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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA ELDERS FOR A LIVABLE
TOMORROW, MONTANA
ENVIRONMENTAL INFORMATION
CENTER, and the MONTANA CHAPTER OF
THE SIERRA CLUB,

Plaintiffs,

vs.

U.S. OFFICE OF SURFACE MINING, an
agency within the U.S. Department of the
Interior; U.S. DEPARTMENT OF THE
INTERIOR, a federal agency, ROBERT
POSTLE, in his official capacity as Program
Support Division Manager of U.S. Office of
Surface Mining Western Region; DAVID
BERRY, in his official capacity as Regional
Director of U.S. Office of Surface Mining
Western Region; JOSEPH PIZARCHIK, in his
official capacity as Director of U.S. Office of
Surface Mining; JANICE SCHNEIDER, in her
official capacity as Assistant Secretary of Land
and Minerals Management of the U.S.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Department of the Interior, and SALLY
JEWELL, in her official capacity as Secretary
of the Department of the Interior

Defendants.

INTRODUCTION

1. Plaintiffs Montana Elders for a Livable Tomorrow, Montana Environmental Information Center, and the Montana Chapter of the Sierra Club (collectively, “Citizens”) bring this civil action for declaratory and injunctive relief against the U.S. Office of Surface Mining, the U.S. Department of the Interior, Robert Postle, David Berry, Joseph Pizarchik, and Janice Schneider (collectively, “Federal Defendants”) in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h.

2. The Citizens’ action arises out of the Federal Defendants’ failure to comply with NEPA by carefully addressing the multifarious adverse environmental harms from coal mining before approving the mining plan modification (modification) for a massive expansion of the Bull Mountains Mine No. 1 in the Bull Mountains of central Montana.

3. The approved modification will allow the mine to expand approximately 7,000 acres and increase coal production to up to 15 million tons of coal per year, making the mine the largest underground coal mine by annual production in the United States.

4. Once the coal is mined, it will be shipped by rail across Montana to either domestic power plants or coal export terminals and shipped overseas. Currently 95% of the coal mined at the Bull Mountains Mine is exported. The mine operator, Signal Peak Energy, LLC (SPE) has long marketed this coal for export.

5. The combined annual greenhouse gas (GHG) emissions from mine operations, coal transportation, and coal combustion would be approximately 23 million metric tons carbon-dioxide equivalent (CO₂e), greater than the annual emissions of the largest single point source of GHG emissions in the United States.

6. On January 27, 2015, Defendant Robert Postle, Program Support Division Manager for the Western Region of the U.S. Office of Surface Mining (OSM), issued a finding of no significant impact (FONSI) for the mining plan modification, concluding that the massive mine expansion would have no significant impact on the environment. On February 24, 2015, Defendant Janice Schneider, Assistant Secretary of Land and Minerals Management of the U.S. Department of the Interior (DOI), approved the mining plan modification.

7. Wherefore, the Citizens, local conservation organizations dedicated to protecting and restoring the environment, are compelled to bring this suit.

JURISDICTION AND VENUE

8. This Court has federal-question jurisdiction over this action, 28 U.S.C. § 1331, which arises under NEPA, 42 U.S.C. §§ 4321-4370h, and the APA, 5 U.S.C. §§ 701-706.

9. The requested declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 5 U.S.C. §§ 705, 706.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in Montana and a substantial part of the property that is the subject of the action, the Bull Mountains Mine, is located in Montana. Venue is also proper under 28 U.S.C. § 1391(e)(1)(C) because officers of the United States are defendants and Plaintiffs Citizens reside in Montana.

11. Venue is also proper in the Missoula Division of this Court because Plaintiffs Montana Elders for a Livable Tomorrow and the Montana Chapter of the Sierra Club reside in Missoula.

12. Citizens have standing under Article III of the U.S. Constitution because the challenged actions cause them economic, professional, recreational, and aesthetic harm, which will be remedied by a favorable ruling from this Court.

13. The challenged actions are final and subject to judicial review under 5 U.S.C. §§ 702, 704, 706.

14. Citizens have exhausted any and all available and required administrative remedies.

PARTIES

15. Plaintiffs Montana Elders for a Livable Tomorrow (MELT) is a non-profit organization of senior citizens in western Montana with lifetimes of experience in industry, academia, wildlife management, government, medicine, and civil and political action. MELT's goal is to leave to future generations a more livable world than the one we are on a path to creating. For MELT, protecting the quality of health, air, water, and land is a moral and ethical issue. MELT's top concern is the negative impact that the fossil fuel industry is having on these essentials, in Montana and around the globe. MELT members live, work, and recreate in areas that will be adversely affected by expansion of the Bull Mountains Mine. MELT's members believe the proposed expansion of the Bull Mountains Mine is an ill-considered step in the wrong direction. MELT brings this action on its own behalf and on the behalf of its adversely affected members.

