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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF MONTANA**  
16 **GREAT FALLS DIVISION**

18 **STATE OF CALIFORNIA; STATE**  
19 **OF NEW MEXICO; STATE OF**  
20 **NEW YORK; and STATE OF**  
**WASHINGTON,**

21 Plaintiffs,

22 v.

23 **RYAN ZINKE**, in his official capacity  
as Secretary of the Interior; **UNITED**  
24 **STATES BUREAU OF LAND**  
**MANAGEMENT; and UNITED**  
25 **STATES DEPARTMENT OF THE**  
**INTERIOR,**

26 Defendants.

Case No.

**COMPLAINT FOR**  
**DECLARATORY AND**  
**INJUNCTIVE RELIEF**

(Administrative Procedure Act, 5  
U.S.C. § 551 *et seq.*; National  
Environmental Policy Act, 42 U.S.C. §  
4321 *et seq.*; Mineral Leasing Act, 30  
U.S.C. § 181 *et seq.*; Federal Land  
Policy and Management Act, 43  
U.S.C. § 1701 *et seq.*)

## INTRODUCTION

1  
2       1. In this action, the State of California, by and through Xavier Becerra,  
3 Attorney General; the State of New Mexico, by and through Hector Balderas,  
4 Attorney General; the State of New York, by and through Eric T. Schneiderman,  
5 Attorney General; and the State of Washington (“Plaintiffs”) challenge a decision  
6 by Defendants Ryan Zinke, United States Bureau of Land Management (“BLM”),  
7 and United States Department of the Interior (“Department”) (collectively,  
8 “Defendants”) to restart the federal coal leasing program without conducting a new  
9 environmental review or supplementing their outdated review of the program, in  
10 violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et*  
11 *seq.* Plaintiffs also challenge Defendants’ decision to restart the federal coal leasing  
12 program without evaluating whether the program is in the public interest or  
13 ensuring that it will provide fair market value to the public, in violation of the  
14 Mineral Leasing Act (“MLA”), 30 U.S.C. § 181 *et seq.*, and the Federal Land  
15 Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*

16       2. On January 15, 2016, then-Secretary of the Interior Sally Jewell, in  
17 response to concerns raised by the Government Accountability Office, the  
18 Department’s Inspector General, Members of Congress, and the public, issued a  
19 Secretarial Order commencing a process to prepare a new programmatic  
20 environmental impact statement (“programmatic EIS” or “PEIS”) that would  
21 identify and evaluate potential reforms to the federal coal leasing program.  
22 Defendants had not updated their environmental analysis for the program since  
23 1985, despite significant new information and changed circumstances triggering the  
24 need for supplemental review. In recognition of the importance of this new  
25 information and circumstances, Defendants, consistent with their practice during  
26 earlier reviews in the 1970s and 1980s, placed a moratorium on new coal leasing  
27 until the review was complete, which was expected in early 2019.



1 program constitutes final agency action and is therefore judicially reviewable  
2 within the meaning of the APA. 5 U.S.C. §§ 704, 706.

3 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because  
4 Defendants are officers or employees of the United States or agencies thereof, and  
5 federally-owned coal that is subject to the federal coal leasing program lies in this  
6 District. This case is also related to a previously-filed action in this District,  
7 *Citizens for Clean Energy, et al. v. U.S. Department of the Interior, et al.*, Case No.  
8 4:17-cv-00030-BMM (D. Mont., complaint filed March 29, 2017).

### 9 **PARTIES**

10 8. Plaintiff State of California brings this action by and through Attorney  
11 General Xavier Becerra. The Attorney General is the chief law officer of the State,  
12 Cal. Const., art. V, § 13, and is authorized to seek judicial remedies to protect the  
13 natural resources of the State of California from pollution, impairment, or  
14 destruction. Cal. Gov. Code §§ 12600-12612. This challenge is brought pursuant  
15 to the Attorney General's independent constitutional, statutory, and common law  
16 authority to bring suit and obtain relief on behalf of the People of the State of  
17 California.

