§ 702-704.
38. The relief requested is authorized pursuant to 5 U.S.C. §§ 705, 706 and/or 28 U.S.C. §§ 2201, 2202.



39. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because actions and omissions giving rise to these claims occurred in the District of Montana, and because some of the lands to be protected under the Clean Air Act lie in Montana.

#### **IV. ADMINISTRATIVE PROCEEDINGS**

40. The RMP Amendments were initiated in response to proposals by several oil and gas companies (including Lance Oil and Gas, Barrett Resources Corporation, Devon Energy Corporation, Yates Petroleum Corporation, Pennaco Energy, and CMS Oil and Gas) to increase significantly the development of coal-bed methane in the project area above levels anticipated in the then-existing RMP. See BLM, “Record of Decision and Powder River and Billings Resource Management Plan Amendments for the Powder River Basin Oil and Gas Project,” at 2 (April 2003) (hereinafter “Montana ROD”). AR § VII, File E, Doc. 2.

41. At the time the RMP Amendments were proposed in this case, the Montana Project area was governed by RMPs adopted in 1994 for the Powder River and Billings resource areas. See BLM’s “Oil and Gas RMP/EIS Amendment Record of Decision” (February 1994). AR § VI, File D, Doc. 46 (hereinafter “1994 RMP Amendments”). The 1994 RMP Amendments were adopted based on an EIS completed in 1992. See “Final Oil and Gas Amendment of the Billings, Powder River and South Dakota Resource Management Plans/Environmental Impact Statement” (December 1992). AR § VI, File D, Doc. 45. The 1994 RMP Amendments authorized conventional oil and gas development and a limited

- number of coal-bed methane exploratory and test wells. See id., at iii-iv. AR § VI, File D, Doc. 45.
42. The environmental impact statement prepared for the 1994 RMP Amendments does not include an analysis of the impact of full-field coal-bed methane development.
43. The 1994 RMP amendments briefly mention coal-bed methane development in a paragraph titled “Issues Not Analyzed in this Amendment.” Id., at 4. AR § VI, File D, Doc. 45. The 1994 RMP Amendments stated that “In order for full-field [coal-bed methane] development to occur on Federal oil and gas lands, an additional environmental document tied to this [1994 RMP] amendment would be required.” Id. AR § VI, File D, Doc. 45.
44. At the time the RMP Amendments were proposed in this case, the Wyoming Project area was governed by two RMPs: (1) the “Platte River Resource Area Management Plan Record of Decisions” from 1985; and (2) the Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office” adopted in 2001. See BLM’s “Final Environmental Impact Statement and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project,” at 1-1 (January 2003) (hereinafter “Wyoming Final EIS”), citing “Approved Resource Management Plan for the Public Lands Administered by the Bureau of Land Management Buffalo Field Office,” Buffalo Field Office (April 2001); “Platte River Resource Area Management Plan,” Casper Field Office (1985). AR § VII, File G, Doc 18. As BLM noted in this Wyoming Final EIS,

the levels of development for oil and natural gas anticipated at the time [of the 1985 and 2001 RMP Amendments] were less than are currently proposed by the Companies and the agencies' current Reasonably Foreseeable Development Scenario. In particular, the current and proposed levels of development of CBM [coal-bed methane] were not specifically analyzed.

Id., at 1-5. AR § VII, File G, Doc 18.

45. On June 21, 2000, BLM published a Federal Register notice of its intent to prepare an EIS to evaluate the direct, indirect, and cumulative effects of expanded oil and gas development in the Wyoming portion of the basin.
46. In July 2000, Wyoming BLM, under the direction of the Secretary, requested that the Argonne National Laboratory (“ANL”) conduct an assessment of impacts on ambient air quality and air quality related values expected to result from emissions of air pollutants associated with the development of coal bed methane and conventional oil and gas resources in the Buffalo and Platte River Resource Management Areas in Wyoming.. See “Final Technical Support Document: Air Quality Impact Assessment for the Montana Final Statewide Oil and Gas EIS and Proposed Amendment of the Powder River and Billings Resource Management Plans and the Wyoming Final EIS and Planning Amendment for the Powder River Basin Oil and Gas Development Project, prepared for the U.S. Department of the Interior Bureau of Land Management Montana and Wyoming State Offices, prepared by Argonne National Laboratory,” at 1-1 (December 2002) (hereinafter “Final Air Quality Assessment”). AR § VII, File G, Doc.12.
47. ANL completed a preliminary air quality assessment for the Wyoming project area in November 2001. See “Final Air Quality Assessment,” at 1-1. AR § VII, File G, Doc.12.

48. The preliminary air quality assessment for the Wyoming project area contained a limited analysis of the impacts on air quality that would result from air pollutants emitted by 39,000 new coal-bed methane wells and 3,200 new oil wells over a ten-year period in the Buffalo and Platte River Resource Management Areas in Wyoming. This assessment failed to include an analysis of the cumulative impacts of air pollutants expected to be emitted from the Oil and Gas Project in the Powder River and Billings Resource Management Areas in Montana., any pre-existing sources permitted prior to September 1, 1994, and other pre-existing sources in western Wyoming, Montana, North Dakota, South Dakota or northern Colorado that would be expected to contribute to pollutant concentrations in Class I national park and wilderness areas within the zone of impact of air pollutants emitted by sources in the project region.
49. In December 2000, BLM announced its intent to prepare another EIS as required to adopt an RMP Amendment for the Billings and Powder River Resource Management Areas in Montana and to analyze the development of up to 10,000 coal-bed methane wells in the Montana portion of the Basin. See BLM's "Notice of Intent to Amend the Powder River and Billings Resource Management Plans and Conduct Scoping Meetings," (December 14, 2000). AR § I, File A, Doc. 11.
50. In April 2001, Montana BLM requested that ANL conduct an assessment of impacts on ambient air quality and air quality related values associated with coal-bed methane and conventional oil and gas development in the Powder River and Billings Resource Management Areas in Montana. See "Final Air Quality Assessment," at 1-1. AR § VII, File G, Doc.12. ANL's assessment of impacts on

- air quality and air quality related values associated with the Oil and Gas Project in the Powder River and Billings Resource Management Areas in Montana was delivered to Montana BLM in April 2002. See “Final Air Quality Assessment,” at 1-1. AR § VII, File G, Doc.12.
51. In January 2002, the BLM released two Draft EISs for the Oil and Gas Project, one each for the Montana and Wyoming portions of the basin. See BLM’s Montana “Statewide Draft Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans” (January 2002) (hereinafter “Montana Draft EIS”). AR § VI, File A, Doc. 1. See also, Wyoming Draft EIS, supra. AR § VI, File D, Doc. 39.
52. The preliminary air quality assessment for the Wyoming project was referenced, but not attached or included for public review, in the Wyoming Draft EIS. See Wyoming Draft EIS, at 3-54, 10-1. AR § VI, File D, Doc. 39.
53. BLM, under the direction of the Secretary, released the Montana Draft EIS in January 2002 without an air quality assessment of the Oil and Gas Project in Montana authorized in the RMP Amendments. See Montana Draft EIS, supra. AR § VI, File A, Doc. 1. Instead, the Montana Draft EIS referenced readers concerned about air quality impacts to the 1992 EIS for oil and gas development in the Powder River and Billings Resource Management Areas, which did not analyze the air quality impacts of full-field coal-bed methane development. See Montana Draft EIS, at 4-10. AR § VI, File A, Doc. 1.
54. Neither the Montana Draft EIS nor the Wyoming Draft EIS contained a detailed air quality assessment of the proposed project that evaluated the cumulative

impact of air pollutants expected to be emitted from the Oil and Gas Project authorized by the Secretary in the RMP Amendments for both Montana and Wyoming.

55. EPA noted that in a January 17, 2002 letter transmitting the Montana Draft EIS to the EPA for review, the BLM “indicated they had not yet analyzed ... the potential human health impacts and visibility changes due to degraded air quality” caused by the Oil and Gas Project authorized by the Secretary in the RMP Amendments. See May 15, 2002 Letter from Robert Roberts, Regional Administrator, EPA, to Sherry Barnett, Acting State Director, Montana BLM, Jan Sensibaugh, Director, Montana Division of Environmental Quality, David Ballard, Chairman, Montana Board of Oil and Gas Conservation, at 4. AR § VI, File C, Doc. 6, at 11351.
56. Commenting on the Montana Draft EIS, EPA stated a “combined analysis of this [Montana] Draft EIS and the Wyoming Draft EIS should be prepared. The bifurcation of the Powder River Basin does not allow the decision-maker and the public to fully evaluate the cumulative impacts of both projects.” Id., at 3-4. AR § VI, File C, Doc. 6, at 11350-11351.
57. EPA recommended that BLM include a revised air quality assessment in “a revised or supplemental Draft EIS to allow the public to have an adequate opportunity to review and comment on these complex issues.” Id., at 5. AR § VI, File C, Doc. 6, at 11352. See EPA’s “Detailed Comments by EPA on the Statewide Draft Oil and Gas Oil and Gas Environmental Impact Statement and

Amendment of Powder River and Billings Resource Management Plans,” at 41.  
AR § VI, File C, Doc. 6, at 11394.

58. BLM held public meetings to discuss the Wyoming Draft EIS between March 18 and March 21, 2002. See Wyoming Final EIS, at 2-2. AR § VII, File G, Doc 18. BLM held public meetings to discuss the Montana Draft EIS in Broadus, Montana on April 1, 2002, in Billings, Montana on April 2, 2002, in Lame Deer, Montana on April 3, 2002, at Crow Agency, Montana on April 3, 2002, in Helena, Montana on April 4, 2002, and in Bozeman, Montana on April 9, 2002.
59. Plaintiffs submitted extensive comments on both Draft EISs. See May 15, 2002, Comments from Vickie Patton, Senior Attorney Environmental Defense, to BLM Montana and Wyoming, “Comments on (1) Draft Environmental Impact Statement and Draft Planning Amendments for the Powder River Basin Oil and Gas Project, Jan. 2002; (2) Statewide Draft Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans, Jan. 2002” (hereinafter “Comments of Environmental Defense”). AR § VI, File C, Doc 6, at 11241. See also May 14, 2002, Comments of National Wildlife Federation, by Tom France and Ben Deeble, “Comments on Statewide Draft Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans.” AR § VI, File C, Doc 6, at 11024.
60. The comments of Environmental Defense focused on seven main issues: (1) BLM’s failure to prepare a single EIS evaluating the cumulative impacts on air quality and other resources of both the Montana and Wyoming projects; (2)

BLM's failure to evaluate cumulative air quality impacts on human health and the environment; (3) BLM's failure to consider the cumulative impacts of air pollutants expected to be emitted from the Oil and Gas Project together with air pollutants expected to be emitted from reasonably foreseeable power plants in the vicinity of the project; (4) BLM's failure to meaningfully consider the impacts of air pollutants expected to be emitted from the Oil and Gas Projects on air quality and air quality related values in National Park and Wilderness Areas designated as Class I areas under the CAA; (5) BLM's failure to examine additional greenhouse gas emissions, such as CO<sub>2</sub> and methane, that will result from the project; (6) BLM's failure to evaluate all viable alternatives and air pollution mitigation strategies in the Draft EISs; and (7) BLM's failure to evaluate the cumulative air quality impacts on nonattainment areas in Wyoming and Montana. See Comments of Environmental Defense, *supra*. AR § VI, File C, Doc 6.

61. On May 15, 2002, EPA sent a letter to the BLM State Director in Wyoming explaining that EPA found the Wyoming Draft EIS "Environmentally Unsatisfactory." See May 15, 2002, Letter from Robert Roberts, Regional Administrator, EPA Region VIII, to Al Pierson, State Director, BLM Wyoming, "EPA's Review of Draft Environmental Impact Statement and Draft Planning Amendment for Powder River Basin Oil and Gas Project," at 4. AR § III, File A, Doc. 12. EPA's review "identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality."



62. On May 15, 2002, EPA sent a letter to the BLM State Director in Montana, explaining that EPA found the Montana Draft EIS was “inadequate” because it did not provide “sufficient information to understand the impacts of the preferred alternative.” See May 15, 2002 Letter from Robert Roberts, Regional Administrator, EPA, to Sherry Barnett, Acting State Director, Montana BLM, Jan Sensibaugh, Director, Montana Division of Environmental Quality, David Ballard, Chairman, Montana Board of Oil and Gas Conservation, at 6. AR § VI, File C, Doc. 6, at 11353. EPA stated “EPA does not believe that the draft EIS is adequate for purposes of the National Environmental Policy Act ... and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.” Id., at 6. AR § VI, File C, Doc. 6, at 11353.
63. In detailed comments on the Montana Draft EIS attached to EPA’s May 15, 2002 letter, EPA raised objections to BLM’s failure to adequately address impacts to air quality. EPA noted, “EPA cannot provide a meaningful set of comments on impacts to air resources until the technical study currently under preparation by Argonne Labs for BLM’s use in the Final EIS is provided.” See EPA’s “Detailed Comments by EPA on the Statewide Draft Oil and Gas Environmental Impact Statement and Amendment of Powder River and Billings Resource Management Plans,” at 34. (hereafter “Detailed Comments”). AR § VI, File C, Doc. 6, at 11387. EPA explained that an air quality assessment from Wyoming and Montana “should be coordinated in order to factor in the cumulative air quality impacts to the entire Powder River Basin, not just each State separately.” Id. AR § VI, File C, Doc. 6, at 11387.

64. On June 19-20, 2002, BLM staff from Montana, Wyoming, the Washington headquarters Office and the Interior Department's Office of the Solicitor met in Billings, Montana to develop options to complete the EIS process. Among the issues discussed were the need to prepare a "[c]omplete joint cumulative impacts analysis for air" resources and whether to prepare a supplemental draft EIS. See July 3, 2002, Internal Working Document, from Pete Culp, Special Assistant to Director U.S. BLM, "Briefing for the Director," at 1. AR § VII, File I, Doc. 3.

65. On July 3, 2002, Pete Culp, Special Assistant to the Director of U.S. BLM, transmitted the following recommendation developed at this meeting in Montana to the U.S. Director of BLM:

Complete the current EISs and do a separate NEPA document and RMP amendment for leasing in each state. Work with the co-leads (Montana) and cooperators to complete the Record of Decision for the current EISs this calendar year. Wyoming would complete the RMP amendment for leasing within 9-12 months.

Id. Among the advantages listed for this recommendation was that both EISs could include a joint analysis of air impacts. Id. Based on the recommendations made at this meeting, BLM did not prepare a supplemental Draft EIS for the Oil and Gas Project.

66. In July 2002, Montana BLM and Wyoming BLM jointly requested that ANL conduct a more comprehensive joint assessment of cumulative impacts on ambient air quality and air quality related values expected to be caused by air pollutants emitted from the Oil and Gas Project in Montana and Wyoming combined with other existing and reasonably foreseeable future sources. See "Final Air Quality Assessment," at 1-1. AR § VII, File G, Doc.12.