16. Plaintiff Montana Environmental Information Center (MEIC) is a nonprofit organization founded in 1973 with approximately 3,000 members throughout the United States

and the State of Montana. MEIC is dedicated to the preservation and enhancement of the natural resources and natural environment of Montana and to the gathering and disseminating of information concerning the protection and preservation of the human environment through education of its members and the general public concerning their rights and obligations under local, state, and federal environmental protection laws and regulations. MEIC is also dedicated to assuring that federal officials comply with and fully uphold the laws of the United States that are designed to protect the environment from pollution. MEIC and its members have intensive, long-standing recreational, aesthetic, scientific, professional, and spiritual interests in the responsible production and use of energy, the reduction of greenhouse (GHG) pollution as a means to ameliorate our climate crisis, and the land, air, water, and communities impacted by climate change. MEIC members live, work, and recreate in areas that will be adversely impacted by the Bull Mountains Mine expansion. MEIC brings this action on its own behalf and on behalf of its adversely affected members.

17. Plaintiff Montana Chapter of the Sierra Club is the local chapter of the Sierra Club. The Sierra Club is a national nonprofit organization with 64 chapters and over 650,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's concerns encompass the exploration, enjoyment and protection of the lands and waters of Montana. The Sierra Club's particular interest in this case and the issues, which the case concerns stem from the impacts to water resources from the Bull Mountains Mine expansion, the impacts of coal trains shipping coal from the Bull Mountains Mine, and the air pollution impacts from the

eventual combustion of the coal. The Montana Chapter of the Sierra Club has approximately 2,200 members in the State of Montana. The Montana Chapter of the Sierra Club brings this action on its own behalf and on behalf of its adversely affected members.

18. Defendant U.S. Office of Surface Mining (OSM) is a federal agency within the U.S. Department of the Interior that is responsible for assuring lawful environmental review of mining plan modifications under NEPA and recommending approval, conditional approval, or disapproval of applications for mining plan modifications. OSM's Western Regional Office conducted the environmental review of the mining plan modification for the expansion of the Bull Mountains Mine, concluding that the expansion would not significantly affect the environment.

19. Defendant U.S. Department of the Interior is a federal department responsible for implementing and complying with federal laws governing approval of mining plan modifications, including NEPA.

20. Defendant Robert Postle is Program Support Division Manager of U.S. Office of Surface Mining Western Region. Mr. Postle is responsible for managing federal coal resources, including those involved in this action. Mr. Postle is responsible for implementing and complying with NEPA and other federal laws governing review and approval of applications for mining plan modifications. Mr. Postle approved OSM's finding of no significant impact (FONSI) for the massive Bull Mountains Mine expansion.

21. Defendant David Berry is Regional Director of OSM's Western Region. Mr. Berry is responsible for managing federal coal resources, including those involved in this action, and for making recommendations to the Secretary of the Interior regarding applications for mining plan modifications. Mr. Berry is also responsible for implementing and complying with

NEPA and other federal laws governing review and recommendations for approval, conditional approval, or disapproval of applications for mining plan modifications.

22. Defendant Joseph Pizarchik is Director of OSM. Mr. Pizarchik is responsible for assuring that OSM complies with federal laws, including NEPA and other laws governing review and recommendations for approval, conditional approval, or disapproval of applications for mining plan modifications.

23. Defendant Janice Schneider is Assistant Secretary of Land and Minerals Management of the U.S. Department of the Interior. Ms. Schneider is responsible for complying with federal laws governing approval, conditional approval, or disapproval of applications for mining plan modifications. Ms. Schneider approved the mining plan modification, allowing the massive expansion of the Bull Mountains Mine.

24. Defendant Sally Jewell is Secretary of the U.S. Department of the Interior. Ms. Jewell is responsible for implementing and complying with federal laws governing mining plan modifications, including NEPA.

FACTS

25. Signal Peak Energy, LLP (SPE), owns and operates the Bull Mountains Mine, located in the Bull Mountains south of the Musselshell River and the town of Roundup, Montana.

