

**IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLORADO**

THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF GARFIELD, COLORADO, THE
BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF JACKSON, COLORADO, THE
BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF MOFFAT, COLORADO, THE BOARD
OF COUNTY COMMISSIONERS OF THE COUNTY
OF RIO BLANCO, COLORADO

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR,
RYAN ZINKE, in his official capacity as
Secretary, U.S. BUREAU OF LAND MANAGEMENT,
MICHAEL D. NEDD, in his official capacity
as Acting Director of the Bureau of Land Management,
RUTH WELCH, in her official capacity as Colorado State
Director of the Bureau of Land Management
U.S. DEPARTMENT OF AGRICULTURE,
SONNY PERDUE, in his official capacity as Secretary,
U.S. FOREST SERVICE, a part of the U.S. Department of
Agriculture, THOMAS L. TIDWELL, in his
official capacity as Chief, U.S. Forest Service,
NORA RASURE, in her official capacity as Regional
Forester, Intermountain Region, U.S. Forest Service,
BRIAN FEREBEE, in his official capacity as Acting Regional
Forester, Rocky Mountain Region, U.S. Forest Service

Defendants.

Case No. 1:17-cv-01199

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COMPLAINT

COME NOW the Plaintiffs, the Boards of County Commissioners of Garfield, Jackson, Moffat and Rio Blanco Counties (collectively, the “Counties”), by and through their attorneys, Holsinger Law, LLC and for their Complaint against the U.S Department of the Interior (“DOI”); Ryan Zinke, in his official capacity as Secretary of the DOI; the Bureau of Land Management (“BLM”), a part of the DOI; Michael D. Nedd, in his official capacity as Acting Director of the BLM; Ruth Welch, in her official capacity as Colorado State Director, BLM; U.S. Department of Agriculture (“USDA”); Sonny Perdue, in his official capacity as Secretary of the USDA; U.S. Forest Service (“USFS”), a part of the USDA; Thomas L. Tidwell, in his official capacity as USFS Chief; Nora Rasure, in her official capacity as Regional Forester, Intermountain Region, USFS; Brian Ferebee, in his official capacity as Acting Regional Forester, Rocky Mountain Region, USFS (collectively, “Defendants”) allege as follows:

I. INTRODUCTION

1. The Plaintiffs challenge and seek declaratory and injunctive relief against the Defendants, for violations of the Administrative Procedure Act (“APA”) pursuant to 5 U.S.C. §§ 701-706, the Federal Land and Policy Management Act (“FLPMA”) pursuant to 43 U.S.C. §§ 1701-1784, the Mineral Leasing Act (“MLA”) pursuant to 30 U.S.C. §§181 *et seq.*, the National

Environmental Policy Act (“NEPA”) pursuant to 42 U.S.C. §§ 4321-4334 and the Data Quality Act (“DQA”) pursuant to 44 U.S.C. § 3516 resulting from the Defendant’s approval of:

- a. BLM’s Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region, including specifically the Greater Sage-Grouse Sub-Region of Northwest Colorado (“BLM RM ROD”);
- b. BLM’s Northwest Colorado Greater Sage-Grouse Approved Resource Management Plan Amendment (“NW CO ARMPA”);
- c. the United States Forest Service’s (“USFS”) Greater Sage-Grouse Record of Decision for Northwest Colorado, Wyoming (“USFS RM ROD”); and
- d. BLM’s Northwest Greater Sage-Grouse Land Use Plan Amendment and Final Environmental Impact Statement (“NW CO LUPA/FEIS”).

The above shall be collectively referred to as the “Federal Plans.”

2. The Federal Plans are final agency actions which are already being implemented in Northwest Colorado. The Federal Plans drastically limit multiple uses of lands within Garfield, Jackson, Moffat and Rio Blanco Counties with corresponding injury to their tax revenues, their economies and their culture and heritage.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706 (judicial review of final agency action) for Defendants’ violations of FLPMA, MLA, NEPA, NFMA and the DQA and 28 U.S.C. § 1331 (federal question). This Court can also grant declaratory and injunctive relief under 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief). Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e) as the

case and controversy pertain to federal lands in Colorado, and the Counties are situated in Colorado.

