

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS; DINÉ CARE,	)	
	)	
Plaintiffs,	)	
v.	)	<b>No.</b> _____
BUREAU OF LAND MANAGEMENT,	)	
	)	
Defendant.	)	<b>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</b>

**PRELIMINARY STATEMENT**

1. This suit challenges the decisions by the Bureau of Land Management (“BLM”) Farmington Field Office (“FFO”) authorizing two quarterly oil and gas lease sales (April and July 2008) for oil and gas leases in the FFO Planning Area in northwestern New Mexico. Specifically, this action seeks declaratory and injunctive relief for violations by Defendant BLM of the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (“NEPA”), and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* (“APA”), in connection with BLM’s approval of the April<sup>1</sup> and July<sup>2</sup> 2008 quarterly oil and gas lease sales under the jurisdiction of the FFO.

2. Plaintiffs WildEarth Guardians and Diné Citizens Against Ruining Our Environment (“Diné CARE”) contend that BLM has violated NEPA by basing its decision to conduct the lease sales on inadequate Environmental Assessments (“EA”)

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<sup>1</sup> The following 18 parcels under the FFO’s jurisdiction were included in the April lease sale: NM-200804-059 through NM-200804-076.

<sup>2</sup> The following 9 parcels under the FFO’s jurisdiction were included in the July lease sale: NM-200807-034 through NM-200807-042.

which did not support the issuance of the Findings of No Significant Impact (“FONSI”), by failing to provide a timely opportunity for public involvement in the NEPA process, and by failing to do an EIS . The EAs did not fully consider, evaluate, and disclose the significant direct, indirect, and cumulative environmental impacts of the leases, including impacts on the already-deteriorating air quality in the San Juan Basin. The EAs also failed to analyze a reasonable range of alternatives that could provide protections for air quality while allowing for lease development. Furthermore, because the lease sales may result in significant environmental impacts, Environmental Impact Statements (“EISs”) should have been prepared.

3. As a result of these violations, Plaintiffs seek a court order declaring that BLM has violated NEPA and enjoining BLM from executing or implementing the lease sales until BLM has fully complied with all requirements of NEPA.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); the Declaratory Judgment Act, 28 U.S.C. § 2201; and the APA, 5 U.S.C. §§ 551 *et seq.*

5. There exists now between the parties hereto an actual, justiciable controversy in which the Plaintiffs are entitled to have a declaration of their rights and of Defendant's obligations, and further relief, because of the facts and circumstances hereinafter set out.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because this is an action against an agency of the United States and because the events or omissions out of which this claim arises took place in New Mexico.

## **PARTIES**

7. WILDEARTH GUARDIANS is a non-profit conservation organization with offices in Santa Fe, New Mexico, and Denver, Colorado. WildEarth Guardians is dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West, and to safeguarding the Earth's climate. WildEarth Guardians and its members work to reduce harmful air pollution to safeguard public health, welfare, and environment. WildEarth Guardians and its members have an interest in ensuring that oil and gas development on lands under the jurisdiction of the FFO proceeds responsibly, in a manner that both safeguards public health, welfare, and the environment, and promotes economic development. WildEarth Guardians has approximately 9,000 members, some of whom live in New Mexico, and WildEarth Guardians members engage in outdoor activities on public lands under the jurisdiction of the FFO. These members will curtail their use of public lands administered by the FFO to avoid exposure to increased air pollution resulting from oil and gas development on the April and July lease sales. Furthermore, when members do conduct activities on public lands under the jurisdiction of the FFO and other lands in the San Juan County area, that experience will be harmed and degraded by virtue of the air pollution resulting from oil and gas development on the lease sale sites together with pollution-producing development on surrounding lands.

8. Diné CARE is a non-profit organization incorporated in the Navajo Nation. Diné CARE is an all Navajo organization comprised of a federation of grassroots community activists. Diné CARE's goal is empowerment of Navajo communities to defend themselves and to promote sustainable and locally beneficial development based on the life-sustaining principles of Navajo culture. The organization actively promotes

small-scale, value-added industries, decentralized energy production, recycling, and environmental regeneration. Because of its ability to provide environmental awareness in terms of the unique Navajo culture and language at the grassroots level, Diné CARE has been active in numerous communities, schools, and environments on and outside of the Navajo Reservation. Many of Diné CARE's members live and work in the San Juan County area, and also use the public lands under the jurisdiction of the FFO. Those members who live outside San Juan County may be forced to curtail their use of public lands administered by the FFO and other lands in San Juan County to avoid exposure to increased air pollution resulting from oil and gas development on the April and July lease sales. Those members who live and/or work in San Juan County, however, will not be able to avoid the increased air pollution.