26. The Bull Mountains Mine is an underground, longwall mining operation, which allows the mine roof to collapse or subside as the mining process advances. The subsidence causes splitting and depression of the surface land above the mining operation.

I. COAL MINING IMPACTS TO WATER

27. Agriculture provides the economic base of the region around Roundup and is the major water user. However, water and high-quality water in particular, is scarce in the region and therefore extremely important.

28. The mining plan modification approved by OSM permits SPE to remove 176 million tons of coal from a coal seam that is saturated by water and functions as an aquifer, the Mammoth Coal Aquifer.

29. During mining, water from the coal seam will be pumped out of the mine to settling ponds that discharge to the headwaters of Rehder Creek. After mining is completed, groundwater recharge will cause the mine cavity to become re-saturated. The quality of the water that fills the mine cavity will degrade, with more elevated concentrations of salts and sulfate.

30. The water that saturates the mine area following mining will likely have sulfate concentrations greater than 1,000 mg/L. Sulfate concentrations greater than 1,000 mg/L are harmful to livestock, causing reduced feed intake, water intake, growth, and fitness.

31. After mine closure, the plume of polluted water in the mine area will migrate away from the mine, toward the mine permit boundary. If parts of underground mine workings called gate roads do not collapse, the water from the mine void will move beyond the mine permit boundary within 50 years. If the gate roads do collapse, the water will still migrate towards the mine permit boundary, but more slowly.

32. Despite acknowledging that the mine water will become polluted and then migrate toward the mine permit boundary, OSM refused to assess whether the pollution would migrate beyond the mine permit boundary.

33. The area into which the mining plan modification will permit the mine to expand contains wetlands and intermittent and perennial waters that are fed in part by groundwater.

34. Wetlands are extremely rare in the Bull Mountains, accounting for less than 0.1 percent of area. Nevertheless, wetlands play an important role in the local ecosystem by providing watering points for wildlife and habitat for aquatic and semiaquatic life and unique plant communities.

35. Subsidence from the long wall mining process may disrupt wetlands and intermittent and perennial waters or cause them to dry up altogether.

36. It is uncertain whether there is sufficient replacement water to mitigate impacts to wetlands and intermittent or perennial waters. Further, Montana state law prohibits SPE from mitigating impacts to wetlands or intermittent or perennial waters by recharging them with continuously pumping and discharging wells.

37. The area to be undermined also comprises the headwaters of numerous streams in the Bull Mountains, including Rehder Creek, East Parrot Creek, Fattig Creek, Railroad Creek, and Pompey's Pillar Creek. Waste water from the mine and coal processing activities is discharged from various outfalls into headwater tributaries of Rehder Creek, a tributary of Halfbreed Creek, which is, in turn, a tributary of the Musselshell River.

38. Headwaters are a critical element of river networks. Impacts to headwaters can lead to cascading downstream impacts throughout a river network.

II. LEASE, EXPORTS, AND COAL TRAINS

39. SPE first obtained its mining permit for the Bull Mountains Mine in 2008.

40. SPE was originally a joint venture between FirstEnergy, an energy producing company with coal-fired power plants in the Midwest, and Boich Companies, a coal marketing company from Ohio.

41. In 2008, SPE filed a coal lease-by-application with the U.S. Bureau of Land Management (BLM) to lease 61.4 million tons of federal coal on approximately 2,700 acres

adjacent to the then-existing mining operation. The proposed federal coal lease would unlock an additional 71.6 million tons of mineable coal on state and private land that would not otherwise be accessible or economically feasible to mine.

42. In 2011, after preparing an environmental assessment (2011 Lease EA) to consider the potential significance of the proposed lease, BLM issued a finding of no significant impact (FONSI) and approved the proposed lease.

43. At the time of the lease, SPE executives stated their intention to export this coal to Asia and South America.

44. BLM leased the coal to SPE for \$.30 per ton. In calculating the lease price, BLM did not consider the value of export sales of the coal. At the same time, BLM's Wyoming Field office was leasing coal with lower energy content for prices up to \$1.35 per ton.

45. BLM's 2011 Lease EA acknowledged that virtually all of the coal mined at the Bull Mountains Mine would be burned in power plants to generate electricity.

46. BLM's 2011 Lease EA acknowledged that transportation of the coal by rail was a connected action.

47. BLM's 2011 Lease EA stated that the purpose of the coal lease was to "add energy supplies from diverse sources" to "meet the nation's future energy needs." The 2011 Lease EA further stated that the lease would reduce "the U.S. dependence on foreign sources of energy."