67. In September 2002, ANL submitted to Montana BLM and Wyoming BLM the initial results of this joint assessment of the cumulative impacts on ambient air quality and air quality related values expected to be caused by air pollutants emitted from the Oil and Gas Project in Montana and Wyoming combined with other existing and reasonably foreseeable future sources. See “Final Air Quality Assessment,” at 1-2. AR § VII, File G, Doc.12.
68. In October 2002, Montana BLM requested that ANL supplement the September 2002 joint air quality assessment to include emissions from current and reasonably foreseeable coal-bed methane development and conventional oil and gas development on the Crow Indian Reservation, the Northern Cheyenne Indian Reservation, and the Custer National Forest. See “Final Air Quality Assessment,” at 1-2. AR § VII, File G, Doc.12.
69. BLM circulated the joint air quality assessment to several participating state and federal agencies. Based on this information, on October 23, 2002, the Montana Department of Environmental Quality (DEQ), a co-lead agency with responsibility for performing an impact statement under state law, informed the BLM that DEQ believed that the new information on air impacts and other impacts required a supplemental Montana Draft EIS to be prepared because “there is substantial new information in the Final EIS that the public will not have had a chance to review and comment on.” See October 23, 2002 Email from Greg Hallsten, Montana Department of Environmental Quality, to Mary Bloom, Montana BLM, “Fatal Flaws,” at 1. AR § VII, File I, Doc. 12.

70. On October 23, 2002, after reviewing the joint air quality assessment, the Montana Department of Environmental Quality sent the following e-mail entitled “fatal flaws” to the BLM:

With respect to the revised air quality material, however, we still have problems. John [North, Montana DEQ attorney] and I, as well as other attorneys who handle air issues and our permitting people, continue to believe that the DEIS and PFEIS contradict one another. The DEIS indicates that there would be no air quality problems, while the PFEIS shows the potential for violations of air quality standards, both directly and cumulatively. In the DEIS, we asked the public to ‘trust us’ that there would be no problems. In the PFEIS, we show there could be problems, and we put numbers to it to support that view. We see this as a fatal flaw.

The set of responses to air quality related comments is another fatal flaw. Leaving aside the dismissive tone, many responses are unresponsive to the comments. Often, the commentor [sic] is referred for an answer to a technical report that does not exist yet and will have very limited availability when it is finished. This is not helpful or informative. Further, **the reader is repeatedly told that information not found in the DEIS is now in the FEIS. Once or twice might be acceptable, but when this happens over and over, we have to conclude that there is substantial new information in the FEIS that the public will not have had a chance to review and comment on.**

**There is also to be an air appendix in the FEIS that is a new feature entirely. We continue to be of the opinion that a supplement to the DEIS is in order.**

Id. (emphasis supplied). AR § VII, File I, Doc 12.

71. In November 2002, ANL completed and delivered to Montana BLM and Wyoming BLM the “Final Air Quality Assessment” which provided the first purported analysis of the cumulative impacts on air quality and air quality related values expected to be caused by the emission of air pollutants from the Oil and Gas Project in Montana and Wyoming, together with some, but not all, existing and reasonably foreseeable future sources. The “Final Air Quality Assessment” included the air pollutant emissions from current and reasonably foreseeable coal-

- bed methane development and conventional oil and gas development on the Crow Indian Reservation, the Northern Cheyenne Indian Reservation, and the Custer National Forest previously requested by BLM (see paragraph 68, supra). See “Final Air Quality Assessment,” at 1-2. AR § VII, File G, Doc.12.
72. Throughout the development of the “Final Air Quality Assessment,” Montana Department of Environmental Quality assisted the BLM in preparing the air quality background assumptions and reviewed the regional data for these assumptions for purposes of including this information in the “Final Air Quality Assessment.” See April 29, 2003, Letter from Edward Shepard, Assistant Director, BLM Renewable Resources and Planning, to Michael Reisner, “Denial of Protest”, at 26. AR § VII, File D, Doc. 4.
73. National Park Service (“NPS”) stated that it received the draft “Final Air Quality Assessment” via EPA on November 27, 2002, the day before Thanksgiving. See December 2, 2002, Letter from Cheryl Eckhart, NEPA Specialist, Intermountain region of National Park Service, to Paul Beels, Project Manager, BLM Buffalo Field Office, “NPS Review of Preliminary Final Environmental Impact Statement and Technical Support Document for the Powder River Basin Oil and Gas Project,” at 1. AR § IV, File G, Doc. 1.
74. On November 29, 2002, NPS states that it was “notified by [BLM’s] Susan Caplan that the due date for comments was December 4, 2002.” Id. AR § IV, File G, Doc. 1.
75. On December 2, 2002, after what NPS described as a “cursory review” of the draft “Final Air Quality Assessment,” the NPS stated --

We are particularly concerned that the project may result in significant or potentially adverse impacts to several units of the National Park System. These units include Badlands National Park (NP) and Wind Cave NP, which are mandatory Class I air quality areas . . . .

Id., at 1-2. AR § IV, File G, Doc. 1. The NPS explained --

We [NPS] prefer to resolve technical issues prior to the public release of an FEIS. In this case, NPS did not receive the documents until two weeks prior to the comment deadline, thus making such resolution impossible. Additionally, NPS was not advised of, nor included in, any of several technical discussions regarding the Final EIS following our [NPS's] April 12, 2002 comments on the draft EIS.

Id., at 2. AR § IV, File G, Doc. 1. In conclusion, the NPS requested the “BLM either defer formal publication of this FEIS, or submit it as a supplement to the previous Draft EIS so that we [NPS] may be allowed to discuss, and hopefully resolve the technical issues regarding this [Oil and Gas] project.” Id., at 2. AR § IV, File G, Doc. 1.

76. On December 5, 2002, EPA commented on the draft of the “Final Air Quality Assessment.” EPA stated “We [EPA] have not had sufficient time to perform an in-depth technical review of all parts of all of the documents.” December 5, 2002, Email from Richard Long, EPA to Pete Culp, Special Assistant to the Director U.S. BLM, “Overview of EPA Region 8’s Comments on BLM’s CBM EIS Air Quality Analyses,” at 2. AR § VIII, File A, Doc. 21.

77. EPA expressed the conclusion that the air quality impacts of the Oil and Gas Project are significant. EPA stated --

Our review of the EISs and the TSD [the “Technical Support Document” referred to herein as “Final Air Quality Assessment”] suggest that the air quality impacts of CBM [coal-bed methane] development in Wyoming and Montana are significant, meaning that: PSD Class I and Class II increments for PM<sub>10</sub> and NO<sub>x</sub> will be exceeded, the NAAQS for PM<sub>10</sub> could be exceeded by CBM construction emissions in Montana, additions to existing impacts

(near coal mines in Wyoming and Montana and in Lame Deer) could also violate the PM<sub>10</sub> NAAQS, visibility criteria will be exceeded by significant amounts on a number of days in a significant number of Class I areas, and acid deposition impacts will be of concern in one Class I area. We believe that the unadjusted modeling results indicate these impacts even without considering the possibility that the model is underpredicting impacts.

Id., at 2. AR § VIII, File A, Doc. 21

78. EPA stated that the EISs were not written in a manner to allow non-technical

laypeople to understand it. EPA stated –

As mentioned above, the EISs could be written better so they are more accessible to the lay public. ... As the EISs are currently written, it is very difficult for the layperson (or even the technical person) to come to reasonable and clear understanding regarding calculated effects.

Id., at 2. AR § VIII, File A, Doc. 21.

79. EPA then explained –

Monitoring and mitigation are given short shrift. Several *months ago* [emphasis in original] EPA reassessed its technical concerns regarding air quality modeling for the CBM EISs. The judgment was made that we could compromise if the final EISs carefully caveated the existing modeling results and their uncertainties and described how air quality monitoring could be used to track PSD increment consumption (for example) and how mitigation could be used to reduce impacts. The BLM documents do not adequately link the modeled impacts, which are clearly above regulatory criteria with what BLM proposes that it would do or it would recommend others do to mitigate impacts. An EPA-developed table on mitigation options is provided in at least one of the BLM documents; however, it is not tied in with the text. How is this information to be used? Significant visibility impacts are predicted, but we do not know whether these impacts are predominantly from PM<sub>10</sub> or NO<sub>x</sub>. One cannot propose meaningful mitigation if one does not know what needs to be controlled.

Id., at 2. AR § VIII, File A, Doc. 21.

80. On January 17, 2003, Defendants published notice of availability of the Wyoming

and Montana Final EISs. See 68 Fed. Reg. 2569 (Montana Notice); 68 Fed. Reg.

2570 (Wyoming Notice). Defendants released the “Final Air Quality Assessment”

to the public for the first time as part of the Final Montana and Wyoming EISs. See BLM's "Statewide Oil and Gas Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plan" (January 2003) (hereinafter "Montana Final EIS"). AR § VII, File A, Doc. 12 & 13. See also, Wyoming Final EIS, supra. AR § VII, File G, Doc 18.

81. Neither of these two notices of availability mention the availability of the "Final Air Quality Assessment," or inform the public that there is any opportunity for public review and comment on the "Final Air Quality Assessment." Neither of these notices discuss or invite the public or agencies to comment on air quality impacts related to the proposed Oil and Gas Project authorized by the Secretary in the RMP Amendments shown by the "Final Air Quality Assessment" to be expected in any of the 15 Class I areas, including visibility impacts, acid deposition in sensitive lakes, or exceedances of maximum allowable increases of air pollutants. Nor did these notices identify the need for, or invite the public to comment on the need for mitigation measures to prevent deterioration of air quality or impairment of visibility in any of these 15 Class I areas.
82. In February 2003, EPA sent a letter to BLM explaining the confusion created by the multiple presentations of the air quality information in the Final Montana EIS and Final Wyoming EIS. EPA stated --

It was difficult to evaluate the full air quality impacts due to the inconsistent manner in which direct impacts were reported between the Wyoming and Montana Final EISs. The modeling approach which calculated Montana CBM [coal-bed methane] and Wyoming CBM direct impacts separately does not allow the decision-maker to look at the total direct impacts from the CBM development in the two states. In the Wyoming EIS, the Montana CBM direct impacts are considered non-project impacts, and in the Montana EIS, the Wyoming CBM direct



impacts are considered non-project impacts. Since the direct impacts from each EIS cannot be simply added together, it is therefore impossible to determine the total direct impacts due to CBM development. The Powder River Basin air shed is impacted by oil and gas development, coalmines, utilities and other sources from both states.

See February 13, 2003, Letter from Robert E. Roberts, Regional Administrator, EPA, to Martin Ott, State Director Bureau of Land Management, Jan Sensibaugh, Director Montana Department of Environmental Quality, and David Ballard, Chairman Montana Board of Oil and Gas Conservation, entitled, “EPA’s Review of Final the Statewide Draft Oil and Gas Final Environmental Impact Statement (Final EIS) and Amendment of the Powder River and Billings Resource Management Plans, CEQ #030020,” at 10. AR § III, File A, Doc. 24.

83. In February 2003, several environmental organizations filed protests to the Final Montana EIS and the Final Wyoming EIS and requested that BLM prepare a new supplemental EIS evaluating these new data to provide an opportunity for public comment on the cumulative impacts described for the first time in “Final Air Quality Assessment.”
84. BLM denied the protests and refused to supplement the Montana EIS and the Wyoming EIS.
85. The BLM, under the supervision of and pursuant to the statutory authority granted to the Secretary, on April 30, 2003 signed the Record of Decisions approving both the Wyoming and Montana Final EISs and the RMP Amendments. See Montana ROD, supra. AR § VII, File E, Doc. 2. See also “Record of Decision and Resource Management Plan Amendments for the Powder River Basin Oil and Gas Project, Buffalo Field Office,” Wyoming BLM (April 2003) (hereinafter “Wyoming ROD”).

**V. EMISSIONS FROM THE OIL AND GAS PROJECT ARE PREDICTED TO CAUSE VIOLATIONS OF CLEAN AIR ACT AND STANDARDS FOR AIR POLLUTANTS IN NATIONAL PARKS AND WILDERNESS PROTECTED AS CLASS I AREAS.**

86. Evidence in the “Final Air Quality Assessment” demonstrates that air pollutants emitted from the Oil and Gas Project authorized by the RMP Amendments would contribute to or cause the violation of state and federal air quality standards, including, but not limited to, national ambient air quality standards, maximum allowable increases in pollutants in excess of the concentrations allowed in mandatory federal Class I areas, adverse impacts on visibility, and adverse impacts on acid sensitive waters, as described in section V.E. infra. See generally, “Final Air Quality Assessment”, supra. AR § VII, File G, Doc.12.
87. In the Wyoming Final EIS, BLM admits that “Under both FLPMA and the CAA, BLM is required to assure that its actions (either direct or by use authorizations) comply with all applicable local, state, tribal and federal air quality requirements, including PSD Class I and II increments.” Wyoming Final EIS, at S-227, (emphasis supplied). AR § VII, File G, Doc 18. See also Wyoming Draft EIS, at 4-102 (stating “under FLPMA, and the Clean Air Act, BLM cannot authorize any activity that does not conform to all applicable local, state, tribal, and Federal air quality laws, statutes, regulations, standards, and implementation plans.”). AR § VI, File D, Doc. 39.
88. On February 7, 2003, a BLM air quality official advised the Special Assistant to the national Director of BLM who was responsible for managing approval of the Project that --

[U]nder both the Clean Air Act and the Federal Land Policy and Management Act, BLM has both the authority and responsibility to assure

that its actions (including all authorized actions) comply with all applicable local, state, tribal and federal air quality laws, statutes, regulations, standards, increments, and implementation plans. Under FLPMA, we also have the authority and responsibility to prevent ‘unnecessary and undue’ degradation of the environment, including air quality.

February 5-7, 2003, Email from Scott Archer, Senior Air Resource Specialist, BLM’s National Science and Technology Center, Denver, to Pete Culp, Special Assistant to the Director U.S. BLM, regarding the need for air quality mitigation measures in the Montana and Wyoming RODs, at 1. AR § VIII, File A, Doc. 27.

89. Neither the Montana or Wyoming Record of Decision adopts any measures or policies intended to prevent predicted emissions of air pollutants from the Oil and Gas Project from exceeding the levels shown to cause or contribute to violations of national ambient air quality standards, maximum allowable increases in concentrations of air pollutants regulated under the Clean Air Act, or to prevent adverse impacts on air quality related values such as impairment of visibility in the mandatory federal Class I areas affected by emissions from the activities authorized by either RMP. See Montana ROD, supra. AR § VII, File E, Doc. 2. See also “Record of Decision and Resource Management Plan Amendments for the Powder River Basin Oil and Gas Project, Buffalo Field Office,” Wyoming BLM (April 2003).

#### **A. Air Pollution Emissions From the Oil and Gas Project.**

90. The “Final Air Quality Assessment” explains that the Oil and Gas Project authorized by the Secretary would produce air pollutant emissions in several ways. During the construction phase, emissions from vehicle traffic and temporary field generators will produce volatile organic compounds (“VOCs”)

and fugitive particulate matter pollution. See “Final Air Quality Assessment,” at 4-23. AR § VII, File G, Doc.12. Additional particulate matter pollution will be emitted by the construction of wells, pipelines, compressor stations, associated facilities, and over 17,000 miles of new roads in Wyoming and over 6,000 new miles of roads in Montana. Id., at 1-12 (Wyoming), B-60 (Montana). AR § VII, File G, Doc.12.

91. During the operation phase, air pollutants will be emitted by compressor engines at producing oil and gas wells. See “Final Air Quality Assessment,” at 1-6. AR § VII, File G, Doc.12. The approximately 2,400 compressors for the Oil and Gas Project will be powered by diesel, electric, or natural gas-fired engines. Id., at 1-6, 1-11. AR § VII, File G, Doc.12. The Oil and Gas Project will continue to produce air pollutant emissions during the life of the project from work crew vehicles and road maintenance activities. See “Final Air Quality Assessment,” at 4-25. AR § VII, File G, Doc.12.