4. The Counties have standing to bring this case as local governments affected by final agency decisions. The Counties' welfare and viability depend upon business, agriculture and recreational activities conducted on or in connection with these federal lands. The U.S. Geological Survey ("USGS") estimates that 66 trillion cubic feet of natural gas is situated in Northwest Colorado.¹ As the second largest reserve in the United States, this asset is vital to the Counties, the State of Colorado and the nation. The economies of each of the Counties primarily rely upon access to and use of the federal lands to which the Federal Plans apply. The Federal Plans would result in estimated negative annual economic impacts from \$240,508,051 to \$584,026,546. FEIS Table 4.22. BLM recognized these impacts will be primarily in oil and gas producing counties such as the Plaintiffs. FEIS at 4-601. In addition, The Federal Plans will affect workers who reside or work in those counties and earn or spend their income in those counties. *Id.* The Counties believe BLM has vastly understated economic impacts. Most of the Counties' revenues come from taxes, the majority of which most of which are property taxes generated from oil and gas production. *See* FEIS, Table 3.95.

5. As BLM noted, "[F]ifty percent of royalties and payments collected by the federal government related to mineral leases in Colorado are returned to the state Colorado then distributes 50 percent of these funds (up to a limit) to the counties of origin and 50 percent to the state school fund, the Department of Local Affairs and the Water Conservations [sic] Board." FEIS at 3-273.

¹ Available at: <https://www.usgs.gov/news/usgs-estimates-66-trillion-cubic-feet-natural-gas-colorado-s-mncos-shale-formation>.

6. Thus “[R]estrictions to oil and gas development in these counties would have considerable impacts on their fiscal revenues.” FEIS at 4-607. The Counties have particular economic and environmental interests in the outcome of the Federal Plans and are therefore injured by the Defendants’ failure to adhere to the APA, NEPA, MLA, FLPMA and the DQA. Declarations of Tom Jankovsky, Don Cook, Betsy Blecha, and Sean Bolton attached hereto as **Exhibits A, B, C and D**.

7. Revenues to the Counties also include state severance taxes on mineral extraction. These tax dollars support community services including fire protection, libraries, hospitals, schools, parks and recreation districts in the Counties, among others. *See e.g.*, **Exhibit A**, Declaration of Tom Jankovsky. The Counties have already been injured by the Federal Plans by deferral of federal leases, permit denials and the corresponding loss of tax revenues. *Id.* The Federal Plans have vastly overstated habitat for GRSG. For example, in Garfield County, more than 147,000 acres are improperly subject to the onerous additional restrictions in the Federal Plans. *Id.* These restrictions have adversely affected tax revenues to the Counties.

8. In addition, the Federal Plans have led to restrictions on access to existing wells and to mitigation requirements for a mine expansion that withdrew 4,500 acres of productive private land from county tax rolls leading to corresponding reductions in county revenues. *See Exhibit B*, Declaration of Don Cook. Reductions in activity and delays in production also detrimentally impact revenues collected by the Counties.

9. Two of Jackson County’s free-use permits for county gravel pits are now situated in PHMA, which subjects them to numerous new stipulations and conditions, including preclusions on mining gravel during certain times of the year with corresponding impacts on the County’s ability to access its resources. *See Exhibit C*, Declaration of Betsy Blecha. In addition,

BLM has failed to nominate some 8,000 acres for lease in PHMA that adjoins active and ongoing leases resulting in corresponding losses of tax revenue to Jackson County. *Id.* These restrictions have detrimentally impacted the County's revenues.

10. The Counties' economies rely on energy resource development, mining, and ranching—industries that utilize public lands—and the taxes lost as result of the Federal Plans have affected the Counties' revenues. *See e.g. Exhibit D*, Declaration of Shawn Bolton.

11. The Counties have also spent countless hours and tremendous energy and resources in their attempts to ensure the Federal Plans protect their citizens and their interests in natural resources, wildlife and recreation attendant to BLM and USFS lands within their jurisdiction. Nonetheless, the Federal Plans disregard and ignore the Counties' input and reflect virtually none of the efforts, experience or local conditions documented by the Counties.