48. In 2011, a subsidiary of the Gunvor Group, Pinesdale LLC, purchased a one-third interest in the Bull Mountains Mine for approximately \$400 million.

49. The Gunvor Group is a leading global commodities trader. SPE stated at the time that this purchase would facilitate coal exports from the Bull Mountains Mine to Asia and South America.

50. U.S. Treasury Department has announced that Russian President Vladimir Putin has investments in Gunvor. The United States government has sanctioned the co-founder of Gunvor, who has personal ties to Russian President Vladimir Putin. U.S. State Department cables have relayed allegations that Gunvor is a front for “massive corruption.”

51. The Bull Mountains Mine is strategically located with access to coal export terminals in Vancouver, Canada, and the Great Lakes, allowing it to export coal to the west to Asia and South America or to the east to Europe.

52. The Bull Mountains mine is the United States coal mine closest in proximity to existing and proposed coal export terminals in the Pacific Northwest and has the lowest total delivered cost of coal.

53. SPE purchased export capacity at the Westshore coal-export terminal at Roberts Banks in Vancouver, Canada, guaranteeing the mine access to Asian and South American markets.

54. In 2011 the Bull Mountains Mine produced approximately 5 million short tons of coal.

55. In 2011 the Bull Mountains Mine shipped three trains of coal per day.

56. In 2012 the Bull Mountains Mine produced 5.7 million short tons of coal.

57. In 2013 the Bull Mountains Mine increased production by 50%, producing approximately 8.6 million short tons of coal.

58. SPE anticipates mining 15 million tons of coal from the Bull Mountains Mine annually.

59. The rail loading facility at the Bull Mountains Mine has the capacity to load seven trains with coal each day.

60. In 2014 95% of the coal mined from the Bull Mountains Mine was exported, with 65% of the coal being shipped to Asia, via the Westshore coal-export terminal at Roberts Bank in Vancouver, Canada.

61. There are only two routes to ship coal west through Montana. These two routes converge in Sandpoint, Idaho.

62. Three coal export terminals in Washington and Oregon are currently proposed: the Gateway Pacific Terminal near Bellingham, Washington, the Millennium Bulk Terminals near Longview, Washington, and the Morrow Pacific Project near Boardman, Oregon. Together these terminals would have the capacity to export approximately 100 million tons of coal annually.

63. Another coal export terminal in British Columbia, Canada, is currently proposed: the Fraser Surry Docks, in Vancouver, British Columbia. This terminal would have capacity to export approximately 4.4 million tons of coal annually.

64. Three existing coal export terminals in British Columbia, Canada, are proposed to expand: Westshore Terminals, at Roberts Bank in Vancouver, British Columbia, Neptune Terminal near Vancouver, British Columbia, and Ridley Terminals near Prince Rupert, British Columbia. Together these expansions would add approximately 30 million tons of annual coal capacity to the existing terminals.

65. Construction of the proposed new and expanded coal export terminals would lead to as many as 36 additional coal trains, including loaded and empty trains, crossing Montana and the Pacific Northwest each day.

66. Since 2008, there has been a significant increase in oil trains carrying oil from the Bakken area of North Dakota and Montana through the Pacific Northwest.

67. Increased coal train traffic threatens public health and the environment in numerous ways.

68. Coal train traffic from the Bull Mountains Mine to the Westshore coal-export terminal or any of the other proposed coal export terminals in the Pacific Northwest must pass through numerous populated cities and towns, such as Great Falls, Bozeman, Helena, and Missoula, Montana; Sandpoint, Idaho; and Spokane and Seattle, Washington.

69. One of two potential routes through Montana is directly adjacent to Glacier National Park, paralleling portions of the Flathead River, which is classified as a protected Wild and Scenic River.

70. Diesel emissions from coal train locomotives, noise and vibrations from coal trains, and coal dust that blows off or falls out of uncovered coal cars adversely affect public health. Diesel exhaust from locomotives is carcinogenic. Diesel particulate matter is associated with heart disease, lung diseases, and cancer.

71. Coal dust is associated with chronic bronchitis, emphysema, pulmonary fibrosis, and environmental contamination from leaching toxic heavy metals. From 500 lbs. to a ton of coal dust can escape from a single loaded coal car. Coal trains typically have 125 to 150 cars.