92. In addition to direct emissions from the Oil and Gas Project activities, other sources of air pollutants in the region will also contribute to air pollutant concentrations in the 15 Class I areas shown by the “Final Air Quality Assessment” to be affected by emissions from the Oil and Gas Project approved by the RMP Amendments. These include emissions from the following existing sources: operations at developed oil and gas fields, coal mines, coal-fired power plants, gasoline and diesel vehicle engine exhaust, dust generated from vehicle traffic on unpaved roads, windblown dust from neighboring areas, road sanding during winter months, and transport of air pollutants from emissions sources

outside the region. See Montana Final EIS, at 3-2. AR § VII, File A, Doc. 12. See also, “Final Air Quality Assessment,” at 4-15-4-43. AR § VII, File G, Doc.12. See also, Wyoming Final EIS, at 4-377-4-379. AR § VII, File G, Doc 18.

**B. “Final Air Quality Assessment” Methodology.**

93. The “Final Air Quality Assessment” evaluated air quality impacts by predicting the air pollutant concentrations that are expected to result from some, but not all, of the emissions from oil and gas development activities authorized by the Secretary in the RMP Amendments and emissions from some other, but not all, existing, new and reasonably foreseeable sources of air pollution. Predicted air pollutant concentrations are compared with the applicable standards under the Clean Air Act, including National and State Ambient Air Quality Standards, applicable maximum allowable increases for Class I areas (also referred to as Prevention of Significant Deterioration (PSD) increments), standards for determining when pollutants cause impairment of visibility that is prohibited in Class I areas, and standards for determining excess deposition of acid-forming air pollutants into watersheds at risk of suffering from acidification. See “Final Air Quality Assessment,” at 2-1, 6-1. AR § VII, File G, Doc.12.

94. The “Final Air Quality Assessment” was performed using the CALPUFF modeling system. See “Final Air Quality Assessment,” at 3-1. AR § VII, File G, Doc.12. The CALPUFF modeling system is an atmospheric dispersion model used to simulate the transport of air pollutants from the sources of emissions through the atmosphere to downwind receptor areas. The CALPUFF modeling system is the only atmospheric dispersion model approved by the United States

Environmental Protection Agency for the purpose of reliably predicting concentrations of air pollutants in the ambient air more than 50 kilometers from the source. 68 Fed. Reg. 18439 (April 15, 2003). The CALPUFF modeling system can accurately predict concentrations of air pollutants in the 50-200 kilometer range, with some studies showing that acceptable results can be achieved out to 300 kilometers. Id., at 18441.

95. The “Final Air Quality Assessment” used the CALPUFF model to “estimate[] and assess[] the potential impacts of air pollutant emissions from the Montana Project and Wyoming Project (current project) sources, other new and RFFA [reasonably foreseeable future actions] in the surrounding area, and cumulative sources ... under the 18 alternative combinations of the two projects.” “Final Air Quality Assessment,” at 2-1. AR § VII, File G, Doc.12.

### **C. Modeling Domain of the Air Quality Assessment**

96. The “Final Air Quality Assessment” is based on an evaluation of the air quality impacts within the geographic range of reliable predictions achievable using the CALPUFF model, known as the “modeling domain”. The modeling domain included most of Montana and Wyoming, and adjacent portions of North Dakota, South Dakota, and Nebraska. See “Final Air Quality Assessment,” at 2-1, 2-3. AR § VII, File G, Doc.12.

97. The Montana Oil and Gas Project area consists of approximately 25,000,000 acres and encompasses all of Big Horn, Carbon, Gallatin, Golden Valley, Musselshell, Park, Powder River, Stillwater, Sweet Grass, Treasure, Wheatland, and

Yellowstone Counties and portions of Carter, Custer, and Rosebud Counties. See “Final Air Quality Assessment,” at 1-4. AR § VII, File G, Doc.12.

98. The Wyoming Oil and Gas Project area consists of 8,636,000 acres and includes all of Campbell, Johnson, and Sheridan Counties and a large portion of northern Converse County. Id., at 1-5.
99. The “Final Air Quality Assessment” demonstrates that air and the air pollutants emitted from sources located in the region included within the Final Air Quality Assessment move freely across state boundaries within the Powder River Basin and are transported out of the Project region to other downwind areas in Montana, Wyoming, South Dakota, North Dakota, and Nebraska.

**D. National Parks and Wilderness Areas Designated Class I That Were Included in “Final Air Quality Assessment.”**

100. The “Final Air Quality Assessment” evaluated the cumulative air impacts of some, but not all, of the air pollutants that are expected to be emitted as a result of the Oil and Gas Project allowed by the RMP Amendments, along with emissions of some, but not all, existing and reasonably foreseeable sources in the Project region. This air quality assessment provides predicted concentrations of air pollutants in the Project region and at national parks and wilderness areas within the modeling domain that have been classified as Class I for purposes of the Prevention of Significant Deterioration pursuant to section 162 of the Clean Air Act. 42 U.S.C. § 7472.
101. The “Final Air Quality Assessment” provides evidence that concentrations of air pollutants in at least fifteen (15) Class I areas will be affected by the emission of air pollutants from the Oil and Gas Project authorized by the

Secretary in the RMP Amendments. These Class I areas include: Badlands Wilderness Area, Wind Cave National Park, Grand Teton National Park, Yellowstone National Park, Theodore Roosevelt National Park North, Theodore Roosevelt National Park South, Bridger Wilderness Area, Fitzpatrick Wilderness Area, Washakie Wilderness Area, North Absaroka Wilderness Area, Teton Wilderness Area, Gates of the Mountains Wilderness Area, Scapegoat Wilderness Area, U.L. Bend Wilderness Area, and Red Rock Lakes Wilderness Area. See “Final Air Quality Assessment,” Figure 2.1 “Topography of the Modeling Domain, Population Centers, and Sensitive Receptors,” at 2-3 [A true and correct copy attached as Exhibit E]; Table 4.3 “PSD Class I Areas and PSD Class II Areas of Concern within the Modeling Domain of the Montana and Wyoming Projects,” at 4-11. AR § VII, File G, Doc.12. See also 40 C.F.R. §§ 81.400 (Scope of Regulations), 81.417 (Montana Class I areas), 81.423 (North Dakota Class I areas), 81.427 (South Dakota Class I areas), 81.436 (Wyoming Class I areas).

102. The program for the Prevention of Significant Deterioration (“PSD”) of air quality in Part C of Title I of the Clean Air Act protects air quality of Class I areas in regions designated attainment or unclassifiable by establishing “maximum allowable increases” of the pollutants sulfur dioxide and particulate matter, 42 U.S.C. § 7473; and nitrogen dioxide, 42 U.S.C. § 7476; 40 C.F.R. § 52.21(c).

103. Maximum allowable increases (also referred to as “increments” or “PSD increments”) are determined in relation to “baseline concentrations” of the pollutant that exist on the “baseline date.” 42 U.S.C. § 7479(4). A baseline date is



the date upon which a major source of air pollution makes a complete permit application under the relevant regulations. Id.; see also 40 C.F.R. § 52.21(b)(14)(ii).

104. In Montana, the statewide baseline date for SO<sub>2</sub> was triggered by the permit application of Pacific Power & Light (Colstrip Facility) on March 26, 1979. The Montana statewide baseline date for PM<sub>10</sub> was triggered by the permit application of Spring Creek Coal on January 2, 1979. The Montana statewide baseline date for NO<sub>x</sub> was triggered by the permit application of Continental Lime (now known as Graymont) on January 10, 1990. These baseline dates apply to all Class I areas in Montana, which include U.L. Bend Wilderness Area, Scapegoat Wilderness Area, Gates of the Mountains Wilderness Area, Red Rock Lakes Wilderness Area, and the Northern Cheyenne Indian Reservation.
105. The baseline date has been triggered for SO<sub>2</sub>, PM<sub>10</sub>, and NO<sub>x</sub> in all areas of Wyoming. See 67 Fed. Reg. 5485. The statewide baseline date for NO<sub>x</sub> in Wyoming is February 28, 1988. See 53 Fed. Reg. 40656. The statewide baseline date for SO<sub>2</sub> in Wyoming is February 2, 1978. The statewide baseline date for PM<sub>10</sub> in Wyoming is February 22, 1979. These baseline dates apply to all Class I areas in Wyoming, which include the Washakie Wilderness Area, Bridger Wilderness Area, Fitzpatrick Wilderness Area, Yellowstone National Park, Grant Teton National Park, Teton Wilderness Area, and North Absaroka Wilderness Area.
106. The baseline date for SO<sub>2</sub> in the baseline area in North Dakota containing Theodore Roosevelt National Park (North and South Units) is December 19,

1977. The baseline date for PM<sub>10</sub> in the baseline area in North Dakota containing Theodore Roosevelt National Park (North and South Units) is January 13, 1978.

The baseline date for NO<sub>x</sub> in the baseline area in North Dakota containing Theodore Roosevelt National Park (North and South Units) is October 31, 1989.

107. The South Dakota baseline date for the baseline areas containing Badlands National Park and Wind Cave National Park for SO<sub>2</sub>, PM<sub>10</sub>, and NO<sub>x</sub> were triggered by the permit application of Northern States Power for its Sioux Falls facility in September 1991.

108. The “Final Air Quality Assessment” did not identify, analyze, or determine the background concentrations existing at the time the baseline dates were established in the baseline areas containing the Class I areas that will be affected by the increases in air pollution emissions resulting from the activities authorized by the Secretary in the RMP Amendments.

#### **E. Violations of Air Quality Standards Demonstrated by Air Quality Modeling Analysis.**

##### **i. Violation of Maximum Allowable Increases (i.e. PSD Increments)**

109. The “Final Air Quality Assessment” compared the air pollutant concentrations attributable to emissions from the sources included in the emissions inventory in the “Final Air Quality Assessment” against the entire maximum allowable increases allowed in PSD Class I areas. See “Final Air Quality Assessment,” at 7-1. AR § VII, File G, Doc.12. The “Final Air Quality Assessment” did not evaluate the extent to which the maximum allowable increases under the PSD program have already been consumed by sources

permitted since the baseline date was triggered in baseline areas containing Class I national park and wilderness areas.

110. According to a recent study of air quality at the Theodore Roosevelt National Park – North unit, the maximum allowable increase of 3-hour SO<sub>2</sub> already was exceeded four times in 1991, twice in 1992, and twice in 1993. See EPA’s “Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana,” at 42 (May 2003). The maximum allowable increase in 24-hour SO<sub>2</sub> was exceeded at Theodore Roosevelt National Park – North unit four times in 1990, six times in 1991, four times in 1992, five times in 1993, and twice in 1994. Id., at 19. The study evaluated air quality at the Theodore Roosevelt National Park – South unit, and found that the maximum allowable increase for 3-hour SO<sub>2</sub> was exceeded twice in 1990, twice in 1993, and once in 1993. Id., at 41. The maximum allowable increase for 24-hour SO<sub>2</sub> was exceeded at Theodore Roosevelt National Park – South unit five times in 1990, five times in 1991, twice in 1992, four times in 1993, and eight times in 1994. Id., at 19.

111. The “Final Air Quality Assessment” analyzed eighteen combinations of the four Alternatives for Wyoming and the five Alternatives for Montana, with Alternative 1 in Wyoming and Alternative E in Montana being the two Preferred Alternatives adopted in the Final EISs and approved in the RODs. See “Final Air Quality Assessment,” at 1-10. AR § VII, File G, Doc.12.

112. The cumulative air quality analysis predicts emissions for Wyoming Alternative 1 based on air pollutants expected to be emitted from the development

of 39,367 coal-bed methane wells in Wyoming and 3,200 conventional oil and gas wells. Id., at 1-11. AR § VII, File G, Doc.12. Under Alternative 1, there are expected to be 1,060 booster (field) compressors and 298 reciprocating (sales) compressors, all of which would be fueled by natural gas. Id. AR § VII, File G, Doc.12. The cumulative air quality analysis predicts emissions for Wyoming Alternative 3 (“no action” alternative) based on air pollutants expected to be emitted from development of 15,458 coal-bed methane wells and 1,409 conventional oil and gas wells on nonfederal land within the Oil and Gas Project area. Id. AR § VII, File G, Doc.12. The emissions inventory for Alternative 3 assumes there would be no additional air pollutants emitted from development of coal-bed methane and conventional oil and gas wells on federal leases. Id. AR § VII, File G, Doc.12.

113. The cumulative air quality analysis predicts emissions for Montana Alternative E based on air pollutants expected to be emitted from the development of up to 18,265 coal-bed methane wells, 1,000 booster (field) compressors, and 100 reciprocating (sales) compressors. Id., at 1-7. AR § VII, File G, Doc.12. Under Alternative E, the compressors would be fueled by natural gas, except that electric compressor engines may be required in areas where noise is a problem. Id. AR § VII, File G, Doc.12. The analysis for Alternative D is based on the same level of development as Alternative E except that all the booster (field) compressors would be required to be powered by electricity. The air pollutants expected to be emitted under Alternative Ea in Montana is based on the development of over 18,000 coal-bed methane wells in Montana, but also

includes reasonably foreseeable development of over 8,000 additional coal-bed methane wells on the Crow and Northern Cheyenne Indian Reservations and the Custer National Forest. Id. AR § VII, File G, Doc.12. The cumulative air quality analysis predicts emissions for Alternative A (the “no action” alternative) in Montana based on air pollutants expected to be emitted from only 250 new coal-bed methane wells that would be drilled and tested, but no new wells would go into production on BLM land. The emissions inventory for Alternative A includes emissions for up to 2,000 conventional oil and gas wells. Id., at 1-6. AR § VII, File G, Doc.12.

114. The results of the modeling analysis for the cumulative impacts reported in the “Final Air Quality Assessment” show that air pollutants expected to be emitted from the level of oil and gas and coal-bed methane development in Wyoming Alternative 1 and Montana Alternative E, which were the alternatives authorized by approval of the RMPs for the four planning regions in Montana and Wyoming, when modeled together with the air pollutants emitted by the existing and reasonably foreseeable future sources included in the emissions inventory, will contribute to a 9.18 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) increase in the 24-hour average concentration of  $\text{PM}_{10}$  in the Washakie Wilderness Area, which is a Class I area. See, Wyoming Final EIS, at 4-387. AR § VII, File G, Doc 18. See also, Montana Final EIS, at 4-26, 4-27, and Table 4-10. AR § VII, File A, Doc. 13. See also, “Final Air Quality Assessment,” at C-9, C-32. AR § VII, File G, Doc.12.

115. The “maximum allowable increase” established pursuant to 42 U.S.C. §7476(f) (i.e., the PSD Increment for 24-hour PM<sub>10</sub> in the Washakie Wilderness Area), is 8 ug/m<sup>3</sup>. See 40 C.F.R. 51.166(c); “Final Air Quality Assessment,” at C-9, C-32. AR § VII, File G, Doc.12.
116. The results of the modeling analysis of cumulative impacts reported in the “Final Air Quality Assessment” show that air pollutants expected to be emitted from lower levels of development allowed by other combinations of Alternatives considered in the Final Air Quality Assessment (e.g., Alternatives 3 in Wyoming and Alternative Ea in Montana, or Alternative 1 in Wyoming and Alternative A in Montana) when modeled together with the air pollutants emitted by the cumulative existing and reasonably foreseeable future sources included in the emissions inventory, would each contribute less than 8.0 µg/m<sup>3</sup> increase in the concentration of 24-hour PM<sub>10</sub> in the Washakie Wilderness Class I Area. See “Final Air Quality Assessment,” Appendix C, tables C.1.2.3. at C-23 and C.2.2.4. at C-53. AR § VII, File G, Doc.12.
117. The Secretary failed to adopt any limits on coal-bed methane well development that would achieve the levels of emissions expected from Alternatives considered in the “Final Air Quality Assessment” that are demonstrated to not cause a violation of the maximum allowable increase in the Washakie Wilderness Area. The Secretary also failed to adopt any other combination of alternatives, or mitigation measures that will prevent 24-hour concentrations of PM<sub>10</sub> in the Washakie Wilderness Area from violating the maximum allowable increase of 8.0 µg/m<sup>3</sup>.

