IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01723

HIGH COUNTRY CITIZENS' ALLIANCE, and
WILDEARTH GUARDIANS,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,
BUREAU OF LAND MANAGEMENT,
DANIEL JIRÓN, in his official capacity as Regional Forester for the U.S. Forest Service's Rocky Mountain Region,
SCOTT ARMENTROUT, in his official capacity as Supervisor of the Grand Mesa, Uncompahgre, and Gunnison National Forests, and
HELEN HANKINS, in her official capacity as the Bureau of Land Management's Colorado State Office Director,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR REVIEW OF AGENCY ACTION

INTRODUCTION

1. The Sunset Roadless Area is a 5,800 acre area of undeveloped aspen and spruce forests, beaver ponds and streams that hugs the west flank of 12,700-foot Mount Gunnison and the West Elk Wilderness in western Colorado. These roadless lands, managed by the U.S. Forest Service, is home to elk, black bear, and goshawk, and is enjoyed by hunters and hikers. Wildflowers abound in summer, and the area turns gold with the aspen leaves in the fall. Visitors can find stunning vistas of Mount Lamborn and the Raggeds, and smaller-scale wonders, like bear claw-marks high up in aspen, and chorus frogs in clear pools.

2. In the last year, however, the Forest Service and the Bureau of Land Management made three interrelated decisions that will dramatically damage the Sunset Roadless Area within a matter of days. First, BLM and the Forest Service took action that culminated in March 2013 in the modification of two coal leases for the nearby underground West Elk Mine, owned by corporate giant Arch Coal. These "Lease Modifications" allow the Mine to expand into 1,700 acres of the Sunset Roadless Area. The Forest Service predicted mining coal within the Lease Modifications will result in the bulldozing of 6.5 miles of new road and the flattening of forest and hillsides to build 48 wells pads –16 well pads per square mile – in the roadless area. This construction will allow the Mine to vent methane, a combustible gas.

3. The second decision, by the Forest Service alone, modified the national Roadless Rule, which generally prohibits road construction in Forest Service inventoried roadless areas such as the Sunset Roadless Area. On July 3, 2012, the Forest Service issued a final rule for Colorado Roadless Areas superseding the national rule in this state. The Colorado Roadless Rule contains a loophole allowing road construction for coal mining within 19,100 acres of

roadless forest in the North Fork Valley, including the Sunset Roadless Area. Absent adoption of the Colorado Roadless Rule, the Forest Service could not have adopted a decision authorizing road construction for the West Elk Mine in the Sunset Roadless Area.

4. Third, BLM and the Forest Service took action on June 27, 2013 to approve the Mine's "Sunset Trail Area Coal Exploration Plan" within the Lease Modifications area. The Exploration Plan allows the Mine to immediately bulldoze six miles of road up to 45 feet wide and scrape ten well pads into the Sunset Roadless Area so that drill rigs can extract core samples, enabling the Mine to evaluate the underground coal seam in preparation for mining the Lease Modifications area.

5. The roads and well pads for both the Exploration Plan and the mining of the Lease Modifications will clearcut forest, destroy and fragment habitat, displace wildlife, alter hydrology, and transform a natural forest into a developed area. The scars of construction will persist for decades, long after the mine has removed its coal and moved on.

6. The Lease Modifications and Exploration Plan decisions must be set aside because each violates federal law meant to protect the environment. The National Environmental Policy Act (NEPA) requires agencies to take a "hard look" at the risks and consequences of agency actions before they are approved. Here, the BLM and Forest Service failed to take the required hard look. First, the agencies failed to disclose adequately the impacts of coal mining on adjacent lands that its Lease Modifications decision will unleash. Despite acknowledging that the Mine would be unable to access or mine the 8.9 million tons of coal on adjacent lands without the Lease Modifications, the agencies' Final Environmental Impact Statement (EIS) fails to analyze the surface and other damage from mining on lands outside the

leased area. Second, the Lease Modifications Final EIS fails to address the societal costs of mining and burning the coal within the lease modifications area. Third, the Final EIS fails to disclose the air pollution that will result from mining the Lease Modifications, failing to estimate the likely emissions of volatile organic compound (VOC) – pollutants that result in the formation of health-threatening smog. Fourth, the Final EIS fails to properly disclose the likely impacts of road and methane drainage well construction on the wilderness and roadless character of the Sunset Roadless Area. Finally, in approving the Exploration Plan, the agencies failed to fully disclose the environmental impacts of road well pad construction on recreation and wilderness character, or to analyze less damaging alternatives. The Forest Service also failed to comply with its NEPA obligations and regulations providing for public involvement, notice, and appeal prior to deciding to concurring in BLM's approval of the Exploration Plan.

7. In addition, the Lease Modifications and Exploration Plan decisions cannot rely on the Colorado Roadless Rule to permit road construction, because the Rule itself was adopted in violation of law. The Forest Service failed to comply with NEPA by failing to take a hard look at the impacts of the Rule's loophole permitting road construction for coal mining, which will allow half a billion tons of coal to be mined and burned that otherwise would stay in the ground.

8. Because the Forest Service's and BLM's approval of the Lease Modifications and the Exploration Plan violate federal law, the agencies' decisions must be set aside, and any construction of roads or well pads allowed by those decisions must be enjoined.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. §§ 701-706 (Administrative Procedure Act's judicial review provisions). The Court may order relief pursuant to 28 U.S.C. § 2201 (declaratory judgments).

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claims occurred within this judicial district, the Forest Service and BLM have offices in this district, the public lands and resources in question are located in this district, and the agency actions will cause impacts in this district.

PARTIES

11. Plaintiff High Country Citizens' Alliance is a non-profit conservation organization headquartered in Crested Butte, Colorado. Founded in 1977, the Alliance has over 700 dues-paying members committed to the protection, conservation, and preservation of the natural ecosystems within the Upper Gunnison River Basin and Gunnison County. High Country Citizens' Alliance is an active participant in public lands management in the Gunnison County, which includes the lands at issue in this case.

12. Plaintiff WildEarth Guardians is a non-profit environmental organization dedicated to protecting and restoring the wildlife, wild places, and wild rivers throughout the American West. WildEarth Guardians is headquartered in Santa Fe, New Mexico, and has offices in Denver, Colorado and Phoenix, Arizona. WildEarth Guardians has over 7,500 dues-paying members and more than 20,000 supporters. Through its Climate and Energy Program, WildEarth Guardians aims to confront the effects of global climate change to protect the American West's wildlife, wild places, and wild rivers. WildEarth Guardians works for clean

energy solutions that can help our society shift away from the use of fossil fuels in order to safeguard our climate, our clean air, and our communities.

13. Plaintiffs High Country Citizens' Alliance and WildEarth Guardians (collectively, "HCCA") have commented and been involved in every stage of the Forest Service's and BLM's review and approval of the Lease Modifications, and provided comments to BLM prior to its approval of the Exploration Plan. HCCA also filed administrative protests of the Lease Modifications with the Forest Service and BLM.