12. The State of Colorado grants counties the authority to develop plans for the purpose of “guiding and accomplishing a coordinated and harmonious development of the relevant territory, which in accordance with present and future needs and resources, will best promote the general welfare of the inhabitants.” C.R.S. § 30-28-106. In addition, C.R.S. § 30-28-107 provides:

The county or regional master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county or region which, in accordance with present and future needs and resources, will best promote the health, safety, morals, order, convenience, prosperity, or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry, and other purposes as will tend to create conditions favorable to health, safety, energy conservation, transportation, prosperity, civic activities, and recreational, educational, and cultural opportunities;....

C.R.S. § 30-28-107.

13. Pursuant to this statutory authority, the Counties prepared various master plans providing for, among other purposes, greater sage grouse conservation, land use planning, wildfire mitigation and suppression, and weed and invasive species control. Despite the fact that the BLM and USFS management and Land Use Plans (“LUPs”) “must be consistent with state and local LUPs to the extent possible, and any amendments to be made would aim to maintain this consistency” (FEIS at 4-610), the Federal Defendants ultimately disregarded the Counties’ input, County-specific scientific analyses, and well-informed local master plans in the preparation of the Federal Plans. The Federal Plans are mandated to be consistent with related plans of State and local governments to the maximum extent so long as they are consistent with federal law. 43 C.F.R. §1610.3-2(a); see also *Am. Motorcyclist Ass’n v. Watt*, 534 F. Supp. 923, 936 (D. Cal. 1981). Federal agencies must also address how inconsistencies between a proposed action and local land use plans are considered and resolved. 43 U.S.C. §1712(c)(9). Here, the agencies have failed to do so. This lack of coordination and cooperation is contrary to FLPMA and NEPA and has likewise injured the Counties.

14. BLM has failed to coordinate with the Counties pursuant to FLPMA. As a result, the Federal Plans conflict with numerous local plans and conservation efforts put in place by the Counties despite the Counties’ continued insistence that BLM adopt a balanced-use alternative that includes and reflects state and local government conservation efforts. See Declarations of Tom Jankovsky, Don Cook, Betsy Blecha, and Sean Bolton attached hereto as **Exhibits A, B, C and D**.

15. Finally, the Counties have standing because Federal Defendants have disregarded NEPA in incorporating significant new issues at the eleventh-hour in this four-year process

without the opportunity for public notice and comment and in contravention of the need for a Supplemental EIS.

16. The Defendants' approval of the Federal Plans is in violation of federal statutes and regulations and is the cause of the Counties' injury such that the relief requested herein can redress the Counties' injury.

III. PARTIES

17. Plaintiff Garfield County, a subdivision of the State of Colorado, was established on February 10, 1883. Garfield County is located in Northwest Colorado. The county seat is Glenwood Springs, Colorado. Garfield County's primary industries are energy development, ranching, farming, fishing, hunting, recreation and tourism. Garfield County covers 2,958 square miles, of which approximately 63% is federal public lands, including more than 600,000 acres of public lands managed by BLM. Primary industries are oil and gas development and production, tourism, agriculture, construction, retail, health services and government. Garfield County's economy and its citizens depend on the use of federal public land for all oil and gas development and production, mining and mineral production, ranching, and outdoor recreation. Many of Garfield County's citizens and visitors live and work on or near federal lands and are therefore substantially and materially impacted by agency decisions relating to the use and regulation of such land. Garfield County has expended considerable effort and resources in developing a conservation plan for Greater Sage-Grouse ("GRSG") tailored to its unique local conditions and topography. Garfield County also expended considerable effort and resources in coordination with the BLM and in serving as a cooperating agency during the NEPA process. Garfield County filed a Protest to the Final EIS for violation of federal laws, failure to coordinate and failure to incorporate state and local plans.