## ii. Visibility Impacts

118. The best visibility in the contiguous 48 United States is measured at the visibility monitoring stations operated in the portions of the northern Rocky Mountains and northern Great Plains where the 15 Class I areas affected by the air pollution emissions from the Oil and Gas Project are located. See “Deciviews Annual 1996-1998,” Interagency Monitoring of Protected Visual Environments Program (hereinafter “IMPROVE”), a cooperative effort of the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, and U.S. Forest Service. [Map available by clicking on pull down window titled “Isopleth Maps” and then clicking on “Deciview” at <http://vista.cira.colostate.edu/improve/Data/GraphicViewer/seasonal.htm>]. A true and correct copy of the nationwide deciview map attached as Exhibit F].
119. The CAA establishes a program to protect visibility in mandatory federal Class I areas. 42 U.S.C. §§7491, 7492. The 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.” Section 7491(a)(1). The CAA 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). EPA has further elaborated on the statutory definition by promulgating a regulation defining “visibility impairment” to “mean 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.

120. 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 CAA 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).

121. Federal land managers with responsibility for national park lands, national wildlife refuge lands and national forest lands that have been designated as Class I areas, acting through the National Park Service, the United States Fish and Wildlife Service, and the United States Forest Service, have developed technical criteria for measuring visibility impairment, and for determining the magnitude of change in visibility that is perceptible by humans. These visibility impairment criteria are found in the “Final FLAG Phase I Report” issued jointly by the U.S. Forest Service, the National Park Service, and the U.S. Fish and Wildlife Service. See Federal Land Managers’ Air Quality Related Workgroup Phase I Report, notice of availability published in 66 Fed. Reg. 382 (January 3, 2001) (“FLAG Report”) [Available at <<http://www2.nature.nps.gov/air/Permits/flag/FlagFinal.pdf>>].

122. The “Final Air Quality Assessment” relied on the criteria adopted in the FLAG Report to evaluate the reduction of visibility that will be caused in Class I areas affected by emissions from the Oil and Gas Project authorized by the Secretary in the RMP Amendments. The FLAG Report states that, for the purpose of determining whether visibility impact of emissions from multiple sources is



humanly perceptible, a technical parameter known as change in light extinction ( $\Delta b_{\text{ext}}$ ) is measured.

A  $\Delta b_{\text{ext}}$  of 5% will evoke a just noticeable change in most landscapes (NAPAP, 1990). The FLMs are concerned about situations where a change in extinction from new source growth is greater than 5% as compared against natural conditions. Changes in extinction greater than 10% are generally considered unacceptable by the FLMs and will likely raise objections to further pollutant loading without mitigation.

FLAG Report, at 26 [Available at

<<http://www2.nature.nps.gov/air/Permits/flag/FlagFinal.pdf>>].

123. The U.S. EPA defines “a deciview [as] a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired...” 40 C.F.R. §51.301. EPA specifies the method for calculating deciviews from light extinction in the definition. Id. The FLAG Report adopts EPA’s prescribed method.
124. A 10% change in light extinction using the method described by EPA and in the FLAG Report is 1 deciview (“dv”), and a 5% change in light extinction is 0.5 dv.
125. A 5% change in light extinction, i.e., 0.5 dv, provides a quantitative measure of the humanly perceptible change in visibility as determined by the FLAG Report.
126. The “Final Air Quality Assessment” determined the cumulative impacts on visibility by comparing site-specific natural background concentrations at Class I areas with the predicted change in visibility caused by air pollutants expected to be emitted from each pair of Oil and Gas Project Alternatives when

combined with air pollutants emitted from other sources included in the emissions inventory.

127. The “Final Air Quality Assessment” relied on the light extinction method for quantitatively measuring visibility impairment adopted in the FLAG Report to evaluate the cumulative impact of Project emissions on visibility in national park and wilderness areas because this method represents “the best available scientific information to identify thresholds of significant adverse impacts.” Wyoming Final EIS, at F-9. AR § VII, File G, Doc 18.

128. Using the FLAG methodology, the “Final Air Quality Assessment” demonstrates that the cumulative impact of air pollutants expected to be emitted from the approved Alternatives (Montana Ea and Wyoming 1), when combined with the air pollutants emitted from existing and reasonably foreseeable sources included in the emissions inventory used for the modeling analysis, will cause the following changes in visibility:

a) A change in visibility greater than 1.0 dv on 28 days per year at the Badlands Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 10.91 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. The magnitude of degradation caused by an 11 dv change in visibility at the Badlands Wilderness Area is demonstrated by two photographic Exhibits obtained from the photographs taken at the NPS visibility monitoring station in the Badlands Wilderness Area: (1) Exhibit G shows a deciview impact of 4 dv at Badlands Wilderness

Area which was determined in the “Final Air Quality Assessment” to represent natural background; and (2) Exhibit H shows a deciview impact of 15 dv at Badlands Wilderness Area. Badlands Wilderness Area photographs showing 4.0 dv impact and 15.0 dv impact on visibility, Interagency Monitoring of Protected Visual Environments Program, a cooperative effort of the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, and U.S. Forest Service. IMPROVE photographs available at <http://vista.cira.colostate.edu/Datawarehouse/IMPROVE/Data/Photos/BADL/start.htm> [True and correct copies of the photographs attached as Exhibits G and H].

b) A change in visibility greater than 1.0 dv on 12 days per year at the Bridger Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 13.28 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. The magnitude of degradation caused by a 14 dv change in visibility at the Bridger Wilderness Area is demonstrated by two photographic Exhibits obtained from the photographs taken at the U.S. Forest Service visibility monitoring station in the Bridger Wilderness Area: (1) Exhibit I shows deciview impact of 5 dv at Bridger Wilderness Area which was determined in the “Final Air Quality Assessment” to represent natural background; and (2) Exhibit J shows a deciview impact of 19 dv at the Bridger Wilderness Area. Bridger Wilderness area photographs showing a 5.0

dv impact and a 19 dv impact on visibility, Interagency Monitoring of Protected Visual Environments Program, a cooperative effort of the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, and U.S. Forest Service. IMPROVE photographs available at <<http://vista.cira.colostate.edu/Datawarehouse/IMPROVE/Data/Photos/BRID/start.htm>>. [True and correct copies of the photographs attached as Exhibits I and J].

c) A change in visibility greater than 1.0 dv on 12 days per year at the Fitzpatrick Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 16.57 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. A change in visibility of 16.57 dv will be greater than the 14 dv change in visibility demonstrated by a comparison of Exhibits I and J from the Bridger Wilderness Area.

d) A change in visibility greater than 1.0 dv on 4 days per year at the Gates of the Mountains Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 14.99 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. A change in visibility of 14.99 dv will be greater than the 14 dv change in visibility demonstrated by a comparison of Exhibits I and J from the Bridger Wilderness Area.

e) A change in visibility greater than 1.0 dv on 8 days per year at the Grand Teton National Park, and a maximum daily deciview change (i.e., the highest

deciview impact on any single day) of 6.95 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12.

f) A change in visibility greater than 1.0 dv on 15 days per year at the North Absaroka Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 14.89 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. A change in visibility of 14.89 dv will be greater than the 14 dv change in visibility demonstrated by a comparison of Exhibits I and J from the Bridger Wilderness Area.

g) A change in visibility greater than 1.0 dv on 3 days per year at the Red Rock Lakes Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 2.85 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12.

h) A change in visibility greater than 1.0 dv on 3 days per year at the Scapegoat Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 9.89 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12.

i) A change in visibility greater than 1.0 dv on 11 days per year at the Teton Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 14.59 dv. See “Final Air Quality

Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. A change in visibility of 14.59 dv will be greater than the 14 dv change in visibility demonstrated by a comparison of Exhibits I and J from the Bridger Wilderness Area.

j ) A change in visibility greater than 1.0 dv on 3 days per year at the Theodore Roosevelt National Park (North Unit), and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 3.65 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12.

k) A change in visibility greater than 1.0 dv on 7 days per year at the Theodore Roosevelt National Park (South Unit), and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 4.62 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12.

l) A change in visibility greater than 1.0 dv on 8 days per year at the U.L. Bend Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 29.05 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. A change in visibility of 29.05 dv will be greater than the 25 dv change in visibility demonstrated by a comparison of Exhibits I and K from the Bridger Wilderness Area. Bridger Wilderness Area photographs showing a 5.0 dv impact and a 30.0 dv impact on visibility. Interagency Monitoring of Protected Visual Environments

Program, a cooperative effort of the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, and U.S. Forest Service. IMPROVE photographs available at <http://vista.cira.colostate.edu/Datawarehouse/IMPROVE/Data/Photos/BRID/start.htm> [A true and correct copy of the photographs attached as Exhibits I and K].

m) A change in visibility greater than 1.0 dv on 18 days per year at the Washakie Wilderness Area, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 24.79 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. A change in visibility of 24.79 dv is demonstrated by a comparison of Exhibits I and K from the Bridger Wilderness Area. Bridger Wilderness Area photograph showing a 5.0 dv impact and a 30.0 dv impact on visibility. Interagency Monitoring of Protected Visual Environments Program, a cooperative effort of the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, and U.S. Forest Service. IMPROVE photographs available at <http://vista.cira.colostate.edu/Datawarehouse/IMPROVE/Data/Photos/BRID/start.htm> [A true and correct copy of the photographs attached as Exhibits I and K].

n) A change in visibility greater than 1.0 dv on 32 days per year at the Wind Cave National Park, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 9.05 dv. See “Final Air Quality

Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12.

o) A change in visibility greater than 1.0 dv on 13 days per year at the Yellowstone National Park, and a maximum daily deciview change (i.e., the highest deciview impact on any single day) of 12.79 dv. See “Final Air Quality Assessment,” at 7-27, Table 7.10. AR § VII, File G, Doc.12; Appendix E-11. AR § VII, File G, Doc.12. The magnitude of degradation caused by a 13 dv change in visibility at Yellowstone National Park is demonstrated by two photographic Exhibits obtained from the photographs taken at the NPS visibility monitoring station in Yellowstone National Park: (1) Exhibit L shows deciview impact of 4 dv at Yellowstone National Park which was determined in the “Final Air Quality Assessment” to represent natural background; and (2) Exhibit M shows a deciview impact of 17 dv at Yellowstone National Park. Yellowstone National Park photograph showing a 4.0 dv impact and a 17.0 dv impact on visibility, Interagency Monitoring of Protected Visual Environments Program, a cooperative effort of the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, and U.S. Forest Service. IMPROVE photographs available at <<http://vista.cira.colostate.edu/Datawarehouse/IMPROVE/Data/Photos/YELL/start.htm>> [True and correct copies of the photographs attached as Exhibits L and M].

129. The “Final Air Quality Assessment” shows that air pollutants emitted by Wyoming Oil and Gas Project sources alone, without considering Oil and Gas



Project sources from Montana or other existing or reasonably foreseeable sources, will add at least one day of visibility impacts above 1.0 dv to eleven of the fifteen Class I areas in the modeling domain. See “Final Air Quality Assessment,” at 7-61, Table 7.21. AR § VII, File G, Doc.12.

130. The Montana Final EIS shows that the emissions of air pollutants emitted by Montana Oil and Gas Project sources alone, without considering Oil and Gas Project sources from Wyoming or other existing or reasonably foreseeable sources, will add at least one day of visibility impacts above 1.0 dv at seven of the fifteen Class I areas. See Montana Final EIS, at AIR-24, Table AQ-9. AR § VII, File A, Doc. 13.

131. Neither the “Final Air Quality Assessment” nor the Final EISs provide the decision-maker with an alternative that would limit emissions to a level that would prevent visibility impairment at all of the 15 Class I areas.

132. The approved RMPs, and the RODs approving the RMPs, do not adopt any limits on development, limits on emissions from the Oil and Gas Project, or any other mitigation measures that would prevent emissions from exceeding the levels that have been shown by the Final Air Quality Assessment to cause or contribute to visibility impairment in the 15 Class I areas.

### **iii. Impacts on Sensitive Lakes**

133. Federal Land Managers have published criteria for determining the magnitude of deposition of acid-forming pollution into acid-sensitive lakes that constitutes an adverse impact on air quality related values within Class I areas

- under 42 U.S.C. § 7475(d)(2)(B). See FLAG Report, at 6, 12, Appendix B, at 163 [Available at <<http://www2.nature.nps.gov/air/Permits/flag/FlagFinal.pdf>>].
134. The deposition of acid-forming pollutants expected to be emitted from the Oil and Gas Projects into acid-sensitive lakes threatens to degrade water quality and damage populations of aquatic species.
135. The “Final Air Quality Assessment” evaluated the impacts on water quality in Class I areas expected to result from the deposition of acid-forming air pollutants emitted from the Oil and Gas Project authorized by the Secretary in the RMP Amendments. See “Final Air Quality Assessment,” at 6-5. AR § VII, File G, Doc.12.
136. The standard adopted by the Federal Land Managers for determining adverse impacts of air emissions on the water chemistry of acid-sensitive lakes is a ten percent change in the acid neutralizing capacity (“ANC”) for lakes with background ANC values greater than 25 ueq/L, and a 1 ueq/L change for lakes with background ANC values equal to or less than 25 ueq/L. See “Final Air Quality Assessment,” at 6-5. AR § VII, File G, Doc.12.
137. The “Final Air Quality Assessment” evaluated acid deposition impacts to lakes by comparing the limits of acceptable change in ANC with the annual total change in ANC that will be caused by air pollutants emitted from the development allowed in the RMP Amendments and cumulative existing and reasonably foreseeable future sources included in the emissions inventory. See “Final Air Quality Assessment,” at 2-2. AR § VII, File G, Doc.12.

138. BLM determined that Upper Frozen Lake in the Bridger Wilderness Area has a baseline ANC level below 25 ueq/L. See “Final Air Quality Assessment,” at 7-32. AR § VII, File G, Doc.12. The “Final Air Quality Assessment” finds that air pollutants expected to be emitted from the Oil and Gas Project authorized under the approved RMP Amendments, in combination with cumulative air pollutants emitted by existing and reasonably foreseeable future sources included in the emissions inventory, will range from 1.3 to 1.8 ueq/L. Id.; Wyoming Final EIS, at 4-388. AR § VII, File G, Doc 18. See also Montana Final EIS, at AIR-17, Table AQ-5 (showing an impact to Upper Frozen Lake of 1.6 ug/m<sup>3</sup>). AR § VII, File A, Doc. 13.

139. The approved RMPs, and the RODs approving the RMPs, do not adopt any limits on development, limits on emissions from the Oil and Gas Project, or any other mitigation measures that would prevent emissions from exceeding the levels that have been shown by the Final Air Quality Assessment to cause or contribute to adverse impacts on water quality in acid-sensitive lakes in the Bridger Class I Wilderness area.

## **VI. PROJECT EMISSIONS WILL CAUSE OR EXACERBATE VIOLATIONS OF NATIONAL AMBIENT AIR QUALITY STANDARD.**

140. The “Final Air Quality Assessment” predicts that air pollutants expected to be emitted from both the Montana and Wyoming Oil and Gas Project alternatives approved by the RMPs will cause 24-hour concentrations of PM<sub>10</sub> to exceed 212 µg/m<sup>3</sup> in portions of the Montana Project region. Appendix C, table C.1.1.1 at C-6.