72. Noise and vibrations from coal trains can cause cardiovascular disease, stroke, cognitive impairment in children, and exacerbation of mental health disorders.

73. Pollution from coal trains and other train traffic has the greatest impact on minority and low-income populations who reside next to rail corridors.

74. Increased coal and oil train traffic can also delay emergency response services in communities and cause death and injury from collisions.

75. Increased coal and oil train traffic can also lead to train derailments that may affect public health and the environment. Coal dust spilled along the tracks can increase the risk of train derailments.

76. Coal dust spilled into waterways may impair aquatic habitat and harm aquatic life. The extent of impacts from coal dust on aquatic ecosystems and aquatic life is uncertain and is being studied by the U.S. Geological Survey.

77. Coal trains travelling from the Bull Mountains Mine to the Westshore coal export terminal or any other existing or proposed export terminal in the Pacific Northwest pass through or over occupied habitat of numerous threatened and endangered species, including Bull Trout, White Sturgeon, Lower Columbia River Chinook Salmon, Puget Sound Chinook Salmon, Upper Columbia spring-run Chinook Salmon, Columbia River Chum Salmon, Lower Columbia River Steelhead, Puget Sound Steelhead, Upper Columbia River Steelhead, and Grizzly Bears.

78. City and county governments will be forced to spend hundreds of millions of dollars to build and improve infrastructure to accommodate projected increased coal and oil train traffic.

79. Other railroad shippers are already suffering increased shipping rates, deteriorating service, and increased equipment costs due to increased coal and oil train shipments to the Pacific Northwest. These impacts will worsen if coal and oil exports through the Pacific

Northwest increase. Coal and oil trains may begin to displace other shippers, such as intermodal container traffic and grain exporters, particularly smaller grain elevators in Montana.

80. Increased coal and oil train traffic through the Pacific Northwest will also impact existing passenger rail service on Amtrak's Empire Builder.

81. Coal exports can cause domestic coal prices to increase.

82. Numerous political, civic, business, faith, and tribal leaders have expressed opposition to or serious concerns with coal exports from the Pacific Northwest, including coal train traffic.

III. COAL COMBUSTION

83. It is foreseeable that the coal from the mine expansion will be burned in power plants to generate electricity.

84. When burned, coal releases numerous toxins and pollutants, including sulfur dioxide (SO₄), nitrogen oxides (NO_x), particulate matter (PM), volatile organic compounds (VOCs), mercury, and carbon dioxide (CO₂). These pollutants harm people and the environment in myriad ways.

85. Particulate matter, sulfur dioxide, nitrogen oxides, and volatile organic compounds cause premature mortality, bronchitis cases, asthma cases, hospital admissions related to respiratory, cardiac, asthma, coronary obstructive pulmonary disease, and ischemic heart disease problems and emergency room visits. Children are particularly susceptible to air pollution.

86. Air pollution from coal-fired power plants causes thousands to tens of thousands of premature mortalities in the United States each year.

87. In the European Union, air pollution from coal combustion causes thousands to tens of thousands of premature mortalities each year.

88. In Asia, air pollution from coal combustion causes hundreds of thousands of premature deaths each year.

89. Children, elderly people, and people with existing respiratory conditions are most vulnerable to air pollution from coal.

90. The cost of air pollution from coal in the United States amounts to tens of millions to hundreds of millions of dollars annually. Life-cycle costs of coal combustion in the United States are estimated at between \$175 and \$500 billion dollars annually.

91. Coal combustion releases numerous toxic and hazardous substances, such as mercury. Mercury is a potent neuro-toxin. Mercury impairs cognitive development of children and causes irreversible damage to the vital organs of fetuses.

92. Approximately 7% of women of childbearing age in the United States exceed the U.S. Environmental Protection Agency's reference dose for mercury. Mercury is passed from mothers to infants through the placenta and secondarily through breast milk. Mercury deposition from coal combustion is the most important source of mercury pollution in the United States. Mercury pollution from coal-fired power plants can be transported from one continent to another.

93. Coal combustion also emits lead, dioxins, arsenic, beryllium, and chromium. These toxic and harmful pollutants can be transmitted over very long distances and can cause significant harm, even at very low concentrations.

94. Air pollution from coal combusted in Asia is transported to and deposited in the western United States.

95. Burning coal releases carbon dioxide (CO₂), a greenhouse gas (GHG).

96. Carbon dioxide emissions from coal-fired power plants constitute a significant proportion of total GHG emissions from the United States.