18. Plaintiff Jackson County, a subdivision of the State of Colorado, was established on May 5, 1909. Jackson County is located in northwestern Colorado. Its county seat is Walden, Colorado. Jackson County's primary industries are agriculture, energy development, logging, fishing, hunting recreation and tourism. Jackson County covers 1,621 square miles, of which approximately 65% is federal public lands. As a result, many of Jackson County's citizens and visitors live and work on or near federal lands and are therefore substantially and materially impacted by agency decisions relating to the use and regulation of federal public land. In addition, Jackson County has expended considerable effort and resources in serving as a cooperating agency during the GRSG NEPA process.

19. Plaintiff Moffat County, a subdivision of the State of Colorado, was established on February 27, 1911. Its county seat is Craig, Colorado. Moffat County's primary industries are energy development, agriculture, fishing, hunting and tourism. Moffat County covers 4,723 square miles of northwestern Colorado, of which approximately 60% is federal public lands. As a result, many of Moffat County's citizens and visitors live and work on or near federal lands and are therefore substantially and materially impacted by agency decisions relating to the use and regulation of federal public land. In addition, Moffat County has expended considerable effort and resources in serving as a cooperating agency during the GRSG NEPA process. Moffat County filed a Protest to the Final EIS for violation of federal laws, failure to coordinate and failure to incorporate state and local plans.

20. Plaintiff Rio Blanco County, a subdivision of the State of Colorado, was established on March 25, 1889. Rio Blanco County is located in northwestern Colorado. Its county seat is Meeker, Colorado. Rio Blanco County's primary industries are energy production, agriculture, forestry, fishing, hunting, recreation and education and health services. Rio Blanco

County covers 3,220 square miles, of which approximately 73% is federal public lands. As a result, many of Rio Blanco County's citizens and visitors live and work on or near federal lands and are therefore substantially and materially impacted by agency decisions relating to the use and regulation of federal public land. In addition, Rio Blanco County has expended considerable effort and resources in serving as a cooperating agency during the GRSG NEPA process. Rio Blanco County filed a Protest to the Final EIS for violation of federal laws, failure to coordinate and failure to incorporate state and local plans.

21. Defendant DOI is a federal agency within the meaning of the APA. 5 U.S.C. § 551(1).

22. Defendant Ryan Zinke is the Interior Secretary and has ultimate responsibility for the Federal Plans.

23. Defendant BLM is an agency within DOI within the meaning of the APA. 5 U.S.C. § 551(1).

24. Defendant Michael D. Nedd is the Acting Director of the BLM.

25. Defendant Ruth Welch is the BLM Colorado State Director.

26. Defendant USDA is a federal agency within the meaning of the APA. 5 U.S.C. § 551(1).

27. Defendant Sonny Perdue is the USDA Secretary.

28. Defendant USFS is an agency within USDA within the meaning of the APA. 5 U.S.C. § 551(1).

29. Defendant Thomas L. Tidwell is the USFS Chief.

30. Defendant Nora Rasure is the USFS Regional Forester of the Intermountain Region.

31. Defendant Brian Ferebee is the USFS Acting Regional Forester of the Intermountain Region.

IV. FACTUAL BACKGROUND

32. On December 9, 2011, BLM published a Notice of Intent (“NOI”) to Prepare Environmental Impact Statements and Supplemental Environmental Impact Statements to Incorporate Greater Sage-Grouse Conservation Measures into Land Use Plans and Land Management Plans. 76 Fed. Reg. 77008 (2011).²

33. The Counties have been actively involved since the inception of the planning effort. Pursuant to 40 C.F.R. § 1501.6, each of the Counties served as cooperating agencies during the NEPA process. In this role, the Counties worked hard throughout the process to encourage Defendants to develop balanced and scientifically-sound GRSG information and analyses specific to Northwest Colorado.

34. Plaintiff Garfield County expended significant resources to establish its own conservation plan tailored to its unique topography, vegetation, and terrain and created state-of-the-art county-specific mapping to accurately identify GRSG habitat.

35. On August 16, 2013, BLM issued the Northwest Colorado Greater Sage-Grouse Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (“DEIS”). 78 Fed Reg. 50088 (2013).³

36. The Counties commented on BLM’s DEIS and highlighted, among other flaws: failure to consider reasonable alternatives; lack of coordination with local governments; and failure to reconcile inconsistencies with state and local plans.