141. The National Ambient Air Quality Standard for PM<sub>10</sub> is violated if 24-hour concentrations exceed 150 µg/m<sup>3</sup> more than once per calendar year in any three-year period. 40 C.F.R. § 50.6.
142. Violations of the National Ambient Air Quality Standard for PM<sub>10</sub> averaged over 24 hours (“NAAQS”) were measured at air quality monitors located in the vicinity of coal mines in Campbell County, Wyoming, during 2001 and 2002 when the Air Quality Assessment was being prepared. See U.S. EPA AIR Data, Monitor Trend Report, Campbell County, PM<sub>10</sub> (2002), available at <http://oaspub.epa.gov/airsdata/adaqs.trends?geotype=co&geocode=56005&geoinfo=%3Fco%7E56005%7ECampbell+Co%2C+Wyoming&pol=PM10&year=2002&fld=monid&fld=address&fld=city&fld=county&fld=stabbr&fld=regn&rpp=25>; and Monitor Trend Report (2001) available at <http://oaspub.epa.gov/airsdata/adaqs.trends?geotype=co&geocode=56005&geoinfo=%3Fco%7E56005%7ECampbell+Co%2C+Wyoming&pol=PM10&year=2001&fld=monid&fld=address&fld=city&fld=county&fld=stabbr&fld=regn&rpp=25>.
143. Campbell County is one of the counties included in the Oil and Gas Project region. Significant well development is expected to occur in the coal beds underlying Campbell County.
144. Concentrations of PM<sub>10</sub> that violate the NAAQS were not reported in either the Draft or Final EIS, or in the “Final Air Quality Assessment.”
145. Reported 24-hour concentrations of PM<sub>10</sub> that violate the NAAQS were not used in performing the air quality modeling analysis to demonstrate the cumulative

impact of emissions from the Montana and Wyoming Oil and Gas Projects in the “Final Air Quality Assessment.”

146. The “Final Air Quality Assessment” predicts that emissions from sources included in the emissions inventory for the development scenarios in the approved RMP Alternatives (Montana alternative E and Wyoming alternative 1) are expected to add  $30.79 \mu\text{g}/\text{m}^3$  to background concentrations of  $\text{PM}_{10}$  in the “near field” portion of the Oil and Gas Project region in Wyoming, which includes Campbell County. See “Final Air Quality Assessment,” Appendix C, Table c.2.1.1, p. C-28. AR § VII, File G, Doc.12.

147. The “Final Air Quality Assessment” predicts that total concentrations of  $\text{PM}_{10}$  (predicted contribution from sources included in the emissions inventory [ $30.79$ ] added to a reported background concentration of  $42 \mu\text{g}/\text{m}^3$ ) will only reach  $72.79 \mu\text{g}/\text{m}^3$ . Id.

148. This calculation omits monitored concentrations in the Oil and Gas Project region demonstrating that background concentrations in the vicinity of coal mines in Campbell County exceed  $150 \mu\text{g}/\text{m}^3$  which is the 24-hour NAAQS for  $\text{PM}_{10}$ . Adding  $30.79 \mu\text{g}/\text{m}^3$  to monitored concentrations of  $\text{PM}_{10}$  in Campbell County will seriously exacerbate existing violations of the NAAQS.

149. The approved RMPs, and the RODs approving the RMPs, do not adopt any limits on development, limits on emissions from the Oil and Gas Project, or any other mitigation measures that would prevent emissions from exceeding the levels that have been shown by the “Final Air Quality Assessment” to cause or contribute to new violations of the NAAQS for  $\text{PM}_{10}$  in the Project region in

Montana, and cause or contribute to more severe violations of the NAAQS for PM<sub>10</sub> in the Campbell County portion of the Project region in Wyoming.

**VII. AIR QUALITY IMPACT ANALYSIS UNLAWFULLY OMITTS EMISSIONS FROM SOURCES OF AIR POLLUTANTS THAT MUST BE INCLUDED TO DETERMINE MAXIMUM ALLOWABLE EMISSIONS THAT CAN BE ALLOWED FROM THE OIL AND GAS PROJECT AND STILL PROVIDE FOR COMPLIANCE WITH AIR POLLUTANT STANDARDS AND PREVENT ADVERSE IMPACTS ON AIR QUALITY RELATED VALUES IN CLASS I AREAS.**

150. The “Final Air Quality Assessment” omitted many sources from the emissions inventory used in the various modeling analyses. The failure to include emissions from many large sources of air pollutants resulted in a seriously deficient “Final Air Quality Assessment” because it fails to provide a “full and fair discussion” of the cumulative impacts of emissions from the Oil and Gas Project as required by NEPA, and fails to show the true cumulative impact of emissions from the Oil and Gas Project on air quality standards throughout the Project region and/or air quality related values in Class I areas.

**A. Emissions Inventory of Air Pollutants Used in the “Final Air Quality Assessment” Omits Many Categories of Emissions Sources.**

151. The emissions inventory modeled in the “Final Air Quality Assessment” included air pollutants expected to be emitted from five broad categories of sources within the Oil and Gas Project region: (a) emissions from construction and operation of a portion of the potential emissions from the Oil and Gas Project authorized by the Secretary in the RMP Amendments, (b) emissions from some, but not all, coal mines in the Project region, (c) emissions from the Dakota, Minnesota, and Eastern (“DM&E”) Railway project in the Project region, d)

emissions from existing sources that had been permitted to construct between September 1, 1994 and May 31, 2002, and (e) emissions from some, but not all, reasonably foreseeable future sources. See description of the development of the emissions inventory in “Final Air Quality Assessment,” at 4-15. AR § VII, File G, Doc.12.

152. The “Final Air Quality Assessment” was performed using permitted emissions rates from sources listed in Appendix B. These sources are NOT a complete list of all sources located in or near the Oil and Gas Project region in northeastern and central Wyoming, and southeastern Montana, or located within the region that contributes emissions to concentrations at the 15 Class I areas affected by emissions from the Oil and Gas Project. See “Final Air Quality Assessment,” Figure 4.5 at 4-17; and Figure 4.6, at 4-18. AR § VII, File G, Doc.12 [True and correct copies of Figures 4.5 and 4.6 attached as Exhibits N and O].

**i. Emissions Inventory Does Not Account for Emissions from All Reasonably Foreseeable CBM Wells.**

153. The emissions inventory for the “Final Air Quality Assessment” included predicted emissions from the development and operation of up to 57,000 coal-bed methane wells, including up to approximately 18,000 coal-bed methane wells in Montana Alternative E and approximately 39,000 coal-bed methane wells in Wyoming Alternative 1. See “Final Air Quality Assessment,” at 4-23, citing Tables 1.2 and 1.5. AR § VII, File G, Doc.12.

154. In Wyoming, BLM’s Reasonable Foreseeable Development Scenario prepared for the EIS states that a moderate development scenario will result in drilling up to 81,000 total coal-bed methane wells and that a high development scenario will

accommodate 139,000 wells in Wyoming alone. See Wyoming Final EIS, Appendix A, at 12. AR § VII, File G, Doc 18.

155. The Wyoming ROD states that the most likely scenario is the development of 51,000 coal-bed methane wells in the Wyoming Oil and Gas Project area. See Wyoming ROD, at 2.
156. Defendants offered no explanation why the emissions inventory for the Oil and Gas Project in Wyoming that were modeled in the “Final Air Quality Assessment” are limited to the air pollutants expected to be emitted from 39,000 wells, or why levels of air pollutants expected to be emitted from moderate and high levels of development were not used to prepare additional emissions inventories for modeling analyses to determine potential air quality impacts from higher rates of development that Defendants determined to be reasonably foreseeable.
157. For Montana, BLM relied on a Reasonably Foreseeable Development Scenario which stated that new development allowed by the preferred Alternative E will lead to drilling up to 26,000 new coal-bed methane wells. See Montana Draft EIS, at 4-2. AR § VI, File A, Doc. 1.
158. BLM offered no explanation why the emissions inventory for the Oil and Gas Project alternatives in Montana that were modeled in the “Final Air Quality Assessment” are limited to the air pollutants expected to be emitted from 18,000 wells, or why levels of air pollutants expected to be emitted from development of 26,000 wells were not used to prepare an additional emissions inventory for



modeling analyses to determine potential air quality impacts from higher rates of development that Defendants determined to be reasonably foreseeable.

159. Combining the most likely (51,000 wells), moderate (81,000 wells) or high (139,000 wells) level of reasonably foreseeable development in Wyoming with 26,000 reasonably foreseeable new coal-bed methane wells in Montana, Defendants provides evidence that total projected levels of reasonably foreseeable development could reach 77,000, 107,000 or 165,000 new wells. Each of these reasonably foreseeable scenarios would result in the emission of significantly greater levels of air pollutants than are expected to be emitted from the 57,000 wells used to determine the emissions inventory used for the air quality modeling analyses in the “Final Air Quality Assessment.”

160. Neither the RMPs nor the Record of Decision limit to 57,000 the total number of oil and gas or coal-bed methane wells that may be permitted for development under the approved RMP Amendments.

**ii. Coal Mine Emissions Not Accounted For.**

161. The emissions inventory used in “Final Air Quality Assessment” included emissions from 20 coal mines operating within the modeling domain. See “Final Air Quality Assessment,” at 4-16. AR § VII, File G, Doc.12.

162. The “Final Air Quality Assessment” did not include air pollutant emissions from 14 active open-pit coal mines in Campbell County, Wyoming. See Wyoming Draft EIS, at 3-176. AR § VI, File D, Doc. 39.

**iii. Emissions From Existing Stationary Sources Permitted Prior to 1994 Are Omitted from the Emissions Inventory.**

163. The “Final Air Quality Assessment” evaluated air pollutants from sources permitted between September 1, 1994 and May 31, 2002. See “Final Air Quality Assessment,” at 4-22, 4-23, and Appendix B. AR § VII, File G, Doc.12. Air pollutants emitted from sources permitted prior to September 1, 1994 were not included in the emissions inventory used in the modeling analysis for the “Final Air Quality Assessment.”

**iv. Sources Within Modeling Domain that Have an Impact on Class I Areas, but Outside Project Region, Are Omitted.**

164. Sources of air pollutants located within the modeling domain that will also contribute to pollutant concentrations in the 15 Class I areas affected by Project emissions, but outside the region where sources listed in Appendix B are located, were omitted from the modeling analysis.

165. Among the sources of emissions within the modeling domain that are excluded from the emissions inventory used for the modeling analysis in the “Final Air Quality Assessment” are emissions from mobile sources, including but not limited to emissions of PM<sub>2.5</sub> and nitrogen oxides from on-road, off-road and non-road (construction equipment) motor vehicles.

**v. Sources Outside the Modeling Domain that Contribute to Air Pollutant Concentrations at Each Class I Area Were Omitted from the Emissions Inventory.**

166. The emissions inventory modeled in the “Final Air Quality Assessment” does not include air pollutants emitted from any sources, either existing or reasonably foreseeable future sources, that are located or operated outside the modeling domain boundaries but are within the zone of air pollutant transport around each of the 15 Class I areas included in the “Final Air Quality Assessment.”

167. Air pollutants emitted from activities involving the extraction, processing and transport of oil and gas from developed fields in the Green River Basin, Wyoming, and the Uinta Basin, Utah, were omitted from the emissions inventory modeled as part of the “Final Air Quality Assessment.”
168. Air pollutants emitted from activities involving the extraction, processing and transport of oil and gas from developed fields in the Green River Basin, Wyoming, and the Uinta Basin, Utah, have been included in air quality modeling analyses performed to disclose the impact of these emissions on the Jim Bridger, Fitzpatrick and Popo Agie Wilderness areas located in the Wind River Range. See e.g. BLM’s “Pinedale Anticline Oil and Gas Exploration and Development Project, Sublette County, Wyoming, Air Emissions Inventory,” Pinedale Field Office (June 1999).
169. The sources included in the Air Emissions Inventory for the Pinedale Anticline Oil and Gas Project contribute to concentrations of air pollutants in Class I areas affected by emissions from the Oil and Gas Project, and are as close, or closer to some Class I areas within the modeling domain (such as the Bridger, Fitzpatrick and Popo Agie Wilderness Areas and the Grand Teton and Yellowstone National Parks) than sources in the Oil and Gas Project region. The impact of emissions from these oil and gas developments on air quality in these Class I areas was not accounted for in the “Final Air Quality Assessment” of cumulative impacts of emissions from the Oil and Gas Project approved by the Secretary in the RMP Amendments.

170. Among the sources of emissions outside the modeling domain that are excluded from the emissions inventory used for the modeling analysis in the “Final Air Quality Assessment” are emissions from mobile sources, including, but not limited to, emissions of PM<sub>2.5</sub> and nitrogen oxides from on-road, off-road and non-road (construction equipment) motor vehicles.

**vi. Specific Sources Within Zone of Impact for Class I Areas Omitted from Emissions Inventory for Modeling Analysis.**

171. The following sources of air pollutants are located closer to one or more of the Class I areas in the modeling domain than the Oil and Gas Project sources included in the modeling analysis. Air pollutants emitted from the following existing sources were omitted from the emissions inventory used to model the cumulative impacts of air pollutants expected to be emitted from the Oil and Gas Project in the “Final Air Quality Assessment”:

- a) Bonanza Power Plant near Vernal, Utah;
- b) Unit 3 of the Craig Power Plant in Craig, Colorado;
- c) Great River Energy’s 1,200 MW Coal Creek Station 50 miles north of Bismarck, North Dakota. See EPA’s “Dispersion Modeling Analysis of PSD Class I Increment Consumption in North Dakota and Eastern Montana” (May 2003).
- d) Great River Energy’s 118 MW Stanton Station near Stanton, North Dakota. See id.
- e) Minnkota Power Cooperative’s 670 MW Milton R. Young coal-fired power plant near Center, North Dakota. See id.

- f) Basin Electric's 656 MW Leland Olds Station near Stanton, North Dakota. See id.
- g) Montana-Dakota Utilities Company's 75 MW Heskett Station near Mandan, North Dakota. See id.
- h) Basin Creek 100 MW power plant near Butte, Montana. See id.
- i) Glacier International's 160 MW power plant on the Blackfeet Reservation in Montana. See id.
- j) Great Northern/Kiewit's 500 MW Eastern Montana coal-fired power plant near Miles City, Montana. See id.
- k) Two new coal mines planned for Otter Creek in the southwest corner of Powder River County.
- l) The Tongue River Railroad coal-hauling railroad along the Tongue River between Miles City and Decker, Montana.
- m) Dakota Coal Company's Frannie Lime Plant in Big Horn County, Wyoming. See May 5, 2003, "Custom Report, 37 NSR Report," Air Quality Division, Wyoming Department of Environmental Quality (Attached to May 19, 2003 Letter from Dan Olson, Administrator, Wyoming DEQ, to Dan Heilig, Executive Director, Wyoming Outdoor Council).
- n) ExxonMobile's Shute Creek gas treatment plant in Lincoln County, Wyoming. See id.
- o) Solvay Mineral's Soda Ash Plant near Green River, Wyoming. See id.
- p) William Field Services' Opal Gas Plant in Lincoln County, Wyoming. See id.
- q) Mountain Cement Company's Cement Plant near Laramie, Wyoming. See id.