9. Both of the Plaintiffs and their members use and enjoy the public lands under the jurisdiction of the FFO for recreational, scientific, aesthetic, spiritual, commercial and other public purposes. Plaintiffs' and their members' interests have been, are being, and will continue to be irreparably harmed by the Defendant's April and July 2008 EAs/FONSIs approving oil and gas lease sales that will further degrade the air quality in the Farmington area. Plaintiffs and their members also have a substantial interest in ensuring that the BLM complies with the requirements of NEPA.

10. The BUREAU OF LAND MANAGEMENT is an agency of the United States within the Department of Interior that is directly responsible for carrying out the Department's obligations under statutes and regulations governing oil and gas leasing and development, including NEPA.

## **APPLICABLE NEPA REQUIREMENTS**

11. NEPA was enacted to ensure that federal projects do not proceed until the environmental effects associated with a project are completely assessed and analyzed by the proponent federal agency. 42 U.S.C. § 4332(2)(C)

12. NEPA requires the preparation of an EIS if a proposed federal action has the potential to significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. If a proposed federal action is associated with the possibility of a significant environmental impact, then the action agency must prepare an EIS. A federal action may forego preparation of an EIS, and approve an action on the basis of an EA and FONSI, only if there is no possibility of significant impact.

13. All NEPA analyses—EISs and EAs—must, *inter alia*, analyze alternatives to the proposed action as well as the direct, indirect, and cumulative impacts associated with the proposed action.

14. NEPA requires agencies to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. § 1506.6(a).

## **FACTUAL ALLEGATIONS**

15. BLM oil and gas lease sales for parcels under the jurisdiction of the FFO fall under the purview of the 2003 Farmington Resource Management Plan (“RMP”). The RMP provides for development of 9,942 new oil and gas wells in the planning area over a 20-year period. Decisions as to which lands are open for leasing and what leasing stipulation can be put on those lands were made during the land use planning process.

16. The planning area for the RMP is the New Mexico portion of the San Juan Basin, which includes all of San Juan County, most of McKinley County, western Rio Arriba County, and northwestern Sandoval County.

17. Ozone is a criteria pollutant under the federal Clean Air Act, 42 U.S.C. § 7401, *et seq.* (“the Act”). The Act establishes a National Ambient Air Quality Standard (“NAAQS”) for each criteria pollutant that represents the maximum allowable concentration of each pollutant that can occur in the air and still protect public health. 42 U.S.C. § 7409. An area will be designated as not in attainment with the ozone NAAQS whenever the three-year average of the fourth highest annual eight-hour ozone concentration exceeds the NAAQS.

18. Ground-level ozone is a dangerous pollutant which causes a variety of adverse impacts to human health including asthma and other respiratory ailments.

19. Oil and gas extraction, processing, transportation, and use contribute to ground-level ozone by emitting ozone precursors, nitrogen oxides (“NO<sub>x</sub>”) and volatile organic compounds (“VOCs”).

20. Until recently, the NAAQS for ozone was 0.08 parts per million (“ppm”) over an 8-hour period. Because older air quality monitors were only able to measure ozone concentrations to two decimal places, EPA employed a “rounding convention” in which it rounded values below 0.085 ppm down to 0.08, so that the ozone NAAQS was effectively 0.084 ppm. A violation was not deemed to occur until the air quality monitor recorded an ozone level of 0.085 ppm. On March 27, 2008, EPA published the final rule for the new ozone NAAQS that lowered the 8-hour standard to 0.075 ppm, and eliminated the rounding convention. 73 Fed. Reg. 16436. This new ozone standard

became effective on May 27, 2008, effectively superseding the prior ozone NAAQS as of that time.

21. The 2003 RMP and EIS for the Farmington planning area specifically considered the old ozone NAAQS of 0.08 ppm which was effectively 0.084 ppm because of the then-existing rounding convention. The Final EIS for the RMP acknowledged that San Juan County was already approaching the nonattainment level of the then current 8-hour ozone NAAQS, and that “emissions from projected development would be potentially significant to ambient [ozone] levels” within San Juan County.