14. Members and staff of the Plaintiffs' organizations regularly use and enjoy the lands impacted within the Lease Modifications and within the area of the Exploration Plan, as well as adjacent lands, for a variety of purposes, including wildlife and wildflower viewing, photography, recreation, and aesthetic appreciation of the area's natural, wild values. The Plaintiffs' members and staff are also concerned with protecting the wildlife, scenery, air quality, and other natural values of the Sunset Roadless Area (including lands within the Lease Modifications and within the area of the Exploration Plan) and adjacent national forest lands. The Forest Service's and BLM's approvals of the Exploration Plan irreparably harms HCCA's interests and their members because exploration will result in the bulldozing of miles of road and ten well pads within the Sunset Roadless Area. Similarly, the Forest Service's and BLM's approvals of the Lease Modifications irreparably harms HCCA's interests and their members because foreseeable mining of the lease area will result in the bulldozing of miles of road and nearly 50 well pads within the Sunset Roadless Area. This construction will destroy wildlife habitat and vegetation, and degrade HCCA's members enjoyment of wildlife, photography, recreation, and the natural and wild character of Sunset Roadless Area, including lands within

the Lease Modifications and within the area of the Exploration Plan. HCCA's members plan to return to Sunset Roadless Area and the lands within the Lease Modifications and within the area of the Exploration Plan this year and every year for the foreseeable future.

15. The Forest Service and BLM's approval of the Lease Modifications and Exploration Plan without performing NEPA analysis as required by law also harms the Plaintiffs' members and staff by denying them the right to informed decision making and full disclosure under NEPA, as well as the right to meaningfully participate in the decision making process.

16. Defendant United States Forest Service is a federal agency under the U.S. Department of Agriculture. The Forest Service is responsible for managing the Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) and "consenting" to the Lease Modifications. The Forest Service is also responsible for "concurring" in the BLM's approval of the Exploration Plan. The Forest Service is responsible for adopting and ensuring the agency complies with its rules, including the Colorado Roadless Rule.

17. Defendant United State Bureau of Land Management (BLM) is a federal agency under the U.S. Department of the Interior. BLM is charged with leasing federal coal resources and approving exploration plans for federally-owned coal.

18. Defendant Daniel Jirón is the Regional Forester for the Rocky Mountain Region. The Regional Forester is responsible for ensuring that the Rocky Mountain Region, which includes the GMUG National Forest, complies with law. The Forest Service's Rocky Mountain Region staff upheld the Forest Service's Record of Decision (ROD) for the Lease Modifications when HCCA appealed the ROD. Mr. Jirón is sued in his official capacity.

19. Defendant Scott Armentrout is the Supervisor of the GMUG National Forest. Mr. Armentrout's predecessor, Acting Supervisor Sherry Hazelhurst, signed the ROD approving the West Elk Mine's Lease Modifications on August 2, 2012. Mr. Armentrout concurred in BLM's decision approving the Exploration Plan on June 27, 2013. Mr. Armentrout is sued in his official capacity.

20. Defendant Helen Hankins is the BLM Colorado State Office Director. On December 27, 2012, Ms. Hankins signed BLM's ROD approving the Lease Modifications. On March 26, 2013, staff of the BLM Colorado State Office under Ms. Hankins supervision signed the Lease Modifications. On June 27, 2013, staff of BLM in Colorado under Ms. Hankins supervision signed the Decision Record approving the Exploration Plan. Ms. Hankins is sued in her official capacity.

LEGAL FRAMEWORK

I. THE ADMINISTRATIVE PROCEDURE ACT

21. Because NEPA does not include a citizen suit provision, this case is brought pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, 701-706, 1305, 3105, 3344, 4301, 5362, and 7521.

22. The APA allows persons and organizations to challenge final agency actions in the federal courts. Id. §§ 702, 704. The APA declares that a court shall hold unlawful and set aside agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Id. § 706(2)(A).

II. THE NATIONAL ENVIRONMENTAL POLICY ACT

23. Congress enacted the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h, to, among other things, "encourage productive and enjoyable harmony between man and his environment" and to promote government efforts "that will prevent or eliminate damage to the environment." Id. § 4321. As a general matter, NEPA requires that federal agencies analyze and disclose to the public the environmental impacts of their actions. Id. § 4332(2)(C).

24. To this end, the Council on Environmental Quality (CEQ) has promulgated regulations implementing NEPA. Among other things, the rules are intended to "tell federal agencies what they must do to comply with the procedures and achieve the goal of [NEPA]," to "insure that environmental information is made available to public officials and decisions are made and before actions are taken," and to ensure "better decisions" and "foster excellent action." 40 C.F.R. § 1500.1(a)-(c).

25. Both the Forest Service and the Department of the Interior, BLM's parent agency, have promulgated regulations implementing NEPA (and supplementing the Council on Environmental Quality regulations) providing additional authority and guidance as to the applicability of NEPA to their actions. See 36 C.F.R. § 220 (Forest Service NEPA regulations); 43 C.F.R. § 46 (Interior Department NEPA regulations). Forest Service regulations state that an action proposed by these agencies is subject to NEPA if four criteria are met: 1) That the agencies have a goal and are actively preparing to make a decision on one or more alternative means of accomplishing that goal; 2) The proposed action is subject to agency control and responsibility; 3) The proposed action would cause effects on the human environment; and 4)

The effects of the proposed action can be meaningfully evaluated. 36 C.F.R. § 220.4(a)(1)-(3). Interior Department regulations define actions subject to NEPA similarly. See 43 C.F.R. § 100.

26. To fulfill its mandates, NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all "major Federal actions significantly affecting the environment." Id. § 4332(2)(C); 40 C.F.R. § 1501.4. The agency should describe "any adverse environmental effects which cannot be avoided should the proposal be implemented." 42 U.S.C. § 4332(2)(C)(ii). Overall, an EIS must "provide [a] full and fair discussion of significant impacts" associated with a federal decision and "inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.

27. NEPA requires federal agencies to analyze "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii). NEPA also requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). CEQ regulations implementing NEPA identify the alternatives analysis as the "heart" of a NEPA document. 40 C.F.R. § 1502.14. NEPA's implementing regulations emphasize an agency's duty to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.16.

28. An EIS must also identify the direct, indirect, and cumulative impacts of each reasonable alternative, including a project's ecological, aesthetic, economic, social, and health effects. Id. §§ 1502.15, 1508.8. Direct impacts are those impacts "caused by the action and [that] occur at the same time and place." Id. § 1508.8. Indirect impacts are "caused by the

action and are later in time or farther removed in distance, but are still reasonably foreseeable." Id. Cumulative impacts are "the impact[s] 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." Id. § 1508.7.

29. In approving an action analyzed in an EIS, federal agencies must issue an ROD. 40 C.F.R. § 1505.2. At a minimum, an ROD must state what the decision was, identify all alternatives considered by the agency in reaching its decision, and 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." Id. § 1505.2(a)-(c).

30. Regulations implementing NEPA require that when an agency is uncertain whether a federal action may have significant environmental impacts, the agency must prepare an environmental assessment (EA) to determine whether it must prepare an EIS. 40 C.F.R. § 1508.9(a)(1); 36 C.F.R. § 220.2; 43 C.F.R. § 46.300. Although an EA may be more brief than an EIS, the EA must nonetheless disclose, analyze, and take a "hard look" at the "need for the proposal, … alternatives as required by [NEPA] section 102(2)(E), [and] the environmental impacts of the proposed action and alternatives." 40 C.F.R. § 1508.9(a)(1). If the agency concludes that the action may have significant impacts, it must prepare an EIS. If it concludes no significant impacts are likely, it may issue a "Finding of No Significant Impact" (FONSI) and forego preparing an EIS.

31. The Forest Service is further required to issue a Decision Notice whenever approving an action analyzed in an EA. 36 C.F.R. § 220.7(c). Among other things, a Decision Notice is required to state the "decision and rationale," provide a "brief summary of public involvement," state "finding requires by other laws and regulations applicable to the decision at the time of the decision," and explain the "administrative review or appeal opportunities." Id.