- r) Puron Corporation's Coal Conversion Plant in Campbell County, Wyoming. See id.
- s) Wold Trona Company's Soda Ash plant near Green River, Wyoming. See id.
- t) Wyoming Interstate Company's Compressor Station near Laramie, Wyoming. See id.
- u) Wyoming Interstate Company's Compressor Station near Rawlins, Wyoming. See id.
- v) General Chemical's Soda Ash Plant near Green River, Wyoming. See id.
- w) Louisiana Land & Exploration's Lost Cabin Gas Plant in central Wyoming near Lysite, Wyoming.
- x) SF Phosphate's Fertilizer Plant near Rock Springs, Wyoming. See id.
- y) FMC Corporation's Soda Ash Plant near Granger, Wyoming. See id.
- z) Holly Sugar Corporation's Sugar Factory near Torrington, Wyoming. See id.
- aa) William Field Services' Gas Plant near Echo Springs, Wyoming. See id.
- bb) Frontier Refining Inc.'s Oil Refinery near Cheyenne, Wyoming. See id.
- cc) Kern River Gas Transmission Company's Compressor Station near Muddy Creek, Wyoming. See id.
- dd) SRTV Border States facility in Natrona County near Casper, Wyoming. See Wyoming BLM's "Draft Environmental Impact Statement Desolation Flats Natural Gas Field Development Projects, Sweetwater and Carbon Counties," Rawlins and Rock Springs Field Offices, at Appendix B (April 2003) .
- ee) Natrona County International Airport near Casper Wyoming. See id.

- ff) Williams Field Services' natural gas facility in Sweetwater County, Wyoming. See id.
- gg) KN Gas Gathering's gas transportation facilities in Fremont County, Wyoming. See id.
- hh) Louisiana Pacific Company's facility in Carbon County, Wyoming. See id.
- ii) Presidio Oil Company's oil and gas facilities in Sweetwater County, Wyoming. See id.
- jj) Mountain Cement Company's Cement facility near Laramie, Wyoming. See id.
- kk) Texaco USA's Stagecoach Draw Oil and Gas production facilities in Sweetwater County, Wyoming. See id.
- ll) N.A. Corporation's facility in Sweetwater County, Wyoming (Wyoming Air Permit number CT-1190). See id.
- mm) Department of Energy Naval Petroleum Reserve oil and gas facilities in Natrona County, Wyoming. See id.
- nn) D.G. Huskins Construction Company's facilities with Wyoming Air Permit numbers CT-1229 & 1230 in Lincoln County, Wyoming. See id.
- oo) Questar Gas Management's facility with Wyoming Air Permit number CT-1295 in Sweetwater County, Wyoming. See id.
- pp) Williams Field Services' natural gas facility in Sublette County, Wyoming. See id.
- qq) Aldila Corporation's golf club manufacturing facility in Uinta County, Wyoming. See id.
- rr) TotalFinaELF's TG Soda Ash mine in Sweetwater County, Wyoming. See id.

ss) Union Pacific Resource's Champlin Gas Plant in Sweetwater County, Wyoming. See id.

tt) Clear Creek Storage's facility with Wyoming Air Permit number CT-1410 in Uinta County, Wyoming. See id.

uu) Jonah Gas Gathering's facilities with Wyoming Air Permit numbers CT-1422 and CT-1423 in Sublette County, Wyoming. See id.

vv) Black Butte Coal's Black Butte Mine in Sweetwater County, Wyoming. See id.

ww) Nelson Refining System's facility with Wyoming Air Permit number CT-1453 in Sweetwater County, Wyoming. See id.

xx) Church & Dwight Incorporated's baking soda facility in Sweetwater County, Wyoming. See id.

yy) Northwest Pipeline Company's gas transmission facilities with Wyoming Air Permit number MD-427A in Sweetwater County, Wyoming. See id.

zz) Bridger Coal Company's coal mine in Sweetwater County, Wyoming. See id.

aaa) South and Jones Timber Company's facility with Wyoming Air Permit number MD-487 in Uinta County, Wyoming. See id.

bbb) Seneca Coal Company's Seneca II mine near Hayden, Colorado. See id.

ccc) Western Mobile's Northern Steamboat Springs Pit with Colorado Air Permit number 87RO030-1 in Routt County, Colorado. See id.

ddd) Elam Construction Incorporated's Davenport Gravel Pit in Rio Blanco County, Colorado. See id.



eee) Umetco Minerals Corporation's facility with Colorado Air Permit number 95MF035 in Moffat County, Colorado. See id.

fff) Western Gas Resource's Sand Wash Station in Moffat County, Colorado. See id.

ggg) Twenty Mile Coal Company's facility in Routt County, Colorado. See id.

hhh) Blue Mountain Energy's Deserado Mine in Rio Blanco County, Colorado. See id.

iii) Connell Resources Camelitti Gravel Pit in Routt County, Colorado. See id.

jjj) Questar Gas Management Company's PFWC Northside 1 and Southside 2 facilities in Moffat County, Colorado. See id.

kkk) The Atlantic Rim CBM Project in Carbon County, Wyoming that will lead to the construction of 3,880 coal-bed methane wells. See 66 Fed. Reg. 33975 (June 26, 2001).

lll) Bitter Creek Pipeline's Symons Central Compressor facilities near Decker in Big Horn County, Montana. See Montana BLM's "Air Quality Technical Report, Badger Hills POD Environmental Assessment," Miles City District Office, at 31 (February 2004).

mmm) Bitter Creek Pipeline's Consul 27 Compressor facilities near Decker in Big Horn County, Montana. See id.

172. The sources of air pollutants identified in this section VII.A. are within the range of one or more Class I areas where their cumulative impact on daily and annual concentrations can be determined by the CALPUFF model.

**B. Defendants Provide No Lawful Explanation For Failure to Develop the Complete Emissions Inventory Needed to Perform a Comprehensive Air Quality Modeling Assessment.**

173. BLM explained that the “Final Air Quality Assessment” does “not represent a regulatory PSD Increment Consumption Analysis.” Montana Final EIS, at 3-3. AR § VII, File A, Doc. 13. “Final Air Quality Assessment,” at 6-1. AR § VII, File G, Doc.12.
174. At no time prior to the issuance of the Montana and Wyoming RODs have Defendants undertaken, or caused to be undertaken, by any State or federal agency, or by any consultant, any complete assessment of the air pollutants emitted by all sources contributing to maximum allowable increases of SO<sub>2</sub>, PM<sub>10</sub> or NO<sub>x</sub> in the 15 mandatory federal Class I areas adversely affected by emissions from the Oil and Gas Project in the Buffalo and Platte River Resource Management Areas in Wyoming and in the Powder River and Billings Resource Management Areas in Montana.
175. At no time prior to the issuance of the Montana and Wyoming RODs have Defendants undertaken, or caused to be undertaken, by any State or federal agency, or by any consultant, any complete assessment of the air pollutants emitted by all sources contributing to ambient air concentrations of SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>x</sub> in the counties likely to be most adversely affected by emissions from the Oil and Gas Project in the Buffalo and Platte River Resource Management Areas in Wyoming and in the Powder River and Billings Resource Management Areas in Montana.

176. Defendants have not required, either in any of the RMPs or in one or both Records of Decision authorizing the Oil and Gas Project, or in any other legally enforceable order, that a regulatory increment consumption analysis be performed prior to, or as a condition for, the issuance by BLM of permits to drill wells, develop access roads, construct pipelines and compressor stations or undertake any other oil and gas development activities that are expected to cause emissions of air pollutants.
177. Montana has not undertaken any increment consumption analysis to determine whether maximum allowable increases have been exceeded for any pollutant in any of the 15 mandatory federal class I areas expected by Defendants to be affected by emissions from the Oil and Gas Project, or to determine whether the maximum allowable increases in such class I areas will be exceeded if expected emissions of air pollutants from the Oil and Gas Project are added to emissions that currently contribute to concentrations of air pollutants in such areas.
178. Montana has not performed any modeling analysis to determine whether visibility impairment will occur in any of the 15 mandatory federal class I areas expected by Defendants to be affected by emissions from the Oil and Gas Project if expected emissions of air pollutants from the Oil and Gas Project are added to emissions of air pollutants that currently affect visibility in such areas.
179. Wyoming has not undertaken any increment consumption analysis to determine whether maximum allowable increases have been exceeded for any pollutant in any of the 15 mandatory federal class I areas expected by Defendants to be affected by emissions from the Oil and Gas Project, or to determine whether the

maximum allowable increases in such class I areas will be exceeded if expected emissions of air pollutants from the Oil and Gas Project are added to emissions that currently contribute to concentrations of air pollutants in such areas.

180. Wyoming has not performed any modeling analysis to determine whether visibility impairment will occur in any of the 15 mandatory federal class I areas expected by Defendants to be affected by emissions from the Oil and Gas Project if expected emissions of air pollutants from the Oil and Gas Project are added to emissions of air pollutants that currently affect visibility in such areas.
181. Defendants have not performed a “regulatory ‘PSD Increment Consumption Analysis’” based on the claims that compliance with state and federal air quality laws will be addressed by the Montana and Wyoming Departments of Environmental Quality during the new source review process.
182. The “new source review” process established by the Clean Air Act mandates that state permitting agencies require a regulatory PSD increment consumption analysis be performed by the permit applicant only when the application is for “major emitting facility” as defined by 42 U.S.C. §7479(1). 42 U.S.C. § 7475.
183. The Clean Air Act requires that all anthropogenic emissions of regulated pollutants, whether from “major emitting facilities,” smaller stationary sources or mobile sources, contribute to ambient concentrations of air pollutants “for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant” unless they are exempted pursuant to section 163(c) of the Clean Air Act. 42 U.S.C. §7473(c).

184. Neither the Montana nor the Wyoming Final EIS identified any of the sources of air pollutants related to the Oil and Gas Project that are listed in the emission inventory used in the Final Air Quality Assessment as either a “major emitting facility” as defined by §169(1), or exempt pursuant to §163(c).
185. Defendants state that the Oil and Gas Project will involve “many small sources” which are “spread out over a very large area.” Wyoming Final EIS, at 4-17, 4-19. AR § VII, File G, Doc 18.
186. The New Source Review process contained in the State Implementation Plans adopted by Montana and Wyoming for the purpose of implementing the requirements of Part C of the Clean Air Act, 42 U.S.C. §§7470-7492, do not require a cumulative impact analysis or other method for determining whether emissions from one or many “minor sources” will contribute to exceedances of the maximum allowable increases in concentrations of air pollutants, contribute to violations of national ambient air quality standards, or contribute to visibility impairment in any area in violation of applicable standards under the Clean Air Act.

#### **VIII. ADVERSE IMPACTS ON PUBLIC HEALTH ARE NOT DISCLOSED.**

187. Defendants have not disclosed the adverse impacts on public health that will result from public exposure to increased concentrations in the ambient air of PM<sub>10</sub> and PM<sub>2.5</sub> in the Oil and Gas Project region.
188. The “Final Air Quality Assessment” demonstrates that emissions from the Oil and Gas Project are predicted to contribute to concentrations of PM<sub>10</sub> greater than 209 µg/m<sup>3</sup> within the Project region in Montana. See “Final Air Quality

Assessment,” Appendix C, Table C.1.1.3., “Estimated Near-Field Criteria Pollutant Impacts,” p. C-6. AR § VII, File G, Doc.12.

189. The “Final Air Quality Assessment” demonstrates that emissions from the Oil and Gas Project are predicted to contribute an additional 30.79  $\mu\text{g}/\text{m}^3$  of  $\text{PM}_{10}$  to areas in Campbell County where ambient concentrations currently exceed 150  $\mu\text{g}/\text{m}^3$  in violation of the NAAQS. See “Final Air Quality Assessment,” Appendix C, Table c.2.1.1, p. C-28. AR § VII, File G, Doc.12.
190. The “Final Air Quality Assessment” demonstrates that air pollutants expected to be emitted from the Oil and Gas Project are predicted to contribute to near-field annual concentrations of  $\text{PM}_{2.5}$  of 13.75  $\mu\text{g}/\text{m}^3$  and 24-hour concentrations of 64.42  $\mu\text{g}/\text{m}^3$  in Montana. See “Final Air Quality Assessment,” Appendix C, Table C.1.1.3. “Estimated Near-Field Criteria Pollutant Impacts,” p. C-6. AR § VII, File G, Doc.12.
191. The “Final Air Quality Assessment” demonstrates that air pollutants expected to be emitted from the Oil and Gas Project are predicted to contribute to near-field annual concentrations of  $\text{PM}_{2.5}$  of 9.92  $\mu\text{g}/\text{m}^3$  and 24-hour concentrations of 43.38  $\mu\text{g}/\text{m}^3$  in Wyoming. See “Final Air Quality Assessment,” Appendix C, Table C.2.1.1. “Estimated Near-Field Criteria Pollutant Impacts,” p. C-28. AR § VII, File G, Doc.12.
192. Prior to the release of the Final EISs for both the Montana and Wyoming RMPs, the U.S. Environmental Protection Agency had performed and released for public comment in April 2002 a review of the published peer-reviewed research demonstrating the adverse health effects of human exposure to  $\text{PM}_{10}$  and  $\text{PM}_{2.5}$ .

See “Air Quality Criteria for Particulate Matter (Third External Review Draft),” U.S. EPA, Office of Research and Development (April 2002) [Available at <[http://www.epa.gov/ncea/pdfs/partmatt/VOL\\_I\\_AQCD\\_PM\\_3rd\\_Review\\_Draft.pdf](http://www.epa.gov/ncea/pdfs/partmatt/VOL_I_AQCD_PM_3rd_Review_Draft.pdf)> and <[http://www.epa.gov/ncea/pdfs/partmatt/VOL\\_II\\_AQCD\\_PM\\_3rd\\_Review\\_Draft.pdf](http://www.epa.gov/ncea/pdfs/partmatt/VOL_II_AQCD_PM_3rd_Review_Draft.pdf)>].

193. The health effects research evidence reviewed and reported by EPA demonstrates that severe adverse health effects, including increased frequency and severity of pulmonary and cardiovascular disease that result in premature death, hospitalization, emergency and urgent care, increased medication and health costs, lost work and school days, and pain and suffering are associated with human exposure to these pollutants at concentrations below the current NAAQS for these pollutants.

194. Significant public health risks are associated with exposure to the concentrations predicted by the “Final Air Quality Assessment” to occur within the Oil and Gas Project region where citizens reside, work, recreate and travel.

195. These significant public health risks were not disclosed at any point in the NEPA process.

## **IX. CLAIMS FOR RELIEF**

### **COUNT ONE**

**The Secretary failed to exercise her planning authority under FLPMA to carry out her statutory duty as a Federal Land Manager to protect Air Quality Related Values in Class I areas under the Clean Air Act.**

196. All previous allegations are incorporated by reference.

197. Section 165(d) of the Clean Air Act imposes on the Secretary of the Interior, as a Federal Land Manager (“FLM”), “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).
198. The Secretary has not established in the RMP Amendments limits on emissions of air pollutants from the Oil and Gas Project that would, together with limitations on expected emissions from existing and other reasonably foreseeable future sources, “protect the air quality related values (including visibility)” of Class I areas and prevent significant deterioration of air quality in Class I areas by ensuring that emissions will not cause or contribute to exceedances of the maximum allowable increases for Class I areas as required by the CAA.
199. The Secretary violated her affirmative responsibility in the CAA to protect air quality related values in mandatory federal Class I areas when she approved the RMP Amendments without establishing limitations on development or mitigation measures such as aggregate limitations on emissions adequate to ensure that emissions from the Oil and Gas Project would not cause or contribute to adverse impacts on air quality related values.
200. The Secretary has failed to exercise her authority under FLPMA to carry out her duty under the CAA to ensure compliance with the maximum allowable increases of air pollutants and to protect air quality related values in Class I areas and her approval of the RMP Amendments is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

## **COUNT TWO**



**Defendants Violated FLPMA by Approving the RMP Amendments Without Requiring Measures to Prevent Demonstrated Violations of State and Federal Air Quality Standards.**

201. All previous allegations are incorporated by reference.
202. FLPMA mandates that “[i]n the development and revision of land use plans, the Secretary shall—(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, and other pollution standards or implementation plans.” 43 U.S.C. §1712(c)(8).
203. FLPMA “declares that it is the policy of the United States that—(8) the public lands be managed in a manner that will protect the quality of ... scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; [and] that where appropriate, will preserve and protect certain public lands in their natural condition.” 43 U.S.C. § 1701(a)(8).
204. FLPMA directs that “In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. 1732(b).
205. The Secretary has determined in the environmental documents for the review and analysis of impacts from the Oil and Gas Project that “air pollution standards” or control laws include the national ambient air quality standards and the maximum allowable increases in air pollutants established by the Clean Air Act, i.e. the “PSD increments which limit the incremental increase in certain air pollutants (including NO<sub>x</sub>, PM<sub>10</sub>, and SO<sub>2</sub>) above legally defined baseline concentration levels.” Wyoming Final EIS, at 4-379. AR § VII, File G, Doc 18; Montana Final EIS, at 4-14. AR § VII, File A, Doc. 13.