22. BLM holds competitive oil and gas lease sales on a quarterly basis (four times a year). Prior to each sale, the BLM State Office sends a list of proposed parcels to each field office where the parcels are located so field office staff can review the parcels “to determine if they are in areas open to leasing; if appropriate stipulations have been included; if new information has become available which might change any analysis conducted during the planning process; if appropriate consultations have been conducted, and if there are special resource conditions of which potential bidders should be made aware.” April FFO EA at 1.

23. At some point prior to the April 2008 lease sale, the BLM FFO prepared an EA for the parcels under its jurisdiction. The FONSI authorizing the April 2008 lease sale for the parcels in the FFO’s jurisdiction stated that the proposed sale conformed with the 2003 RMP, and determined that the proposed lease sale would not have significant environmental impacts, and that an EIS was not required.

24. The April 2008 EA considered three alternatives in its 1-page alternatives section. The “No Action” alternative would withdraw all proposed parcels from the lease

sale. The “Proposed Action” would offer all proposed parcels in the lease sale. The “Preferred Alternative”, which was selected in the FONSI, would withdraw three of the proposed parcels pending further consultations with the Navajo Nation; the remaining parcels would be included in the lease sale.

25. The April 2008 EA tiered to and incorporated the analyses of the 2003 Final EIS for the RMP, including the cumulative impact analysis for air quality. The EA reported that there had been “no change in the basic assumptions or projections” described in the Final EIS except with respect to air quality. The EA cited 2003 and 2004 monitoring and modeling done by Alpine Geophysics, LLC, and Environ International Corporations, Inc. and the New Mexico Air Quality Bureau (“AQB”) for San Juan County that “indicate[d] that projected development [would be] unlikely to elevate ozone concentrations to significant levels for the foreseeable future.” However, these analyses were based on the then-current effective ozone standard of 0.084 ppm.

26. The 2003 and 2004 modeling and monitoring studies cited in the EA projected that the San Juan County region would not exceed the ozone standard through December 2007, but did not assess potential violations of the ozone standard after that time. The study has not been updated to include subsequent ambient air quality monitoring data or to account for the new more stringent ozone standard.

27. On April 1, 2008, Plaintiffs filed a timely protest of BLM’s April 16, 2008 oil and gas lease sale for parcels in New Mexico, Oklahoma, and Texas.<sup>3</sup> Given the reduction in the ozone NAAQS to 0.075 ppm, Plaintiffs urged BLM to perform a thorough cumulative impact analysis of the effects of increased ozone and ozone

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<sup>3</sup> The lease sales for parcels in Oklahoma and Texas are not at issue in this complaint.



precursors at the lease sale stage, particularly for those parcels included in the FFO's territory. Specifically relating to the lease sales in the San Juan Basin, Plaintiffs also provided BLM data demonstrating that the Blanco ambient air monitor had exceeded the new ozone standard in both 2006 and 2007, and that the ambient air monitors in Bloomfield and Shiprock were just under the new ozone standard. Plaintiffs also urged BLM to identify and assess reasonable alternatives to the proposed action that would avoid or minimize adverse effects to the environment including imposing NSO and other appropriate stipulations, and giving serious consideration to a 'no leasing' option.

28. On July 11, 2008, BLM dismissed Plaintiffs' protest of the April lease sale. BLM acknowledged that the EA did not directly address ozone, but stated that ozone impacts were "indirectly addressed" by the air quality analysis in the 2003 RMP/FEIS, and that ozone impacts from the April lease sale were within what was contemplated by the RMP/FEIS. Without acknowledging the new ozone standard recently adopted by EPA and brought to BLM's attention by Plaintiffs' protest, BLM stated that "[o]zone levels in the region are now close to exceeding health-based national standards for outdoor air." BLM did not address Plaintiffs' request for an alternatives analysis that complied with the requirements of NEPA.

29. At some point prior to the July lease sale, the BLM FFO prepared another EA for the parcels in that lease sale under its jurisdiction, and again issued a FONSI approving the sale.