III. THE MINERAL LEASING ACT

32. The Mineral Leasing Act, 30 U.S.C. §§ 181-287, grants BLM the authority to lease federally-owned coal. BLM's coal-leasing authority extends to federally-owned coal on lands controlled by other federal or state agencies, including the Forest Service, and on split-estate lands where private landowners control the surface estate. Id. §§ 181, 182.

33. Under the Mineral Leasing Act, coal leases on Forest Service land "may be issued only upon consent" of the Forest Service and "only ... upon such conditions as [the Forest Service] may prescribe with respect to the use and protection of the nonmineral interests in those lands." Id. § 201(a)(3)(A)(iii).

34. Regulations issued pursuant to the Mineral Leasing Act and the Federal Land Policy and Management Act (FLPMA) govern the exploration of federally-owned coal. Exploration plans concerning federal coal are regulated under three separate regimes. First, where the exploration will take place on lands not subject to a federal coal lease, the entity seeking to explore must receive an exploration license. 43 C.F.R. Part 3410 (Exploration Licenses). These regulations require the publication of a notice of the company's exploration plans in the Federal Register, and a requirement that other companies have the chance to share in the costs and the data retrieved from such exploration. 43 C.F.R. § 3410.2-1(c). Second, where

the exploration will occur on lands leased to the entity seeking to explore, but not within an approved mine permit boundary, BLM reviews the exploration plan pursuant to the requirements of 43 C.F.R. Part 3480. These regulations do not require posting notice of the exploration proposal in the Federal Register. Finally, where an entity seeks to explore lands within the boundary of its mine permit boundary, exploration activities are permit[ted] through the Office of Surface Mining, via the Colorado Division of Reclamation, Mining, and Safety (DRMS).

35. Where an entity seeks to explore on federal lands under lease but not currently within a mine permit boundary, the company may not begin exploration operations unless the company has first "obtain[ed] approval from the authorized [BLM] officer." 43 C.F.R. § 3482.1(a)(1). BLM has discretion to disapprove any exploration plan within a lease, or it may require an applicant to modify the plan. 43 C.F.R. § 3480.0-6(d)(1) (authorized officer at BLM has duty to "[a]pprove, disapprove, approve upon condition(s), or require modification to exploration plans for Federal coal."). See also id. §§ 3482.1(a)(1); 3482.2(a)(1). Regulations anticipate that BLM will make an exploration plan available for comment. See 43 C.F.R. § 3482.2(a)(1) ("The authorized [BLM] officer after evaluating a proposed exploration plan and all comments received thereon, and after consultation with the responsible officer of the surface managing agency … shall promptly approve or disapprove in writing an exploration plan."). Before approving a plan, BLM must "determine that the exploration plan complies with" 43 C.F.R. Pt. 3480, applicable requirements of the state mining regulatory authority, and requirements of the federal coal lease. 43 C.F.R. § 3482.2(a). See also id. § 3482.1(a)(2).

36. Where other federal agencies, such as the Forest Service, manage surface resources, BLM is required to engage in "consultation" with the surface managing agency. 43

C.F.R. § 3482.2(a). To this end, an exploration plan cannot be approved until the surface managing agency reviews the adequacy of the reclamation bond and concurs "with the approval terms" of the exploration plan. 43 C.F.R. § 3482.2(a).

IV. THE 2001 ROADLESS AREA CONSERVATION RULE

37. The Forest Service's 2001 Roadless Area Conservation Rule (hereinafter the "National Roadless Rule") prohibits road construction and reconstruction in Inventoried Roadless Areas and prohibits the cutting, sale, or removal of timber from Inventoried Roadless Areas, subject to limited exceptions. 66 Fed. Reg. 3244, 3272–73 (Jan. 12, 2001) (to be codified at 36 C.F.R. §§ 294.10-.14); see also Wyoming v. U.S. Dep't of Agric., 661 F.3d 1209 (10th Cir. 2011) (upholding the 2001 Roadless Area Conservation Rule).

V. THE COLORADO ROADLESS RULE

38. On July 3, 2012, the Forest Service approved and adopted the Colorado Roadless Rule. 77 Fed. Reg. 39,576, 39,576 (July 3, 2012). The Forest Service prepared a final EIS in compliance with NEPA purporting to analyze the impacts of the Colorado Roadless Rule prior to the Rule's adoption. While the National Roadless Rule prohibits road construction for coal mining in inventoried roadless areas, the Colorado Roadless Rule contains an exception allowing construction of temporary roads for "coal exploration and/or coal-related surface activities" in the North Fork coal mining area, which is identified on maps included in the Colorado Roadless Rule final EIS. Id. at 39,578. 36 C.F.R. § 294.43(c)(1)(ix).

VI. HEALTHY FORESTS RESTORATION ACT

39. The Healthy Forests Restoration Act (HFRA), as amended, requires the Forest Service to provide for notice to the public, an opportunity to comment, and the right to file

administrative appeals of certain Forest Service decisions. To carry out the requirements of the HFRA, the Forest Service promulgated revisions to 36 C.F.R. § 218, providing explicit procedures for providing public notice, opportunity for comment, and a predecisional objection process for actions of the Forest Service implementing a land and resource management plan and documented with an ROD or Decision Notice. 78 Fed. Reg. 18481 (March 27, 2013). These public involvement regulations contain explicit and mandatory requirements that the Forest Service must follow to ensure adequate public notice, opportunity for comment, and predecisional objection.

40. For example, for any proposed action where an EA is prepared, the Forest Service is required to provide legal notice of the opportunity to comment on the proposed action, which is to be published in a "newspaper of record," and provide 30 days for public comment. 36 C.F.R. §§ 218.24(a)(1) & (4); 218.24(c)(2). Prior to issuing a decision, the Forest Service must also "promptly make available" an EA, provide legal notice of its proposed decision in a newspaper of record, and provide "45 days following the publication date of the legal notice" during which a written objection may be filed. Id. §§ 218.7(b) and 218.26(a). A written response to an objection must be issued by the Forest Service within "45 days following the end of the objection filing period." Id. § 218.26(b). This "predecisional objection" process provides the public an opportunity to formally challenge a Forest Service decision before the agency. The regulations state that the filing of an objection is a prerequisite to exhausting administrative remedies and seeking judicial review in federal court. 36 C.F.R. § 218.14(b).

41. In adopting the predecisional objection regulations, the Forest Service noted that "considering public concerns early on, before a decision is made aligns with the Forest Service's

collaborative approach to forest management and increases the likelihood of resolving those concerns resulting in better, more informed decisions." 78 Fed. Reg. 18483.

FACTUAL BACKGROUND

I. THE WEST ELK COAL MINE

42. The West Elk Coal Mine is located near Paonia, Colorado, in the North Fork Valley of Gunnison County. The Mine opened in 1982 and is an underground coal mine that employs the longwall mining method. The Mine is owned and operated by Mountain Coal Company (MCC), a subsidiary of the nation's second largest coal producer, Arch Coal. The Mine largely underlies lands managed by the U.S. Forest Service as the GMUG National Forest. The West Elk Mine has an annual production capacity of 7 million tons of coal.

43. The geologic formations in and adjacent to the coal seams mined at West Elk contain significant amounts of methane. According to the U.S. Environmental Protection Agency (EPA), the West Elk Mine is the fourth largest methane polluter among all underground coal mines in the United States. Methane is released as a result of mining. Because it is combustible, methane can pose a safety hazard in mines. To protect miners, the federal Mine Safety and Health Administration requires MCC to remove excess methane which the Mine has chosen to do in part by venting methane directly into the atmosphere through methane drainage wells. These methane drainage wells are located every 750 to 1,000 feet on the land surface above the longwall panel. The West Elk Mine's methane drainage wells are drilled from the surface above the underground mine and require the bulldozing of an extensive road network and the clearing and leveling of rough terrain to create a level pad about one-half acre in size to

accommodate an industrial rig to drill the drainage well. The Forest Service and BLM have alleged that methane drainage wells are "essential" for the West Elk Mine's operations.