206. The Secretary approved RMP Amendments for the Buffalo and Platte River Resource Management Areas in Wyoming and for the Powder River and Billings Resource Management Areas in Montana, which are the “land use plans” required by §1712(a), that violate the duty imposed by 43 U.S.C. § 1712(c)(8) because such RMP Amendments fail to “provide for compliance with applicable pollution control laws, including State and Federal air... pollution standards or implementation plans” by failing to limit emissions of air pollutants from activities allowed by such plans to the levels necessary to prevent concentrations of air pollutants in excess of the national ambient air quality standards within the Oil and Gas Project region, and the maximum allowable increases in Class I areas established by the Clean Air Act.

207. The Secretary approved RMP Amendments for the Buffalo and Platte River Resource Management Areas in Wyoming and for the Powder River and Billings Resource Management Areas in Montana, which are the “land use plans” required by §1712(a), that violate the duty imposed by 43 U.S.C. § 1712(c)(8) because such RMP Amendments fail to “provide for compliance with applicable pollution control laws, including State and Federal air... pollution standards or implementation plans” by failing to limit emissions of air pollutants from activities allowed by such plans to the levels necessary to prevent adverse impacts on air quality related values, including impairment of visibility and degradation of water quality by acid deposition, in Class I areas.

208. The Secretary’s approval of the RMP Amendments which authorize a level of oil and gas development that the Secretary has determined will result in the

emission of air pollutants sufficient to cause or contribute to the violation of applicable pollution control laws, including State and Federal air pollution standards or implementation plans, violates the Secretary's duty in FLPMA to adopt land use plans that provide for compliance with such laws, standards and implementation plans, is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law .

### **COUNT THREE**

#### **Defendants Violated FLPMA by Failing to Determine Whether Emissions will Violate Maximum Allowable Increases in Class I Areas.**

209. All previous allegations are incorporated by reference.

210. The Secretary's failure to perform a comprehensive analysis of all air pollutants expected to be emitted from the Oil and Gas Project, together with air pollutants emitted from all other existing and reasonably foreseeable sources that would be required to be included in a PSD increment consumption analysis, to determine whether particulate matter, nitrogen oxides and sulfur dioxide expected to be emitted from the Oil and Gas Project will cause or contribute to violations of the maximum allowable increases for these pollutants at each Class I area, violated the duty enacted in FLPMA, 43 U.S.C. §1712(c)(8), to develop land use plans that "shall—(8) provide for compliance with applicable pollution control laws, including State and Federal air ... pollution standards or implementation plans." Such failure is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### **COUNT FOUR**

#### **Defendants Violated NEPA by Failing to Make the "Final Air Quality Assessment"**

**Available for Public Review and Comment Before Issuance of the Montana and Wyoming Final EISs.**

211. All previous allegations are incorporated by reference.
212. “NEPA procedures must ensure that environmental information is available to the public officials and citizens before decisions are made and before actions are taken,” and “public scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).
213. NEPA regulations require that “Federal agencies shall to the fullest extent possible . . . encourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1500.2(c).
214. NEPA regulations mandate that agencies preparing NEPA documents “shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments . . . .” *Id.* at § 1501.4(b).
215. The Secretary never made available for public review, input, and comment the analysis of cumulative air quality impacts of the Oil and Gas Project in both Montana and Wyoming that was published for the first time in the “Final Air Quality Assessment.” The Secretary did not provide any assessment of the air quality impacts of emissions from the Oil and Gas Project in the Montana Draft EIS. The “Final Air Quality Assessment” was not released as part of the Draft EISs for either Montana or Wyoming. The preliminary air quality assessment released as part of the Wyoming Draft EIS did not include an analysis of the cumulative air quality impacts that will be caused by air pollutants emitted from the Oil and Gas Project authorized by the Secretary in the Montana and Wyoming RMPs.

216. The “Final Air Quality Assessment” contained the only analysis demonstrating that the cumulative effect of air pollutants expected to be emitted from the Oil and Gas Project in both Montana and Wyoming.
217. The “Final Air Quality Assessment” provides evidence demonstrating that emissions from the Oil and Gas Project will cause or contribute to significant impacts on the human environment by causing or contributing to concentrations of PM<sub>10</sub> that exceed the maximum allowable increase for PM<sub>10</sub> in the Class I Washakie Wilderness area, cause or contribute to significant impairment of visibility in 15 class I areas, and cause or contribute to acid deposition that would have an adverse impact on water quality in a class I area in violation of the Clean Air Act. This evidence of significant impacts was released for the first time as part of the Montana and Wyoming Final EISs.
218. The requirements for disclosure and public involvement required by 40 C.F.R. §§ 1500.1(b) and 1500.2(c) have not been satisfied because the cumulative impact analysis published in the “Final Air Quality Assessment” was not disclosed to the public, and no opportunity for public comment was provided before the decisions to approve the RMP Amendments were made.
219. The “Final Air Quality Assessment” was not adopted pursuant to the public involvement requirements of the NEPA process, and therefore cannot be relied upon by the Secretary to satisfy her obligation to disclose and consider the “cumulatively significant impacts” of multiple related actions as required by 40 C.F.R. §1508.27(b)(7).

220. The Secretary's failure to make available for public review and comment the analysis of the cumulative impacts of air pollutants emitted from both the Montana and Wyoming Oil and Gas Projects as published in the "Final Air Quality Assessment," and the failure to consider such cumulative impacts within the NEPA process, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### **COUNT FIVE**

#### **Defendants Violated NEPA by Failing to Draft and Distribute a Supplemental Draft EIS for the Montana Project Containing an Air Quality Assessment.**

221. All previous allegations are incorporated by reference.

222. NEPA regulations require that "[i]f a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion." 40 C.F.R. §1502.9(a).

223. NEPA regulations require the Secretary to prepare a supplemental EIS if "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact." 40 CFR § 1502.9(c).

224. The draft Montana EIS did not contain an air quality assessment and the draft Wyoming EIS did not contain an air quality assessment of the cumulative impacts of air pollutants expected to be emitted from both the Montana and Wyoming Oil and Gas Project.

225. By failing to include any air quality assessment of the Oil and Gas Project in Montana in the draft Montana EIS, and by failing to include any cumulative air quality assessment in either the draft Montana EIS or the draft Wyoming EIS, the

Secretary precluded meaningful analysis by citizens of the impact on air quality authorized by the Secretary in the RMP Amendments.

226. The Secretary's failure to draft a supplemental EIS for the Montana RMP Amendments based on the significant new information relevant to the air quality impacts shown by the "Final Air Quality Assessment" was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### COUNT SIX

#### **Defendants Violated NEPA by Failing to Perform Comprehensive Increment Consumption Analysis As Necessary to Determine Whether Emissions will Violate Maximum Allowable Increases in Class I Areas.**

227. All previous allegations are incorporated by reference.

228. An EIS must "consider" a project's cumulative impacts in addition to its direct impacts on the environment. See 40 C.F.R. § 1508.25(c). A "cumulative impact" is defined as the impact on the environment which "results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7.

229. EPA has stated, "Class I increments do apply to [a] project, even though it is not a major stationary source. So called 'minor sources' (less than 250 tpy potential emissions) also consume increment, and under EPA's PSD regulations minor sources cannot be allowed [by federal land management agency] to exceed the increment."

230. The regulation prescribing the method for performing an increment consumption analysis under the Clean Air Act also requires a cumulative emissions analysis that shows that –
- allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction[s] (including secondary emissions) would not cause or contribute to air pollution in violation of:
- (1) Any national ambient air quality standard in any air quality control region; or
- (2) Any applicable maximum allowable increase over the baseline concentration in any area.
- 40 C.F.R. §51.166(k).
231. The “Final Air Quality Assessment” excluded several existing or reasonably foreseeable future sources from its evaluation of cumulative impacts within the modeling domain, including, but not limited to, those sources listed above in section VII.A. supra.
232. The “Final Air Quality Assessment” includes no assessment of the cumulative impact of emissions from pre-existing sources within the modeling domain that began emissions after the baseline date was established but before September 1, 1994, planned developments on federal lands authorized pursuant to other RMPs within or near the boundaries of the modeling domain, and reasonably foreseeable sources located within or near the modeling domain that will impact air quality in Class I areas within the modeling domain, including but not limited to sources in southwest Wyoming, northern Colorado, Montana and northeastern Utah.
233. The Secretary provided no lawful explanation for failing to conduct a comprehensive analysis of air pollutants emitted from all sources that contribute to increases in pollutant concentrations to determine whether the maximum



allowable increase for pollutants emitted from the Oil and Gas Project would be violated by new emissions from the project (i.e. a PSD increment consumption analysis), or to demonstrate the cumulative air quality impacts of the Project as required by 40 C.F.R. § 1508.8.

234. The Secretary's failure to perform a complete PSD increment consumption analysis to determine whether particulate matter, nitrogen oxides and sulfur dioxide emitted from the Oil and Gas Project will be expected to cause or contribute to violations of the maximum allowable increases for these pollutants at each Class I area violated the duty under NEPA to disclose significant environmental impacts, including "whether the action threatens a violation of federal, State, or local law or requirements imposed or the protection of the environment." 40 CF.R. §1508.27(b)(10). Such failure is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### **COUNT SEVEN**

#### **Defendants Violated NEPA by Failing to Provide the Public with Non-technical Explanation of the Visibility Impacts that Will Be Caused by Air Pollutants From the Oil and Gas Project.**

235. All previous allegations are incorporated by reference.

236. NEPA requires the Secretary to "provide full and fair discussion of significant environmental impacts" in the EIS. 40 C.F.R. § 1502.1.

237. The "Final Air Quality Assessment" does not provide the public with non-technical explanation of the impacts on visibility that will be caused by the Oil and Gas Project approved by the Secretary in the RMP Amendments. There is no discussion in the "Final Air Quality Assessment" of the normal visibility in miles

or kilometers at the affected Class I areas. There is no discussion in the “Final Air Quality Assessment” of the magnitude of reduction in visibility in terms of miles or kilometers or other commonly understandable characteristics that will be caused by emissions from the Project.. The “Final Air Quality Assessment” does not contain photographic or other information that would have allowed the public or non-technical decision-makers to meaningfully understand the significance of visibility impacts at Class I areas that will be as high as 29.05 deciviews.

238. Information was available, including photographic information and deciview maps, that would have allowed the Secretary to provide a full and fair explanation of the visibility impacts at Class I areas.

239. By failing to provide clear and non-technical information on the visibility impacts at Class I areas, the Secretary failed to provide a full and fair discussion of the visibility impacts as required under NEPA and this failure makes the Secretary’s approval of the RMP Amendments arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

## **COUNT EIGHT**

### **Defendants Violated NEPA by Failing to Disclose Adverse Health Effects from Human Exposure to Predicted Concentrations of Particulate Matter**

240. All previous allegations are incorporated by reference.

241. As noted, NEPA requires the Secretary to “provide full and fair discussion of significant environmental impacts” in the EIS. 40 C.F.R. § 1502.1.

242. “Significant” environmental impacts include “the degree to which the proposed action affects the public health and safety.” 40 C.F.R. §1508.27(b)(2).

243. The “Final Air Quality Assessment” of the proposed action states that concentration increases of 24-hour PM<sub>10</sub> will reach 212 µg/m<sup>3</sup> in areas affected by emissions from the Oil and Gas Project. See “Final Air Quality Assessment,” at 7-5, Table 7.2. AR § VII, File G, Doc.12.
244. Research assessing the adverse health effects of human exposure to fine particles has shown that exposure to concentrations of PM<sub>2.5</sub> in the range predicted for the Oil and Gas Project area are associated with increased mortality, hospitalization, urgent and emergency care for pulmonary and cardiovascular diseases.
245. Hundreds of epidemiological research studies have been published by independent investigators reporting the relationship between exposures to PM and adverse health outcomes. These adverse effects include causing or exacerbating cardiovascular and respiratory diseases that contribute to premature death, require hospitalization, urgent or emergency care, use of medications, and the pain, suffering and discomfort associated with exacerbation of asthma and other pre-existing respiratory conditions. These studies have been summarized in EPA’s ongoing review of the NAAQS required by 42 U.S.C. § 7409(d)(1). See “Air Quality Criteria for Particulate Matter (Third External Review Draft),” U.S. EPA, Office of Research and Development, App. 8A – 8B, (April 2002) [[http://www.epa.gov/ncea/pdfs/partmatt/VOL\\_I\\_AQCD\\_PM\\_3rd\\_Review\\_Draft.pdf](http://www.epa.gov/ncea/pdfs/partmatt/VOL_I_AQCD_PM_3rd_Review_Draft.pdf)] and [[http://www.epa.gov/ncea/pdfs/partmatt/VOL\\_II\\_AQCD\\_PM\\_3rd\\_Review\\_Draft.pdf](http://www.epa.gov/ncea/pdfs/partmatt/VOL_II_AQCD_PM_3rd_Review_Draft.pdf)].

246. Based on this new evidence, EPA has released a draft Staff Paper summarizing its preliminary conclusions from its review of these studies. The Staff Paper finds that “many new studies relating ambient PM<sub>2.5</sub> concentrations to health effects provide evidence of associations at air quality levels below those for which statistically significant associations were observed in the last review [1996].” EPA’s “Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information,” at 6-22 (OAQPS – First Draft Staff Paper, August 29, 2003).

247. Based on these research studies, EPA has announced its preliminary conclusion regarding the adequacy of the current annual standard for PM<sub>2.5</sub> that --

Consideration should be given to revising the current PM<sub>2.5</sub> primary standards to provide increased public health protection from fine particles based primarily on newly available evidence of mortality and morbidity health effects in areas where the annual mean concentrations are below the level of the current annual PM<sub>2.5</sub> standard.

Id., at 6-39.

248. The Secretary has failed to disclose in any environmental document the recent scientific evidence showing that human populations in the areas where concentrations of PM<sub>2.5</sub> are expected to be highest will be exposed to pollutant levels that are associated with a significant increased risk of experiencing adverse health effects that can cause premature death, hospitalization, the need for urgent or emergency care, medications, and possible loss of work days and/or school attendance resulting from the adverse physical effects and reduced vitality associated with pulmonary and cardiovascular disease.