97. Operations, transportation, and combustion of coal from the Bull Mountains Mine will result in approximately 23.16 million metric tons of CO₂ annually.

98. The largest single point source of GHG pollution in the United States, Scherer Generating Station in Juliette, Georgia, emits approximately 22.29 million tons of CO₂ annually.

99. An interagency working group (IWG), consisting of eleven federal agencies, used three leading economic models to monetize the harm caused by each additional ton of CO₂ emitted. The IWG established the social cost of carbon (SCC), which represents the money saved by avoiding damage caused by each additional ton of CO₂ emitted into the atmosphere.

100. The SCC for 2015 ranged from a low estimate of \$12 per metric ton of CO₂ to a high estimate of \$109 per metric ton of CO₂. The middle value is \$37 per metric ton of CO₂. Various academic studies have indicated that the social cost of carbon is likely significantly higher than even the highest estimate of the IWG.

101. The impacts of climate change are already being observed and are projected to worsen throughout the Great Plains region, which includes the area of the Bull Mountains Mine. For example, rain events in the region have already become more intense, causing increased erosion and runoff.

102. The mine area suffered record flooding in 2011; major, rare precipitation events in 2013; and a 100-year precipitation event in 2014. These events caused uncommon pollution discharges at the Bull Mountains Mine.

IV. MINING PLAN MODIFICATION

103. In 2012 SPE applied to the Montana Department of Environmental Quality (MDEQ) for a permit amendment to expand the Bull Mountains mine by approximately 7,000 acres and give the company access to 176 million tons of coal, including the federal coal leased in 2011.

104. On October 18, 2013, after completing a fifteen-page, checklist environmental assessment, MDEQ approved the permit amendment, allowing the mine to double in size and expand by over 7,000 acres.

105. In approving the permit amendment, MDEQ observed that OSM's approval of a mining plan amendment would be necessary prior to mining any of the federal coal reserves included in the permit amendment.

106. On November 22, 2013, SPE sought OSM's approval of a mining plan modification to allow the company to expand mining operations into 2,500 acres of the federal coal that was leased in 2011.

107. SPE required approval to mine the federal coal reserves in order to access the additional state and private coal reserves included in the 2013 permit amendment approved by MDEQ.

108. In 2013 OSM issued a draft environmental assessment (draft EA) and unsigned FONSI for SPE's proposed mining plan modification for the Bull Mountains Mine expansion.

109. The purpose and need statement of the draft EA provided that, consistent with "National Energy Policy," "the continued extraction of coal is essential to meet the nation's future energy needs." The purpose and need statement declared that another purpose of the mine expansion was to generate revenue: "[T]he public receives lease bonus payments, lease royalty payments, and a reliable supply of low sulfur coal for power generation."

110. The Citizens submitted detailed comments supported by multiple exhibits.

111. On January 27, 2015, OSM issued a final environmental assessment (2015 EA) and FONSI for the mining plan modification for the Bull Mountains Mine expansion.

112. The purpose and need statement of the 2015 EA removed reference to “meeting the nation’s future energy needs” because 95% of coal currently mined from the Bull Mountains Mine is being exported. The purpose and need statement also removed generation of public revenue as a purpose of the action.

113. The revised purpose and need statement provided that “[t]he purpose of the Proposed Action is to *recommend approval, disapproval, or approval with conditions of the proposed mining plan modification to the ASLM* [Assistant Secretary of Land and Minerals].” The mining plan modification was needed “to allow the lessee to exercise their right to mine leased Federal coal resources.”

114. Neither OSM’s 2015 EA nor its FONSI considered whether the mine expansion was a proposal that would normally require an environmental impact statement (EIS) under OSM’s department manual guidance, 516 DM 13.

115. The 2015 EA failed entirely to address important concerns related to impacts to water resources, coal train traffic, and air pollution.

116. On February 24, 2015, Assistant Secretary of Land and Minerals Management Janice Schneider approved the mining plan modification.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(NEPA Violation: Failure to Determine Whether an EIS Was Required by OSM’s NEPA Guidance)

117. Citizens incorporate by reference all preceding paragraphs.

118. Pursuant to NEPA’s implementing regulations promulgated by the Council on Environmental Quality (CEQ), federal agencies must “adopt procedures” to guide decisionmaking under NEPA. 40 C.F.R. § 1507.3(a).

119. Agencies' supplemental NEPA procedures must include "criteria for and identification of those typical classes of action . . . [w]hich normally do require environmental impact statements." *Id.* § 1507.3(b)(2)(i).