44. On January 16, 2009, two subsidiaries of Arch Coal (MCC and Ark Land Company) submitted an application to BLM for two Lease Modifications that would add approximately 10.1 million tons of federal coal to two of the West Elk Mine's existing leases, COC-1362 and COC-67232.

45. The Lease Modifications would allow MCC to access and mine an additional 8.9 million tons of coal on adjacent Forest Service and private lands. This adjacent Forest Service and private land coal could not be mined without MCC obtaining the right to mine the Lease Modifications area because of the geometric alignment of underground coal "panels" (areas to be mined) on the existing leases. Private land-owners adjacent to the Lease Modifications area pressed the Forest Service to approve the Lease Modifications because: "If the two federal coal lease modifications are not approved, 977 acres of [private] land will not be mined, bypassing an estimated 5.6 million tons of coal extraction."

46. In total, the Lease Modifications would allow MCC to mine 19 million tons of coal and would extend the West Elk Mine's life by approximately 2.9 years.

II. THE WEST ELK MINE'S SURFACE IMPACTS

47. The methane drainage wells required to mine coal at the West Elk Mine cause damaging surface impacts to the land above and adjacent to the Mine. Each methane drainage well requires bulldozing an area about one acre in size to clear the well pad. In addition, each methane drainage well requires the construction of roads to transport the drill rig and construction and maintenance equipment that must access the well. Because the terrain in the

area is rough and hilly, roads and well pads often carve areas out of hill sides where cut and fill is required to level the pad and road bed. Waste pads are often built at the drilling site. Water used in drilling operations is often sucked from a nearby creek; long hoses or pipes snake through adjacent woods to deliver water to the pad. Where roads are constructed across streams, the streams are channelized through a metal culvert. The well pads and roads needed for methane drainage wells eliminate vegetation, fragment wildlife habitat, can pollute surface waters, destroy vegetation, and degrade many other resources.

48. The Forest Service and BLM estimate that approximately 48 additional methane drainage wells will be necessary to mine the 10.1 millions tons of coal contained in the Lease Modifications, which will require 48 additional well pads and 6.5 miles of additional roads. This is an average of about 16 well pads per square mile. Approximately 42 methane drainage wells and associated well pads and roads will be required to mine the 8.9 million tons of coal on adjacent public and private lands.

III. THE SUNSET ROADLESS AREA

49. The Lease Modifications would add 1,721 acres to the West Elk Mine's existing federal coal leases. The vast majority of the Mine's expansion would occur in the Sunset Roadless Area. More than 1,700 acres of the land covered by the Lease Modifications – 99% of the Lease Modifications' acreage – are located in the Sunset Roadless Area.

50. The Sunset Roadless Area is a 5,800 acre expanse of undeveloped and unroaded aspen and giant spruce forests located nine miles east of Paonia, Colorado, and directly adjacent to the West Elk Wilderness Area. The Sunset Roadless Area is home to elk, mule deer, black bear, wild turkey, beaver, chorus frog, goshawk, and mountain lion. The Sunset Roadless Area

also contains habitat for the threatened Canada lynx. Because the Sunset Roadless Area contains high-quality, undeveloped Forest Service lands, in 2005 the Forest Service found nearly 3,000 acres of the Sunset Roadless Area "capable" of wilderness protection.

51. When coal in the Lease Modifications is mined, the Forest Service estimates that 1,701 acres of the 5,800-acre Sunset Roadless Area would be criss-crossed by methane drainage wells and associated well pads and roads. Because 99% of the Lease Modifications' acreage lies in the Sunset Roadless area, nearly all of the 48 methane drainage wells identified under the "Reasonably Foreseeable Mine Plan" in the Final EIS will likely be located within the Sunset Roadless Area. The federal agencies project that the 6.5 miles of new roads necessary to drill and maintain the methane drainage wells will disturb approximately 24 acres of land in the Sunset Roadless Area. Expansion of the West Elk Mine into the Sunset Roadless Area would fragment wildlife habitat, destroy plant and wildlife communities, cause increased air pollution and erosion, diminish solitude, and significantly harm other resources in the Roadless Area. Aspen and spruce trees a century old or older will be logged; the U.S. Fish and Wildlife Service concluded that habitat may not recover its "functionality" for some wildlife species for 30-40 years after the roads and well pads are decommissioned. The area's capability for addition to the preservation as wilderness would also likely be compromised due to the construction of roads, well pads, and clearcutting, some of which will occur within the lands identified as wilderness capable by the Forest Service just eight years ago.

IV. THE WEST ELK MINE'S AIR POLLUTION

52. In addition to requiring methane drainage wells and roads that scar the surface above and adjacent to the Mine, the West Elk Mine's high concentrations of methane cause and

contribute to air pollution and climate change when vented into the atmosphere. The Forest Service and BLM estimate that in the one-year period of July 2010 to June 2011, the West Elk Mine vented 58,663 tons of methane pollution into the atmosphere. Methane is a potent greenhouse gas. One pound of methane has at least twenty-one times the global warming potential of carbon dioxide. Consequently, the 58,663 tons of methane vented into the atmosphere from the West Elk Mine in 2010-2011 had the same heat-trapping impacts as 1.2 million tons of carbon dioxide pollution. The West Elk Mine's greenhouse gas emissions are roughly equivalent to the greenhouse gas emissions of over 230,000 automobiles, and greater than the greenhouse gas emissions of the coal-fired Valmont Power Plant in Boulder. The greenhouse gas pollution from the West Elk Mine far exceed the thresholds set by EPA and the Council on Environmental Quality (CEQ) that signify when a project's greenhouse gas emissions are significant. EPA has set a significance threshold of 100,000 tons per year of carbon dioxide equivalent. CEQ has proposed a significance threshold of 25,000 tons per year of carbon dioxide equivalent; the West Elk Mine's methane emissions are nearly 50 times greater than CEQ's proposed threshold.

53. The coal mined at the West Elk Mine will also emit large quantities of carbon dioxide pollution when it is subsequently burned at coal-fired power plants. The Forest Service and BLM estimate that the carbon emissions resulting from combusting the West Elk Mine's coal are between 18 to 20 millions tons per year of carbon dioxide.

54. When the impacts of methane pollution and coal combustion are combined, the West Elk Mine is responsible for annual greenhouse gas pollution of approximately 19 to 21 million tons per year of carbon dioxide equivalent. The Forest Service and BLM estimate that

the Lease Modifications will extend the West Elk Mine's life by 2.9 years. Consequently, the federal agencies' approval of the Lease Modifications would result in an additional 55 to 60 million tons of carbon dioxide equivalent pollution over the Lease Modifications' life.