249. The Secretary has failed to disclose in any environmental document that the U.S. EPA has determined that new health effects research provides evidence that the adverse health effects of exposure to PM<sub>2.5</sub> has been demonstrated in areas where air quality complies with current national ambient air quality standards for PM<sub>2.5</sub>.
250. The new evidence of adverse health effects of fine particulate below the level of the 1997 NAAQS must be evaluated in the EIS to determine acceptable levels of exposure to avoid endangering public health, and the Secretary must disclose the impact that emissions from the proposed projects will have on public health as a result of increasing PM<sub>2.5</sub> levels above current background concentrations of PM<sub>2.5</sub>.
251. By failing to disclose and take into account the adverse health effects that are likely to be experienced by persons residing, traveling, working or attending school in areas where PM<sub>2.5</sub> concentrations from the Oil and Gas Project are expected to be highest, the Secretary has failed to prepare an EIS that “provide[s] full and fair discussion of significant environmental impacts” and that “inform[s] decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment” as required by NEPA. 40 C.F.R. §1502.1.
252. The Secretary’s failure to provide a full and fair analysis of the public health risks from the Oil and Gas Project authorized by the RMP Amendments is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

## COUNT NINE

### **Defendants Violated NEPA by Failing to Identify Mitigation Necessary to Prevent Significant Risks to Human Health, and by Failing to Explain Why Mitigation Necessary to Prevent Such Impacts Has Not Been Adopted.**

253. All previous allegations are incorporated by reference.

254. NEPA requires the Secretary to take a hard look at measures to mitigate the significant environmental impacts of a major federal action. See 40 C.F.R. §

1502.14(f). Mitigation includes:

- a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

40 C.F.R. § 1508.20.

255. The Secretary has failed to identify in any EIS the maximum level of emissions of air pollutants that contribute to concentrations of PM<sub>2.5</sub> that could be accommodated in the areas affected by emissions from the Oil and Gas Project without causing or contributing to adverse health effects for the exposed population.

256. The Secretary has failed to identify in any EIS or the “Final Air Quality Assessment” mitigation measures that would be needed to avoid or minimize the significant adverse health effects likely to be experienced by persons residing, traveling, working or attending school in areas where emissions from the Oil and Gas Project allowed under the RMP Amendments authorized by the Secretary are

expected to contribute to PM<sub>2.5</sub> concentrations known to be associated with adverse health effects.

257. The Secretary's failure to identify mitigation measures sufficient to protect the public from adverse health effects associated with exposure to PM<sub>2.5</sub> concentrations expected to be emitted from the Oil and Gas Project authorized by the RMP Amendments is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### COUNT TEN

#### **Defendants Violated NEPA by Failing to Identify Mitigation Measures Sufficient to Prevent Exceedances of Maximum Allowable Increases in Class I Areas .**

258. All previous allegations are incorporated by reference.

259. NEPA regulations require the agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. Before approving RMPs, the Secretary 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).

260. The Secretary has failed to identify in any EIS the maximum level of emissions of air pollutants that could be accommodated in the Class I areas affected by emissions from the Oil and Gas Project without causing or contributing to exceedances of the maximum allowable increases of air pollution under the Clean Air Act.

261. The Secretary has failed to identify in any EIS or the “Final Air Quality Assessment” mitigation measures that would be needed to avoid or minimize the

exceedances of the maximum allowable increases of air pollution in Class I areas that will be caused by emissions from the Oil and Gas Project allowed under the RMP Amendments authorized by the Secretary.

262. The Secretary's failure to identify mitigation measures sufficient to prevent exceedances of the maximum allowable increases of air pollution in Class I areas that will be caused by emissions from the Oil and Gas Project authorized by the RMP Amendments is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### **COUNT ELEVEN**

#### **Defendants Violated NEPA by Failing to Identify Mitigation Measures Sufficient to Prevent Impairment of Visibility in Mandatory Federal Class I Areas.**

263. All previous allegations are incorporated by reference.

264. NEPA regulations require the agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. Before approving the RMPs, the Secretary 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).

265. The Secretary has failed to identify in any EIS the maximum level of emissions of air pollutants that could be accommodated in the Class I areas affected by emissions from the Oil and Gas Project without causing or contributing to impairment of visibility in those Class I areas.

266. The Secretary has failed to identify in any EIS or the “Final Air Quality Assessment” mitigation measures that would be needed to avoid or minimize the



impairment of visibility in Class I areas that will be caused by the Oil and Gas Project allowed under the RMP Amendments authorized by the Secretary.

267. The Secretary's failure to identify mitigation measures sufficient to prevent the impairment of visibility in Class I areas that will be caused by emissions from the Oil and Gas Project authorized by the RMP Amendments is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### COUNT TWELVE

#### **Defendants Violated NEPA by Failing to Identify Mitigation Measures Sufficient to Prevent Adverse Impacts on Water Quality Caused by Air Pollution Emissions in Mandatory Federal Class I Areas .**

268. All previous allegations are incorporated by reference.

269. NEPA regulations require the agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. Before approving the RMPs, the Secretary 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).

270. The Secretary has failed to identify in any EIS the maximum level of emissions of air pollutants that could be accommodated in the Class I areas affected by emissions from the Oil and Gas Project without causing or contributing to adverse impacts on water quality.

271. The Secretary has failed to identify in any EIS or the “Final Air Quality Assessment” mitigation measures that would be needed to avoid or minimize adverse impacts on water quality in Class I areas that are predicted to be caused

by emissions from the Oil and Gas Project allowed under the RMP Amendments authorized by the Secretary.

272. The Secretary's failure to identify mitigation measures sufficient to prevent adverse impacts on water quality in Class I areas that are predicted to be caused by emissions from the Oil and Gas Project authorized by the RMP Amendments is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

### COUNT THIRTEEN

#### **Defendants Violated NEPA by Failing to Adopt All Practicable Means to Avoid Environmental Harm, or Provide Lawful Explanation Why Such Means Were Not Adopted.**

273. All previous allegations are incorporated by reference.

274. NEPA requires that the Secretary "state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not." 40 C.F.R. §1505.2(c).

275. The Secretary identified in the EISs practical means that could avoid or minimize environmental harm from the emission of air pollutants, such as requiring dust suppression during well pad and road construction, the use of zero-emission electric compressor engines to avoid emissions, the use of emissions controls for fossil-fueled compressor engines, and phased development to limit emissions by limiting the total number of wells being developed and in operation during any period. See Montana Final EIS, at AIR-31, AIR-32. AR § VII, File A, Doc. 13. Wyoming Final EIS, at 4-404. AR § VII, File G, Doc 18. The Secretary

did not adopt as enforceable requirements any of these means and offered no lawful explanation why they were not adopted.

276. The failure of the Secretary to adopt practical means that could avoid or minimize environmental harm, and the failure to explain why such means were not adopted is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### COUNT FOURTEEN

##### **Defendants Violated FLPMA and NEPA by Failing to Adopt Mandatory Requirements Consistent with Mitigation Assumptions in the “Final Air Quality Assessment.”**

277. All previous allegations are incorporated by reference.

278. NEPA requires that “mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency.” 40 C.F.R. §1505.3.

279. FLPMA planning regulations provides that RMPs:

[S]hall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resources to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in related plan of other Federal agencies, State or local governments, or Indian tribes, and whether there is new data of significance to the plan.

40 C.F.R. 160.4-9.

280. The “Final Air Quality Assessment” relied on several assumptions regarding the reduction of air pollutant emissions for the purpose of estimating emissions from

the Oil and Gas Project allowed under the RMP Amendments authorized by the Secretary.

281. These assumed reductions include, but are not limited to, that control measures would be applied to reduce fugitive dust from unpaved access roads by 50%, that natural gas rather than more polluting diesel fuels would be used as the fuel for compressor stations, that control technology would be installed to achieve emissions limitations of 1.0 and 1.5 grams of nitrogen oxides (“NO<sub>x</sub>”) per horsepower-hour of operation for compressor engines, and that non-selective catalytic reduction technology (NSCR) would be installed to control NO<sub>x</sub> emissions from diesel engines. See “Final Air Quality Assessment,” at B-55, B-82. AR § VII, File G, Doc. 12. Montana Final EIS, at 4-17, 4-18. AR § VII, File A, Doc. 13. Wyoming Final EIS, at 4-381, 4-382. AR § VII, File G, Doc 18.
282. In the Wyoming Final EIS, BLM states that NO<sub>x</sub> emissions from compressor engines is assumed for purposes of the modeling analysis to be 1.0 grams of NO<sub>x</sub> per horsepower/hour of operation. Wyoming Final EIS, at 4-381. AR § VII, File G, Doc 18. However, BLM notes that since applicable best available control technology for compressor engines “is decided on a case-by-case basis, actual emission rates could be decided to be less or more than this level by the Departments of Environmental Quality in Wyoming or Montana, and on Indian lands by EPA.” Id. AR § VII, File G, Doc 18. BLM admits that emission rates for compressor engines could be as high as 2.0 g NO<sub>x</sub>/hp-hr. Id. If compressors were allowed to operate with emissions at 2.0 g NO<sub>x</sub>/hp-hr, total emissions from all

- compressors in the project region would be 100% greater than the emissions assumed for the modeling analysis of concentrations in downwind locations.
283. If actual emissions are two times greater than the emissions assumed in the emissions inventory used to perform the modeling analysis in the “Final Air Quality Assessment,” then the contribution of compressor emissions to concentrations of NO<sub>x</sub> in Class I areas from the Oil and Gas Project would be double the impacts predicted in the “Final Air Quality Assessment.”
284. Defendants have not adopted any of the emissions standards or emission control measures in the RMPs or ROD to require lessees and/or operators to install and operate the emission control measures assumed for the purpose of predicting reduced emissions from the Oil and Gas Project in the “Final Air Quality Assessment.”
285. Defendants have not identified any requirement of State law or commitment from the State as a “consenting agency” upon which she may rely that would require operators to install and operate the emission control measures assumed for the purpose of predicting reduced emissions from the Oil and Gas Project in the “Final Air Quality Assessment.”
286. The Secretary has not adopted or entered into any cooperative agreement with any State agency that requires the State, or by which the State agrees to issue permits containing standards to limit emissions to the levels assumed for the purpose of predicting reduced emissions from the Oil and Gas Project in the “Final Air Quality Assessment.”

287. The air pollutants expected to be emitted from the Oil and Gas Project that were used to predict concentrations of air pollutants in the “Final Air Quality Assessment” were assumed to be limited by assumptions of the maximum number of wells to be developed in any year, and an assumed level coal-bed methane production. See “Final Air Quality Assessment,” at 4-23. AR § VII, File G, Doc.12.

288. The ROD does not adopt any limits on development, the rate or pace of development, emissions limitations, control measures or other mitigation measures that will ensure the maximum level of development in any single year will not exceed either the levels of wells or the level of emissions assumed for the purposes of predicting emissions from the Oil and Gas Project in the “Final Air Quality Assessment.”

289. To the extent Defendants rely on these assumed control measures to limit emissions for the purpose of demonstrating compliance with any NAAQS or maximum allowable increase, then she must be required in the ROD to satisfy the obligation under FLPMA to adopt RMPs that contain the limits of development and/or emissions limitations and control measures that are identified as necessary to “provide for compliance” with applicable air pollution standards or implementation plans.

290. In the alternative, if the assumptions used to reduce the expected emissions from the Oil and Gas Project for the purpose of modeling the expected impacts are not adopted in the RMPs or RODs as enforceable requirements, then the Defendants failed to prepare an EIS that “provide[s] a full and fair discussion of the

significant environmental impacts” of the project as required by NEPA, 40 C.F.R. §1502.1, because the air quality assessment will have omitted disclosure of the air quality impacts of permissible, potential emissions from the project that will occur if the rate of development is not limited, and if operators are not required to meet emissions limitations on compressor engines, the use of natural gas as a fuel is not required, and dust suppression to control dust from dirt roads by 50% are not required.

291. Defendants’ failure to make the rate of well development, emission limitations, and emission control measures assumed in the “Final Air Quality Assessment” enforceable requirements of the RMP Amendments authorizing the Oil and Gas Project, or in the alternative to prepare an environmental impact statement that provides full and fair discussion of the significant environmental impacts that would occur if development is not limited and such emission controls are not required, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### **X. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- (1) Declare that the Secretary unlawfully approved the RMPs for the Oil and Gas Project because she failed to satisfy her duty to adopt emissions limitations, measures to control emissions, or limitations on development sufficient to prevent adverse impacts to air quality values in Class I areas, or sufficient to prevent concentrations of air pollutants in Class I areas that exceed the

maximum allowable increases for such areas in violation of the Clean Air Act and its implementing regulations, as set forth above; and

(2) Declare that Defendants unlawfully approved the RMP Amendments for the Oil and Gas Project because she failed to develop RMPs that provide for compliance with applicable pollution control laws, namely compliance with the requirements of the Clean Air Act including compliance with the national ambient air quality standards, the protection of air quality related values and the prevention of significant deterioration beyond the maximum allowable increments established for Class I areas in violation of FLPMA and its implementing regulations, as set forth above; and

(3) Declare that Defendants unlawfully approved the RMP Amendments for the Oil and Gas Project without first satisfying various requirements of NEPA, including but not limited to,

a) Defendants' failure to fully determine the cumulative adverse impacts on air quality and air quality related values in national parks and wilderness areas designated as Class I as result of air pollutants emitted from the Oil and Gas Project by failing to perform a modeling analysis that includes a complete inventory of emissions from all sources of air pollutants that contribute to concentrations of air pollutants in each such area;

b) Defendants' failure to fully determine the cumulative adverse impacts on air quality in the Project region as result of air pollutants emitted from the Oil and Gas Project by failing to perform a modeling analysis that includes a



complete inventory of emissions from all sources of air pollutants that contribute to violations of national ambient air quality standards in such area;

c) Defendants' failure to disclose such cumulative adverse impacts as part of a draft or supplemental EIS that satisfies the public participation requirements of NEPA and provides sister agencies with responsibilities as Federal Land Managers with a meaningful opportunity to comment on such impacts;

d) Defendants' failure to determine the extent to which air pollutants emitted from the Oil and Gas Project would cause or contribute to violations of State and Federal air pollution laws, standards and implementation plans;

e) Defendants' failure to disclose the adverse health effects likely to be experienced by persons living, working, traveling, attending school or recreating in the area where concentrations of PM<sub>2.5</sub> and PM<sub>10</sub> would likely reach or exceed levels shown to be associated with serious adverse health effects;

f) Defendants' failure to identify alternatives that could avoid or minimize such adverse impacts; and

g) Defendants' failure to adopt mitigation sufficient to avoid such adverse impacts or explain why such mitigation was not adopted; and

- (4) Pursuant to the Administrative Procedure Act, vacate Defendants' decisions approving the amendment of the Resource Management Plans in Montana and Wyoming as arbitrary, capricious, and not in accordance with law; and

- (5) To preserve the status quo until Defendants prepare, publish for comment and issue final EISs that fully disclose the environmental impacts of the Oil and Gas Project as required by the National Environmental Policy Act, enjoin the Defendants not to issue any leases or permits for the development of oil and gas or coal-bed methane, or allow the development of oil and gas or coal-bed methane on leased lands;
- (6) Order Defendants not to issue any leases or permits for the development of oil and gas or coal-bed methane, or allow the development of oil and gas or coal-bed methane on leased lands until the Secretary has adopted RMPs that comply with FLPMA by providing for compliance with the Clean Air Act and applicable air pollution standards and implementation plans;
- (7) Retain jurisdiction of this action to ensure compliance with its decree;
- (8) 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 of law; and
- (9) Grant such other and further relief as is just and proper.

Dated this 20 th of May, 2004.

Respectfully submitted,



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