120. "In determining whether to prepare an environmental impact statement the Federal agency *shall* . . . determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which . . . [n]ormally requires an environmental impact statement." *Id.* § 1501.4(a) (emphasis added).

121. NEPA procedures adopted by OSM are located in chapter 13 of Part 516 of the U.S. Department of the Interior's Departmental Manual (DM).

122. OSM's NEPA procedures contain criteria for determining whether an EIS should normally be prepared prior to approval of a mining plan. 516 DM 13.4.

123. In evaluating whether to prepare an EIS for the mining plan modification for the Bull Mountains Mine, OSM failed to consider its own criteria in 516 DM 13.4 for proposals that normally require an EIS.

124. OSM's failure to consider its own criteria for determining whether to prepare an EIS was arbitrary and capricious and unlawful in violation of NEPA, 42 U.S.C. § 4332(2)(C), NEPA's implementing regulations, and the APA, 5 U.S.C. § 706.

SECOND CAUSE OF ACTION

(NEPA Violation: Failure to Prepare an Environmental Impact Statement)

125. Citizens incorporate by reference all preceding paragraphs.

126. Pursuant to NEPA, federal agencies are required to prepare an environmental impact statement (EIS) for any federal action that "significantly affect[s] the quality of the human environment." 42 U.S.C. § 4332(2)(C).

127. To determine the significance of an action, the agency must evaluate the action's context and intensity. 40 C.F.R. § 1508.27(a), (b).

128. Context means that the significance of the action must be considered in an appropriate setting. "For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole." *Id.* § 1508(27)(a). "Both short- and long-term effects are relevant." *Id.*

129. Intensity requires the agency to consider ten factors, including adverse impacts, effects on public health and safety, unique characteristics of the impacted area, controversy, uncertainty, precedential value, cumulative impacts, and potential for violations of environmental laws. *Id.* § 1508.27(b).

130. Under these criteria the mining plan modification for the Bull Mountains Mine raises substantial questions about whether the mine expansion will have significant effects, requiring preparation of an EIS.

131. Federal Defendants' determination that the mining plan modification would not have significant environmental impacts was arbitrary and capricious and unlawful in violation of NEPA, 42 U.S.C. § 4332(2)(C), NEPA's implementing regulations, and the APA 5 U.S.C. § 706.

THIRD CAUSE OF ACTION

(NEPA Violation: Failure to Take Hard Look at Indirect and Cumulative Effects of Coal Transportation, Coal Exports, and Coal Combustion)

132. Citizens incorporate by reference all preceding paragraphs.

133. NEPA requires federal agencies' environmental analysis to consider "any adverse environmental effects which cannot be avoided." 42 U.S.C. § 4332(2)(C)(ii).

134. Agencies are required to take a hard look at direct, indirect, and cumulative impacts of a proposed action. 40 C.F.R. § 1508.25(c).

135. Direct impacts are “caused by the action and occur at the same place and time.” *Id.* § 1508.8(a). Indirect impacts are “caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable.” *Id.* § 1508.8(b).

136. Cumulative impacts are “the impact[s] on the environment which result[] 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 actions.” *Id.* § 1508.7.

137. The mining plan modification for the Bull Mountains Mine will cause foreseeable indirect and cumulative environmental impacts from coal transportation, coal exports, and combustion, including but not limited to impacts to public health and welfare from trains and air pollution, as noted above.

138. Federal Defendants failed to take a hard look at numerous indirect and cumulative impacts from foreseeable transportation, coal exports, and combustion of coal that will result from the mining plan modification for the Bull Mountains Mine.

139. Federal Defendants failure to consider these impacts was arbitrary and capricious and unlawful, in violation of NEPA, 42 U.S.C. § 4332(2)(C), NEPA’s implementing regulations, and the APA, 5 U.S.C. § 706.

FOURTH CAUSE OF ACTION

(NEPA Violation: Failure to Take Hard Look at Foreseeable Greenhouse Gas Emissions)

140. Citizens incorporate by reference all preceding paragraphs.

141. NEPA requires federal agencies to take a hard look at “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(2)(C)(ii).

142. Agencies must “recognize the worldwide and long-range character of environmental problems.” *Id.* § 4332(2)(F).

143. Agencies must also “insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.” *Id.* § 4332(2)(B).

144. Agencies may not trumpet the economic benefits of an agency action without also acknowledging the economic costs of the action.