55. The U.S. Supreme Court has acknowledged that climate change poses "serious and well recognized" impacts to the human environment. Massachusetts v. EPA, 549 U.S. 497, 521 (2007). Among the long list of public health and environmental harms caused by climate change are increased average temperatures, more frequent extreme temperatures, more frequent extreme weather events, increased sea-level rise, changes in precipitation patterns, increased species extinctions, and increased public health harms. The Forest Service and BLM state that average temperatures in Colorado in 2020 are expected to be 2.5 degrees Fahrenheit warmer than in the last half of the twentieth century. By 2050, average Colorado temperatures are expected to increase by 4 degrees Fahrenheit relative to the last half of the twentieth century. This will result in fewer extreme cold months, more extreme warm months, and more strings of consecutively warm winters in Colorado. Colorado's high-elevation snowpack is expected to decrease by 10-20% by 2050, and Upper Colorado River Basin streamflows are projected to decrease by 6-45%. Due to increased temperatures, peak spring streamflows in Colorado have shifted two weeks earlier since the 1970s.

56. The multitude of severe environmental and public health harms caused by climate change is projected to result in significant economic costs. For example, climate change will cause increased expenditures for disaster relief, flood insurance, and drought-related crop losses. The U.S. Government Accountability Office (GAO) has noted that in the past decade, extreme weather-related events have cost the United States tens of billions of dollars in damages. The

GAO report highlighted that in 2012 the federal government requested $60.4 billion for Superstorm Sandy recovery efforts; and New York City recently announced a $20 billion climate adaptation plan aimed at avoiding a repeat of the destruction wrought by Superstorm Sandy from future storms. In addition, a National Research Council study commissioned in part by the Central Intelligence Agency reported the United States military and intelligence agencies will face increased threats and expenditures in future years from decreased world stability, water and food shortages, and energy supply chain disruptions caused by climate change.

57. Given the multi-billion dollar costs of climate change, federal agencies have developed a metric called the "social cost of carbon" that estimates the socio-economic costs of each ton of greenhouse gas pollution. EPA explains that the social cost of carbon "is meant to be a comprehensive estimate of climate change damages and includes changes in net agricultural productivity, human health, and property damages from increased flood risks." However, EPA makes clear that the social cost of carbon "does not include all important damages" and it "very likely" underestimates the true economic costs of greenhouse gas pollution. Id. In 2010, EPA and other agencies (including the Agriculture Department) estimated that the social cost of carbon is $21 per ton of carbon dioxide emissions. The federal government has since revised the social cost of carbon upward to $36 per ton of carbon dioxide emissions.

58. The social cost of the West Elk Mine's methane and carbon dioxide pollution is staggering. Using the conservative and outdated $21 per ton estimate for the social cost of carbon, the greenhouse gas pollution resulting from the Lease Modifications has a social cost of between $1.2 billion and $1.3 billion. Using the updated $36 per ton social cost of carbon, the Lease Modifications have a social cost of between $2.0 billion and $2.2 billion.

59. The West Elk Mine also causes significant air pollution beyond carbon pollution. The Forest Service and BLM estimate that the Mine's operations—including the use of trucks, heavy equipment, and rail transportation—cause over 38 tons per year (tpy) of particulate matter pollution, over 169 tpy of nitrogen oxides pollution, and over 127 tpy of carbon monoxide pollution. Air removed from the mine through drainage results in the emission of not only methane but also volatile organic compound (VOCs). VOCs can cause numerous health impacts, including eye, nose, and throat irritation; headaches, loss of coordination, and nausea; and damage to the liver, kidneys, and central nervous system. VOCs also react with other air pollutants in the presence of sunlight to create ground-level ozone, also known as smog. Ground-level ozone causes a multitude of harmful health effects, including chest pain, coughing, and throat irritation. Ground-level ozone can also worsen bronchitis, emphysema, and asthma; reduce lung function and inflame the linings of the lungs; and permanently scar lung tissue with repeated exposure.

60. In the Lease Modifications Final EIS, the federal agencies noted that samples taken from West Elk Mine's methane drainage wells in 2009 identified VOCs and other toxic compounds in air emissions. The federal agencies also stated that VOC emissions from the Mine's methane drainage wells are likely to be "highly variable." However, the Forest Service and BLM made no efforts to analyze or asses the Mine's VOC emissions and whether such emissions are significant under NEPA. Instead, the federal agencies explicitly acknowledged that "no attempt is made here to quantify all [VOC] emissions on an annual basis." Id. Similarly, the Forest Service and BLM made little to no effort to analyze the impacts of the

Mine's air pollution on ground-level ozone concentrations, for which VOC pollution is a key contributor.

61. Expanding the West Elk Mine and extending the Mine's life for an additional 2.9 years will cause additional emissions of VOCs and other air pollutants.

V. THE FOREST SERVICE AND BLM'S ENVIRONMENTAL REVIEW AND APPROVAL OF THE LEASE MODIFICATIONS

62. In November 2011, the Forest Service and BLM issued an Environmental Assessment (EA) initially approving Lease Modifications expanding the West Elk Mine, and concluding that the Lease Modifications would have "no significant impact" on the Sunset Roadless Area and the forests and wildlife found there. HCCA appealed the decision to the Regional Forester pursuant to 36 C.F.R. § 215 and argued that NEPA required preparation of an EIS containing a more in-depth analysis of the Lease Modifications' impacts. In response, in February 2012, the Forest Service rescinded its approval of the Lease Modifications.

63. In May 2012, the Forest Service and BLM issued a Draft EIS purporting to analyze the Lease Modifications' impacts. BLM also issued its own "preliminary" EA that incorporated the Draft EIS by reference and repeated verbatim parts of the Draft EIS's analysis. The Draft EIS failed to take the requisite "hard look" at many of the Lease Modifications' impacts. For example, the Draft EIS failed to adequately analyze the impacts to wildlife, air quality, and other resources that would result from mining the 8.9 million tons of coal on adjacent public and private lands. The Draft EIS also failed to quantify and adequately analyze the West Elk Mine's VOC pollution.

64. The Draft EIS included a "Benefit-Cost Analysis" that estimated the Lease Modifications' costs and benefits. This "Benefit-Cost Analysis" included an estimate of the

social cost of the Lease Modifications' greenhouse gas pollution. The Draft EIS estimated that the social cost of the Lease Modification's greenhouse pollution was $8 million, based on annual emissions of 383,000 tons of carbon dioxide equivalent emissions. This analysis did not address the costs associated with combustion of the mined coal.

65. On July 9, 2012, HCCA submitted detailed comment letters to the Forest Service on the Draft EIS and to BLM on its draft "preliminary" EA, addressing these and other flaws in the agencies' analyses.

66. In August 2012, the Forest Service and BLM issued the Final EIS for the Lease Modifications to expand the West Elk Mine. BLM abandoned its separate EA. Despite HCCA's comments, the Final EIS failed to take a hard look at numerous impacts of mining the Lease Modifications. First, the Final EIS failed to adequately analyze and disclose the impacts to vegetation, wildlife, water quality, and other resources from coal mining on adjacent lands that would not occur but for the Lease Modifications. Second, the Final EIS also failed to disclose the quantity or impacts of VOC emissions that will occur due to reasonably foreseeable mining within the Lease Modifications. Third, rather than update and correct the Draft EIS's "Benefit-Cost Analysis," the Final EIS eliminated all discussion and analysis of the costs of the Lease Modifications' methane pollution. The Final EIS thus skewed the analysis of the Lease Modifications' socioeconomic impacts by underestimating the projects' costs and overestimating the Lease Modifications' benefits. Fourth, the Final EIS failed to take a hard look at the impacts to roadless and wilderness values of reasonably foreseeable mining of the Lease Modifications.