30. The July 2008 EA also tiered to and incorporated the analyses of the 2003 Final EIS for the RMP, including the cumulative impact analysis for air quality. The Air Quality section of the EA acknowledged EPA's promulgation of a new ozone standard;

however, it did not include any analysis of potential impacts from oil and gas development to the region's ozone levels based on the new standard. Like the April EA, the July EA relied on air quality analyses from the RMP and the 2003 and 2004 air quality studies based on the old ozone standard. The July EA also provided a very brief 1.5-page description of three alternatives that were the same as those in the April EA. The "Preferred Alternative", which was selected in the FONSI, would withdraw two of the proposed parcels pending further consultations with the Navajo Nation; the remaining parcels would be included in the lease sale.

31. On July 1, 2008, Plaintiff WildEarth Guardians filed a timely protest of BLM's July 16, 2008, oil and gas lease sale for parcels in New Mexico, Oklahoma, and Texas. Plaintiff again urged BLM to perform a cumulative impact analysis of the effects of increased ozone and ozone precursors at the lease sale stage for those parcels included in the FFO's territory. Reminding the BLM of the ozone exceedences for the Blanco air monitor first raised in the April protest, Plaintiff also presented data demonstrating that the Navajo Lake air monitor had exceeded the new ozone NAAQS. Plaintiffs also again urged BLM to perform an alternatives analysis that would comply with the requirements of NEPA.

32. On October 28, 2008, Plaintiff WildEarth Guardians sent an addendum to its protest of the July lease sale to the BLM State Director alerting her to the fact that ozone levels in San Juan County had exceeded federal standards. Ozone monitoring data obtained from the New Mexico Environment Department's online database showed that the three-year average for the Navajo Lake ozone monitor was at 0.077 ppm, exceeding the new federal standard of 0.075 ppm.

33. On October 24, 2008, BLM issued a written dismissal of Plaintiff WildEarth Guardians' protest of the July lease sale. Plaintiff did not receive BLM's dismissal until October 29, 2008. Using the same boilerplate language as the dismissal of the April protest, BLM acknowledged that the EA did not directly address ozone, but stated that ozone impacts were "indirectly addressed" by the air quality analysis in the 2003 RMP/FEIS, and that ozone impacts from the current lease sale are within what was contemplated by the RMP/FEIS. BLM yet again failed to acknowledge the new ozone standard recently implemented by EPA, or consider the air quality impacts of future development of the leases in light of this lower standard, which is particularly urgent given that the area has already exceeded the new ozone NAAQS for outdoor air. BLM did not address Plaintiffs' request for an alternatives analysis that complied with the requirements of NEPA.

34. Both the April and July EAs contained the same boilerplate language regarding potential impacts to ozone levels from oil and gas development. BLM did not address the new ozone standard and did not consider current data from air monitors in San Juan County in making its determination that the lease sales would not significantly impact air quality in the county. Both EAs also use boilerplate descriptions of the same three alternatives—leasing none of the parcels, leasing all of the parcels, or leasing most of the parcels with the exception of those for which tribal consultation has not been completed – and fail to provide any meaningful analysis of the different environmental impacts of the alternatives.

35. Neither the EAs nor the FONSI for the April and July lease sales were circulated to the public either prior to or following the lease sales. Plaintiffs obtained

these documents through a Freedom of Information Act (“FOIA”) request. On June 16, 2008, Plaintiffs submitted a FOIA request for all environmental documents related to the April lease sale; Plaintiffs received these documents on July 28, 2008. On June 24, 2008, Plaintiffs submitted a FOIA request for all environmental documents related to the July lease sale; Plaintiffs received these documents also on July 28, 2008.

36. For both the April and July lease sale EAs, BLM failed to inform the plaintiffs or other members of the public that it was preparing EAs for the lease sales. The EAs were prepared as internal documents only and BLM provided no notice to the public that the EAs had been prepared or were available for public review. Plaintiffs did not become aware that BLM was preparing EAs for the lease sales until June 2008 when the EAs were listed on the FFO’s online NEPA log.

37. Given the long history of prolific oil and gas production in the San Juan Basin, there is a high likelihood that the leases issued in the April and July sales will be developed. Because these leases were issued without NSO stipulations, by approving the lease sales and executing leases, BLM has lost its discretion to prohibit future development of these leases.

## **CLAIMS FOR RELIEF**

### **First Claim for Relief: Violation of NEPA – EAs and FONSI’s Are Legally Inadequate (Failure to Fully Analyze Cumulative Impacts)**

38. Plaintiffs incorporate by reference all the preceding paragraphs.

39. NEPA and its implementing regulations require BLM to consider the cumulative environmental impacts of the lease sales when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.25(c)(3), 1508.7.