145. Federal Defendants failed to monetize the economic costs of greenhouse gas (GHG) emissions from the mining plan modification, despite their monetizing and trumpeting the economic benefits of the mining plan modification.

146. Federal Defendants’ failure to adequately consider these costs was arbitrary and capricious and unlawful, in violation of NEPA, 42 U.S.C. § 4332(2)(B), (C), (F), NEPA’s implementing regulations, and the APA, 5 U.S.C. § 706.

FIFTH CAUSE OF ACTION

(NEPA Violation: Failure to Take Hard Look at Water Pollution Impacts)

147. Citizens incorporate by reference all preceding paragraphs.

148. NEPA requires federal agencies’ environmental analysis to consider “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(2)(C)(ii).

149. Agencies are required to take a hard look at direct, indirect, and cumulative impacts of a proposed action. 40 C.F.R. § 1508.25(c).

150. Direct impacts are “caused by the action and occur at the same place and time.” *Id.* § 1508.8(a). Indirect impacts are “caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable.” *Id.* § 1508.8(b).

151. Cumulative impacts are “the impact[s] on the environment which result[] 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 actions.” *Id.* § 1508.7.

152. Federal Defendants failed to take a hard look at the direct, indirect, and cumulative impacts of water pollution from the mine plan modification, including whether water pollution would migrate past the mine permit boundary and the ecological impacts of destruction of wetlands and intermittent and perennial waters.

153. Federal Defendants failure to take a hard look at these impacts was arbitrary and capricious, and unlawful, in violation of NEPA, 42 U.S.C. § 4332(2)(C), NEPA’s implementing regulations, and the APA, 5 U.S.C. § 706.

SIXTH CAUSE OF ACTION

(NEPA Violation: Unlawful Purpose and Need Statement)

154. Citizens incorporate by reference all preceding paragraphs.

155. NEPA requires an EIS to contain a purpose and need statement that “briefly specif[ies] the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13.

156. NEPA requires an EA to “include brief discussions of the need for the proposal.” *Id.* § 1508.9(b).

157. It is unlawful for an agency to fail to provide a purpose and need statement at all or to provide a statement that is excessively convoluted or imprecise. Nor may an agency tailor its purpose and need statement so that only one alternative may accomplish the agency’s goals.

158. It is unlawful for an agency to adopt a private applicant’s purpose and need as the purpose and need for federal action. A purpose and need statement must acknowledge the national policy and congressional objectives that underlie the agency’s authority.

159. Federal Defendants' replacement of considerations of national policy and public interest from its purpose and need statement with SPE's purpose and need was arbitrary and capricious, and unlawful, in violation of NEPA, 42 U.S.C. § 4332(2)(C), NEPA's implementing regulations, and the APA 5 U.S.C. § 706.

SEVENTH CAUSE OF ACTION

(NEPA Violation: Failure to Consider Reasonable Alternatives)

160. Citizens incorporate by reference all preceding paragraphs.

161. NEPA requires federal agencies to consider "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii).

162. Agencies must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Id.* § 4332(2)(E).

163. In considering alternatives, agencies must "rigorously explore and objectively evaluate all reasonable alternatives," including a "no action" alternative. 40 C.F.R. § 1502.14(a), (d).

164. Federal Defendants failed to consider reasonable alternatives to the mining plan modification. Federal Defendants considered only the alternatives of approval and disapproval, but not conditional approval.

165. Federal Defendants failure to consider adequate alternatives was arbitrary and capricious, and unlawful, in violation of NEPA, 42 U.S.C. § 4332(2)(C), (E), NEPA's implementing regulations, and the APA, 5 U.S.C. § 706.

REQUEST FOR RELIEF

WHEREFORE, Citizens respectfully request that this Court:

- A. Declare that Federal Defendants' actions violate NEPA and the regulations and policies promulgated thereunder;
- B. Vacate and set aside Federal Defendants' action;
- C. Enjoin Federal Defendants from re-issuing or approving the mining plan modification until Federal Defendants have demonstrated compliance with NEPA and the APA;
- D. Enjoin operations in the Amendment AM3 Area until Federal Defendants have demonstrated compliance with NEPA and the APA;
- E. Award Citizens their fees, costs, and other expenses as provided by applicable law;
- F. Issue such relief as Citizens subsequently request or that this Court may deem just, proper, and equitable.

Respectfully submitted this 17th day of August 2015,

/s/ Shiloh S. Hernandez
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