VI. THE COLORADO ROADLESS RULE

67. Just days before the Forest Service issued the Final EIS on the Lease Modifications, the agency adopted the Colorado Roadless Rule. 77 Fed. Reg. 39,576, 39,576 (July 3, 2012); 36 C.F.R. § 294.43. The Forest Service issued a final EIS purporting to analyze the environmental impacts of the proposed rule on May 4, 2012. 77 Fed. Reg. 26548 (May 4, 2012). The Forest Service admitted in its EIS that the exception for temporary roads for coal exploration and coal mining in the North Fork coal mining area would allow for the mining (and combustion) of about half a billion tons of coal that, absent road construction, would not otherwise be mined. However, the final EIS failed to disclose the air pollution impacts, and especially the impacts of greenhouse gas pollution, that would result from he additional coal mining and coal combustion made possible by the rule.

VII. AGENCY LEASE MODIFICATIONS DECISIONS AND HCCA'S ADMINISTRATIVE APPEALS

68. On August 2, 2012, the Forest Service issued its Record of Decision (ROD) consenting to the Lease Modifications. The Forest Service ROD approved "Alternative 3" in the Final EIS, which approved both Lease Modifications in full and applied and relied on the Colorado Roadless Rule to allow road construction in the Sunset Roadless Area.

69. On September 24, 2012, HCCA filed an administrative appeal of the Forest Service's approval of the Lease Modifications pursuant to 36 C.F.R. § 215. The appeal challenged, among other things, the Final EIS's failure to fully and adequately analyze the Lease Modifications' impacts to adjacent private and public lands, socioeconomic, VOC emissions, and wilderness and roadless character.

70. On November 6, 2012, the Forest Service's Appeal Deciding Officer denied HCCA's appeal and upheld the Forest Service's decision to approve the Lease Modifications.

71. Following that decision, the Forest Service officially consented to the Lease Modifications. After receiving the Forest Service's consent, BLM issued its ROD on December 27, 2012 adopting the Final EIS's analysis and approving the Lease Modifications.

72. On January 28, 2013, HCCA appealed the BLM's approval of the Lease Modifications to the Interior Board of Land Appeals (IBLA) pursuant to 43 C.F.R. §§ 4.21 and 4.410-4.413. HCCA timely sought a stay of BLM's decision, which by regulation triggered a 45-day stay of BLM's decision. 43 C.F.R. §§ 4.21. When the IBLA failed to act on HCCA's motion with the 45-day period, the automatic stay expired in mid-March 2013. BLM signed the Lease Modifications on March 27, 2013, which allowed MCC to move forward with actions to exploit the leased coal. HCCA subsequently moved for a voluntary dismissal of the IBLA appeal so HCCA could pursue this action in federal court. On April 23, 2013, the IBLA issued an order granting HCCA's voluntary dismissal of the appeal.

VIII. THE BLM'S AND FOREST SERVICE'S APPROVAL OF THE SUNSET ROADLESS AREA EXPLORATION PLAN

73. On March 21, 2013, a week before BLM signed the Lease Modifications, a subsidiary of Arch Coal submitted the Exploration Plan for the Sunset Roadless Area within the Lease Modifications. On information and belief, Arch Coal re-submitted the Exploration Plan after BLM signed the Lease Modifications on March 27, 2013. The initial plan proposed the construction of 5.5 miles of road and 10 well pads within the Sunset Roadless to assist Arch Coal in characterizing the coal resource in the Lease Modifications.

74. The fact that the Arch seeks to explore inside the Lease Modifications area has regulatory advantages for the company. If the Lease Modifications were not in place (e.g., if they were vacated by Court order), BLM would have to process any exploration proposal under a different set of Mineral Leasing Act regulations, specifically those governing the granting of exploration licenses. 43 C.F.R. Part 3410. Those regulations would require the publication of a notice of the company's exploration plans in the Federal Register, and a requirement that other companies have the chance to share in the costs and the data retrieved from such exploration, 43 C.F.R. § 3410.2-1(c).

75. BLM notified the public in late April 2013 that it was considering the Exploration Plan, but provided the public only with information concerning the name of the applicant, the name of the project, and the general location of the project. BLM did not make the Plan itself available to the public via the internet. The Forest Service provided no notice to the public of its intent to concur with the Exploration Plan.

76. Before BLM posted its public notice, HCCA joined other conservation groups in submitting a preliminary comment letter on the Exploration Plan (which plan HCCA obtained only when its counsel called counsel for BLM and sought a copy). HCCA urged BLM to prepare a NEPA analysis of the exploration activity's impacts on watersheds, streams soils, wildlife, recreation and wilderness or roadless values. The letter emphasized the Sunset Roadless Area's unique beauty and values and requested that BLM consider several alternatives which could reduce the environmental impacts of coal exploration there, including reducing the number of well pads to be approved, eliminating well pads that have the most damaging impacts, removing redundant roads, phasing the project by permitting only those activities proposed for

2013, and using helicopter access in lieu of roads. HCCA based their comments on the proposed Exploration Plan, but expected, consistent with NEPA, BLM's prior practice with coal mining exploration plans just a few miles from the Sunset Roadless Area, and pursuant to 43 C.F.R. § 3482.2(a) (providing for public comment), that BLM would publish a draft EA and provide the public an opportunity to review and comment on the agency's analysis.

77. On June 27, 2013, and without releasing a draft EA for public review and comment, BLM issued a FONSI, and decision record approving the Exploration Plan. A final EA, prepared by BLM with the Forest Service identified as a "cooperating agency," was made available to the public only the day after the FONSI and decision record were signed.

78. Also on June 27, 2013, the Forest Service sent a letter to the BLM stating that it "concurred" with the Exploration Plan and determined that the reclamation bond was adequate. The Forest Service's concurrence decision and determination of bond adequacy was subject to NEPA in accordance with 36 C.F.R. § 220. Specifically, the Forest Service's concurrence decision and determination of bond adequacy should have at least been analyzed in an EA, meaning public notice, an opportunity for comment, and opportunity for predecisional objection should have been provided in accordance with 36 C.F.R. § 218. The Forest Service did not subject its concurrence decision to NEPA or provide public notice, an opportunity for public, or an opportunity to submit a predecisional objection on its concurrence decision, as required by 36 C.F.R. § 218. The Forest Service did not issue a Decision Notice in providing its concurrence and determination of bond adequacy.

79. On June 28, 2013, one day after BLM signed the decision record and FONSI, BLM petitioned the Interior Board of Land Appeals to put the Exploration Plan decision into

"full force and effect" to allow Arch Coal to immediately move forward with exploration. Such a "full force and effect" decision would circumvent the Board's normal procedure whereby BLM cannot implement a decision until the public had a chance to appeal to the Board and to seek an automatic 45-day stay.

80. The Exploration Plan EA states that Arch Coal intends to construct 5.9 miles of road and 10 well pads within the Sunset Roadless Area, disturbing a total of 30 acres. Roughly half of the construction will occur this summer of 2013 (2.8 road miles, 4 well pads, 12 acres bulldozed), with the balance of construction occurring in 2014. The EA acknowledges that road construction will disturb an area 30 to 45 feet wide (or approximately the width of up to 6 vehicles) in the Sunset Roadless Area. Construction will involve seven stream crossings, the installation of culverts, the construction of up to twenty 1,800-cubic-foot slurry pits to capture polluted drilling fluids, drilling, the removal and stockpiling of topsoil, and traffic consisting of drilling rigs, fuel trucks, water trucks, a pipe truck, flatbed trailer, air compressors and/or boosters, a supply trailer, and four-wheel-drive pick up trucks.