40. The EAs and FONSIIs for the April and July 2008 quarterly lease sales are legally inadequate because they failed to analyze the cumulative impacts of all past, present, and reasonably foreseeable oil and gas lease sales, and other activities and development, on the air quality in San Juan County, including particularly the impact of such development on compliance with the new federal ozone standard.

41. BLM's approvals of the April and July 2008 quarterly lease sales on the basis of legally inadequate EAs and FONSIIs that failed to fully analyze cumulative impacts were arbitrary and capricious, and constitute a violation of NEPA and the APA.

**Second Claim for Relief:  
Violation of NEPA – EA and FONSI Are Legally Inadequate  
(Failure to Analyze a Reasonable Range of Alternatives)**

42. Plaintiffs incorporate by reference all the preceding paragraphs.

43. NEPA and its implementing regulations require BLM to include in EAs “reasonable alternatives” to a proposed action that will avoid or minimize the action’s adverse effects on the quality of the human environment. 40 C.F.R. §§ 1500.2(e), 1508.9(b).

44. BLM failed to analyze any alternative that would prevent further degradation to San Juan County air quality from development of the leases offered in the April and July sales. For example, BLM failed to consider reducing the number of leases offered based on the amount of ozone precursor emissions that could be expected from lease development and production activities, or to consider any alternative requiring the use of technological controls that would reduce such emissions.

45. BLM's approvals of the April and July 2008 quarterly lease sales on the basis of legally inadequate EAs and FONSIIs that failed to analyze a reasonable range of

alternatives were arbitrary and capricious, and constitute a violation of NEPA and the APA.

**Third Claim for Relief:  
Violation of NEPA -- An EIS Must Be Prepared**

46. Plaintiffs incorporate by reference all the preceding paragraphs.

47. BLM's approvals of the April and July 2008 quarterly lease sales are major federal actions that may significantly affect the quality of the human environment because they may have significant adverse impacts on air quality in San Juan County.

48. Accordingly, BLM's decisions not to prepare EISs before approving the the April and July 2008 lease sales were arbitrary and capricious, and in violation of NEPA and the APA.

**Fourth Claim for Relief:  
Violation of NEPA -- BLM Failed to Involve the Public in the NEPA Process**

49. Plaintiffs incorporate by reference all the preceding paragraphs.

50. NEPA and its implementing regulations require the BLM to involve the public, to the extent practicable, in preparing EAs, 40 C.F.R. § 1501.4(b), and to provide public notice of the availability of EAs. 40 C.F.R. § 1506.6.

51. BLM did not provide notice to the public that it was preparing EAs for the lease sales, did not provide any information about potential environmental impacts of the lease sales to the public, and did not provide any opportunities for the public to comment on the potential environmental impacts of the lease sales.

52. BLM did not make any draft or final lease sale EAs available for public comment or public review in a timely fashion.

53. BLM's failure to involve the public in any way in the NEPA process for the April and July lease sales, including its failure to timely provide Plaintiffs with the EAs for the April and July lease sales, is a violation of NEPA and the APA because BLM was required to make diligent efforts to involve the public in the NEPA process.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that BLM's actions are in violation of NEPA and its implementing regulations, as set forth above;
- B. Declare unlawful and set aside BLM's decisions approving the April and July 2008 quarterly lease sales until such a time as BLM has complied with NEPA;
- C. Adjudge and declare that BLM FFO's EAs and FONSI's for the April and July 2008 quarterly lease sales are arbitrary and capricious and contrary to law; and vacate said EAs and FONSI's as invalid;
- D. Enjoin any oil and gas activities on the lease parcels covered by the FFO EAs for the April and July 2008 lease sales, including issuance of permits to drill, until such a time as BLM has prepared EISs to analyze the direct, indirect, and cumulative impacts of such sale;
- E. Enter such temporary, preliminary, or permanent injunctive relief as specifically prayed for by Plaintiffs hereinafter;
- F. Award Plaintiffs their reasonable fees, costs, expenses, and disbursements, including attorneys' fees, associated with this litigation pursuant to the Equal Access to Justice Act;

G. Grant such additional and further relief as the Court may deem just and appropriate.

Dated: November 12, 2008

Respectfully submitted,

/s/ Samantha Ruscavage-Barz  
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