² <https://www.federalregister.gov/documents/2011/12/09/2011-31652/notice-of-intent-to-prepare-environmental-impact-statements-and-supplemental-environmental-impact>

³ <https://www.federalregister.gov/documents/2013/08/16/2013-19837/notice-of-availability-of-the-northwest-colorado-greater-sage-grouse-draft-resource-management-plan>

37. Given objections to the quality, objectivity and integrity of data underlying the Federal Plans, the Counties participated in DQA challenges relative to:
- a. BLM’s National Technical Team (“NTT”) Report (March 18, 2015);
 - b. The U.S. Fish and Wildlife Service (“USFWS”) Conservation Objectives Team (“COT”) Report (March 18, 2015);
 - c. The U.S. Geological Survey (“USGS”) report on Greater Sage-Grouse: Ecology and Conservation of a Landscape Species and its Habitats (“the Monograph”) (March 18, 2015); and
 - d. The USGS Manier, et al. 2014 “Buffer Report.” (September 14, 2015).
38. The Federal Defendants dismissed the DQA challenges with little to no detail or analysis.
39. On May 29, 2015, BLM published a Notice of Availability (“NOA”) for the Rocky Mountain Region Greater Sage-Grouse Proposed Land Use Plan Amendments and Final Environmental Impact Statements (“FEIS”) for the Wyoming, Northwest Colorado, Lewiston, and North Dakota Sub-Regions. 80 Fed. Reg. 30703 (2015).⁴
40. The FEIS contained a multitude of new issues that were never addressed or analyzed in the DEIS such that the public had no opportunity to review or comment as required by NEPA. These changes included the concepts of: hard and soft triggers; and delegation of BLM decision-making authority to the USFWS and Colorado Parks and Wildlife (“CPW”) as well as a fundamental change in land management away from multiple uses to management for a single species.

⁴ <https://www.federalregister.gov/documents/2015/05/29/2015-12950/notice-of-availability-of-the-rocky-mountain-region-greater-sage-grouse-proposed-land-use-plan>

41. Garfield, Rio Blanco and Moffat Counties timely submitted protests (“Protests”) to the FEIS in accordance with 43 C.F.R. § 1610.5-2 to which Defendants failed to adequately respond.
42. On September 23, 2015, the USFS published the NOA for the FS RM ROD and Approved Land Management Plan Amendments for the Rocky Mountain Region Greater Sage-Grouse Sub-Regions Northwest Colorado, and Wyoming. 80 Fed. Reg. 57332 (2015).⁵
43. On September 24, 2015, BLM published the NOA for the RM ROD and ARMPA. 80 Fed. Reg. 57639 (2015).⁶
44. Subsequent to the approval of the final ARMPs/LUPAs, litigation was initiated in various jurisdictions to challenge violations of federal law inherent in the final agency action.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

45. Determine that the Federal Plans violate the APA in that they are arbitrary and capricious;
46. Declare that the Defendants’ approval of the Federal Plans violates the APA, NEPA, FLPMA, NFMA, MLA and the DQA;
47. Set aside the Federal Plans which relate to Northwest Colorado until such time as they are revised to comply with governing laws;
48. Order the Defendants to pay the Plaintiffs’ costs of litigation, including attorney fees incurred by the preparation of this action as allowed by law;

⁵ <https://www.federalregister.gov/documents/2015/09/23/2015-24168/notice-of-availability-of-the-record-of-decision-and-approved-land-management-plan-amendments-for>

⁶ <https://www.federalregister.gov/documents/2015/09/24/2015-24208/notice-of-availability-of-the-record-of-decision-and-approved-resource-management-plan-amendments>

49. Enjoin Defendants from continuing to implement the Federal Plans; and
50. Such other and further relief as the Court may deem just and equitable.

Dated this 15th day of May, 2017.

Respectfully Submitted,

HOLSINGER LAW, LLC

Original on file at Holsinger Law, LLC

By: /s/ Kent Holsinger

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