81. The Exploration Plan EA fails to take a hard look at the impacts of road and pad construction and clearcutting on values such as recreation, wilderness capability, wildlife, and water quality. For example, the EA asserts there will be no impact to recreational activities in the area because there are "no recreations [sic] facilities or areas within the analysis area." The EA thus ignores the existence of the several trails in the area, including the Sunset Trail, after which the Exploration Plan is named, and the fact that some recreationists seek out roadless areas precisely because there are few developed facilities. The EA fails to even mention the existence of wilderness-capable lands within the Exploration Plan project area. The FONSI concludes that

the construction of miles of road and ten well pads would have no additional impacts on the area's roadless nature. Like the Lease Modifications EIS, the Exploration Plan EA applied and relied on the Colorado Roadless Rule.

82. The Exploration Plan EA also fails to examine a range of reasonable alternatives, taking instead an all-or-nothing approach. The EA analyzes fully only Arch Coal's proposal (ten well pads and six miles of road), and the no action alternative (zero well pads and zero miles of road), despite the fact that public commenters, including HCCA, specifically requested that the BLM analyze alternatives that would reduce redundant road access and that would eliminate the most environmentally damaging roads and well pads.

FIRST CAUSE OF ACTION

(NEPA Violation: Lease Modification EIS Failure to Adequately Analyze the Environmental Impacts of Mining 8.9 Million Tons of Coal on Adjacent Public and Private Lands)

83. The allegations in paragraphs 1 to 82 are incorporated herein by reference.

84. NEPA requires federal agencies, including the Forest Service and BLM, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.25(c).

85. The Lease Modifications Final EIS indicates that approval of the Lease Modifications will allow MCC to mine 8.9 million tons of coal on adjacent public and private lands that MCC would be unable to access and mine without the Lease Modifications.

86. The Lease Modifications Final EIS failed to take the required "hard look" at the impacts to wildlife, air quality, and other resources that would result from mining the 8.9 million tons of coal on adjacent public and private lands.

87. The Forest Service and BLM's failure to take the required "hard look" at the impacts to wildlife, air quality, and other resources that would result from mining the 8.9 million tons of coal on adjacent public and private lands in analyzing the impacts of the agencies' decisions to approve or consent to the Lease Modifications violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SECOND CAUSE OF ACTION

(NEPA Violation: Failure to Adequately Analyze the Lease Modifications' Socioeconomic Impacts)

88. The allegations in paragraphs 1 to 87 are incorporated herein by reference.

89. NEPA requires federal agencies, including the Forest Service and BLM, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions, including social and economic impacts. 42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.8, 1508.25(c). NEPA further requires that where there is incomplete or unavailable information concerning impacts, the agency shall locate such information unless, inter alia, the cost is exorbitant. 40 C.F.R. §§ 1502.22.

90. The Lease Modifications Draft EIS contained a flawed socioeconomic analysis that failed to disclose completely the costs of the greenhouse gas pollution from coal mining that will foreseeably occur as a result of the Lease Modifications and overestimated the project's economic benefits. Rather than correct this analysis, the Lease Modifications Final EIS eliminated all analysis of the costs of the Lease Modifications' greenhouse gas pollution. The Final EIS also overestimated the Lease Modifications' economic benefits. The Lease Modifications Final EIS thus failed to take a "hard look" at the analysis of the Lease

Modifications' socioeconomic impacts, in violation of NEPA. The Lease Modifications Final EIS also fails to comply with NEPA's provision concerning incomplete or unavailable information concerning socioeconomic impacts, in violation of NEPA.

91. The Forest Service and BLM's failure to comply with NEPA in analyzing the socioeconomic impacts of the agencies' decisions to approve or consent to the Lease Modifications violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

THIRD CAUSE OF ACTION

(NEPA Violation: Failure to Adequately Analyze the Lease Modifications' Air Quality Impacts)

92. The allegations in paragraphs 1 to 92 are incorporated herein by reference.

93. NEPA requires federal agencies, including the Forest Service and BLM, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.25(c). NEPA further requires that where there is incomplete or unavailable information concerning impacts, the agency shall locate such information unless, inter alia, the cost is exorbitant. 40 C.F.R. §§ 1502.22.

94. The Lease Modifications Final EIS failed to quantify and analyze fully the air quality impacts, including VOC pollution and ozone pollution, from coal mining that will foreseeably occur as a result of the Lease Modifications, and thus failed to take the "hard look" at the impact of the Lease Modifications, in violation of NEPA. The Lease Modifications Final EIS also fails to comply with NEPA's provision concerning incomplete or unavailable information concerning VOC pollution and ozone pollution, in violation of NEPA.

95. The Forest Service and BLM's failure to comply with NEPA in analyzing the air quality impacts of the agencies' decisions to approve or consent to the Lease Modifications

violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

FOURTH CAUSE OF ACTION

(NEPA Violation: Failure to Adequately Analyze the Lease Modifications' Impacts to Wilderness and Roadless Character of the Sunset Roadless Area)

96. The allegations in paragraphs 1 to 96 are incorporated herein by reference.

97. NEPA requires federal agencies, including the Forest Service and BLM, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.25(c).

98. The Lease Modifications Final EIS failed to quantify and analyze fully impacts, to the wilderness and roadless character of the Sunset Roadless Area caused by coal mining that will foreseeably occur as a result of the Lease Modifications, and thus failed to take the "hard look" at the impact of the Lease Modifications, in violation of NEPA.

99. The Forest Service and BLM's failure to take the requisite "hard look" at the impacts to wilderness and roadless character caused by the agencies' decisions to approve or consent to the Lease Modifications violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

FIFTH CAUSE OF ACTION

(NEPA Violation: Failure to Adequately Analyze the Colorado Roadless Rule's Impacts on Air and Greenhouse Gas Pollution)

100. The allegations in paragraphs 1 to 100 are incorporated herein by reference.

101. NEPA requires federal agencies, including the Forest Service and BLM, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.25(c). NEPA further requires that where

there is incomplete or unavailable information concerning impacts, the agency shall locate such information unless, inter alia, the cost is exorbitant. 40 C.F.R. §§ 1502.22.

102. The Colorado Roadless Rule Final EIS failed to adequately analyze and disclose the impacts of the Rule's provisions allowing road construction for coal mining in the North Fork coal mining area, specifically the air quality impacts (including the impacts of volatile organic compound emissions and greenhouse gas pollution) of methane venting, coal mine operation, and coal combustion.

103. The Forest Service's failure to take the requisite "hard look" at the impacts of the Colorado Roadless Rule on air pollution including volatile organic compound emissions and greenhouse gas pollution violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SIXTH CAUSE OF ACTION

(Roadless Rule Violation: Failure to Comply with the Roadless Rule's General Prohibition on Road Construction in Inventoried Roadless Areas)

104. The allegations in paragraphs 1 to 103 are incorporated herein by reference.

105. Forest Service regulations prohibit road construction in inventoried roadless areas in Colorado unless one of several exceptions apply. 36 C.F.R. § 294.43(a).

106. Because the Forest Service failed to comply with NEPA in evaluating the air pollution impacts of the provision of the Colorado Roadless Rule permitting the construction of temporary roads for coal exploration and coal mining in the North Fork coal mining area (36 C.F.R. § 294.43(c)(1)(ix)), that provision is invalid. Because the Colorado Roadless Rule exception allowing road construction for coal mine-related activities is invalid, the general prohibition on road construction in the Colorado Roadless Rule applies.

107. BLM's decision to approve road construction for coal exploration violates the remainder of the Colorado Roadless Rule, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SEVENTH CAUSE OF ACTION
(Mineral Leasing Act Violation: Failure to Obtain an Exploration License for Coal Mining Outside a Lease Boundary)

108. The allegations in paragraphs 1 to 107 are incorporated herein by reference.

109. Regulations issued pursuant to the Mineral Leasing Act and FLPMA require that where the exploration will take place on lands not subject to a federal coal lease, the entity seeking to explore must receive an exploration license. 43 C.F.R. Part 3410 (Exploration Licenses). These regulations require the publication of a notice of the company's exploration plans in the Federal Register, and a requirement that other companies have the chance to share in the costs and the data retrieved from such exploration. 43 C.F.R. § 3410.2-1(c). Where the exploration will occur on lands leased to the entity seeking to explore, but not within an approved mine permit boundary, BLM reviews the exploration plan pursuant to the requirements of 43 C.F.R. Part 3480.

110. Because Lease Modifications decision was adopted in violation of law, it is invalid. The area subject to the Exploration Plan is thus not legally part of MCC's coal leases. Because the area subject to the Exploration Plan is not legally part of MCC's coal leases, exploration of the area can only occur if BLM first approves an exploration license pursuant to 43 C.F.R. Part 3410. BLM has not issued such a license.

111. BLM's decision to approve coal exploration without complying with law concerning the issuance of exploration licenses violates the Mineral Leasing Act and regulations

implementing that statute (43 C.F.R. Part 3410), and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

EIGHTH CAUSE OF ACTION

(NEPA Violation: Failure to Adequately Analyze the Explorations Plan's Environmental Impacts)

112. The allegations in paragraphs 1 to 111 are incorporated herein by reference.

113. NEPA requires federal agencies, including the Forest Service and BLM, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions. 42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.25(c).

114. In the Exploration Plan EA, the BLM and Forest Service failed to disclose adequately the impacts of road construction and well-pad clearing for the Sunset Trail Area Coal Exploration Plan on, inter alia, wilderness capable lands and on recreation.

115. The Forest Service and BLM's failure to take the requisite "hard look" at the impacts on, inter alia, wilderness capable lands and on recreation of the agencies' decisions to approve or concur with the Sunset Trail Area Coal Exploration Plan violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

NINTH CAUSE OF ACTION

(NEPA Violation: Failure to Analyze a Range of Reasonable Alternatives to the Exploration Plan)

116. The allegations in paragraphs 1 to 115 are incorporated herein by reference.

117. NEPA requires federal agencies, including the Forest Service and BLM, to analyze a range or reasonable alternatives in EAs. 42 U.S.C. § 4332(2)(C), (E); 40 C.F.R. §§ 1502.14, 1508.9.

118. The BLM and Forest Service failed to analyze reasonable alternatives in the EA for the Sunset Trail Area Coal Exploration Plan. The EA analyzes fully only Arch Coal's proposal (ten well pads and six miles of road), and the no action alternative (zero well pads and zero miles of road), despite the fact that other reasonable alternatives were suggested, including alternatives that would reduce redundant road access and that would eliminate the most environmentally damaging roads and well pads.

119. The Forest Service's and BLM's failure to analyze a range of reasonable alternatives in the agencies' analysis of the impacts of the Sunset Trail Area Coal Exploration Plan violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

TENTH CAUSE OF ACTION

(NEPA Violation: Forest Service Failure to Comply with NEPA for the Sunset Trail Area Coal Exploration Plan Concurrence Decision)

120. The allegations in paragraphs 1 to 119 are incorporated herein by reference.

121. The Forest Service's concurrence with the BLM's Sunset Trail Area Coal Exploration Plan, as well as their determination of the adequacy of the reclamation bond, was subject to NEPA. 36 C.F.R. § 220.4(a). Specifically, the Forest Service's concurrence required the preparation of an EA and issuance of a Decision Notice before it could be approved. 36 C.F.R. § 220.7.

122. The Forest Service did not prepare an EA or decision notice for its concurrence and determination of bond adequacy. The failure of the Forest Service to follow proper NEPA procedures denied the public, including Plaintiffs, the opportunity to be notified, to provide

comment, and to avail themselves of the predecisional objection process in accordance with 36 C.F.R. § 218.

123. The Forest Service's failure to comply with NEPA in issuing its concurrence and determination of bond adequacy with regards to the Sunset Trail Area Coal Exploration Plan violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

ELEVENTH CAUSE OF ACTION

(Healthy Forests Restoration Act Violation: Failure to Comply with Notice, Comment, and Appeal Regulations)

124. The allegations in paragraphs 1 to 123 are incorporated herein by reference.

125. The Forest Service's concurrence with the BLM's Sunset Trail Area Coal Exploration Plan, as well as the Service's determination of the adequacy of the reclamation bond, was subject to NEPA. 36 C.F.R. § 220.4(a). Specifically, the Forest Service's concurrence required the preparation of an EA and issuance of a Decision Notice before it could be approved. 36 C.F.R. § 220.7.

126. Because its concurrence and determination of bond adequacy required the preparation of an EA and Decision Notice, the Forest Service's decision was subject to the notice, comment, and objection requirements as required by regulations implementing the Healthy Forests Restoration Act, 36 C.F.R. § 218. The Forest Service did not comply with the requirements of 36 C.F.R. § 218, thereby denying the public, including Plaintiffs, the opportunity to be notified, to comment, and to object to the Forest Service's decision.

127. The Forest Service's failure to comply with 36 C.F.R. § 218 in issuing its concurrence and determination of bond adequacy with regards to the Sunset Trail Area Coal

Exploration Plan violates its notice, comment, and objection procedural requirements and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and provide the following relief:

1. Declare that Defendants violated NEPA, the Mineral Leasing Act, the Colorado Roadless Rule, the Healthy Forests Restoration Act, regulations implementing these laws, and the APA in approving the Lease Modifications and the Sunset Trail Area Coal Exploration Plan as set forth above;

2. Declare unlawful and issue an injunction setting aside Defendants' decisions approving and consenting to Lease Modifications COC-1362 and COC-67232;

3. Declare unlawful and issue an injunction setting aside Defendants' decisions approving and concurring to the Sunset Trail Area Coal Exploration Plan;

4. Declare unlawful and issue an injunction setting aside Defendant U.S. Forest Service's decision adopting an exception to the Colorado Roadless Rule for road construction for coal mining (36 C.F.R. § 294.43(c)(1)(ix));

5. Issue an injunction ordering Defendants to not approve, consent to, or otherwise take action pursuant to Lease Modifications COC-1362 and COC-67232 unless and until the Defendants comply with NEPA, the Mineral Leasing Act, the remaining valid portions of the Colorado Roadless Rule, and regulations implementing these laws;

6. Issue an injunction ordering Defendants to not approve, concur with, or otherwise take action pursuant to any exploration plan for the Lease Modifications area, including the Sunset Trail Area Coal Exploration Plan, unless and until Defendants comply with NEPA, the Mineral Leasing Act, the remaining valid portions of the Colorado Roadless Rule, the Healthy Forests Restoration Act, and regulations implementing these laws

7. Grant Plaintiffs such temporary restraining orders or preliminary injunctions as they may request;

8. Award Plaintiffs costs and reasonable attorney's fees as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other statute;

9. Retain jurisdiction of this action to ensure compliance with its decree; and

10. Provide such other declaratory and injunctive relief as the Court deems just and proper.

Respectfully submitted July 2, 2013,

/s/ *Edward B. Zukoski*
Edward B. Zukoski
Earthjustice
1400 Glenarm Place, Suite 300
Denver, CO 80202
(303) 623-9466
Fax: (303) 623-8083
tzukoski@earthjustice.org

Attorney for High Country Citizens' Alliance and WildEarth Guardians