18 9. Plaintiff State of New Mexico brings this action by and through Attorney  
19 General Hector Balderas. The Attorney General of New Mexico is authorized to  
20 prosecute in any court or tribunal all actions and proceedings, civil or criminal,  
21 when, in his judgment, the interest of the state requires such action. N.M. Stat. Ann.  
22 § 8-5-2.

23 10 Plaintiff State of New York is a sovereign entity and brings this action by  
24 and through Eric T. Schneiderman, Attorney General, to protect its own sovereign  
25 and proprietary rights, and as *parens patriae* on behalf of its affected citizens and  
26 residents.

27 11. Plaintiff State of Washington is a sovereign entity and brings this action  
28 to protect its own sovereign and proprietary rights, and as *parens patriae* on behalf

1 of its affected citizens and residents. The Attorney General is the chief legal  
2 adviser to the State of Washington. The Attorney General's powers and duties  
3 include acting in federal court on matters of public concern. This challenge is  
4 brought pursuant to the Attorney General's independent constitutional, statutory,  
5 and common law authority to bring suit and obtain relief on behalf of the State of  
6 Washington.

7 12. Plaintiffs have an interest in the responsible use, management, and  
8 conservation of our nation's public resources. That interest is particularly strong  
9 where, as here, the use of such resources causes adverse environmental impacts that  
10 the States are working diligently to address.

11 13. Plaintiffs have long been leaders in working to reduce greenhouse gas  
12 ("GHG") emissions and slow the pace of climate change. Plaintiffs have a  
13 significant interest in ensuring that the federal coal leasing program does not  
14 undermine those efforts. GHG emissions from the production, transport, and  
15 consumption of federal coal currently account for 11 percent of national GHG  
16 emissions, and approximately 1.5 percent of global GHG emissions. Plaintiffs have  
17 and will continue to be significantly affected by climate change through adverse  
18 impacts such as increased heat waves and greater air pollution, more frequent and  
19 intense storms and associated flooding, reduced snowpack and water supplies,  
20 increased wildfires, and sea level rise.

21 14. For example, Washington experiences many negative effects of climate  
22 change, including rising ambient temperatures, a diminished and unpredictable  
23 snowpack that is necessary for water consumption and hydropower generation, and  
24 ocean warming and acidification, which is harmful to Washington's shellfishery.  
25 Washington has enacted statutes and expended significant financial resources in  
26 reducing greenhouse gas emissions and slowing the pace of climate change.  
27 According to the University of Washington, climate change adversely affects  
28 Washington's water resources by decreasing snowpack, increasing stream

1 temperatures, decreasing summer minimum streamflows, and causing widespread  
2 changes in streamflow timing and flood risk. These changes increase the potential  
3 for more frequent summer water shortages in some basins (e.g., the Yakima basin)  
4 and for some water uses (e.g., irrigated agriculture or instream flow management),  
5 particularly in fully allocated watersheds with little management flexibility.

6 Washington's forests are likely to experience significant changes in the  
7 establishment, growth, and distribution of tree species as a result of increasing  
8 temperatures, declining snowpack, and changes in soil moisture. A rise in forest  
9 mortality is also expected due to increasing wildfire, insect outbreaks, and diseases.

10 Sea level is projected to rise in most coastal and marine areas of the state,  
11 increasing the likelihood for permanent inundation of low-lying areas, higher tidal  
12 and storm surge reach, flooding, erosion, and changes and loss of habitat. Sea level  
13 rise, rising coastal ocean temperatures, and ocean acidification will also affect the  
14 geographical range, abundance, and diversity of Pacific Coast marine species.

15 Climate change is expected to affect both the physical and mental health of  
16 Washington's residents by altering the frequency, duration, or intensity of climate-  
17 related hazards to which individuals and communities are exposed. Health impacts  
18 include higher rates of heat-related illnesses (e.g., heat exhaustion and stroke);  
19 respiratory illnesses (e.g., allergies, asthma); vector-, water-, and food-borne  
20 diseases; and mental health stress (e.g., depression, anxiety). These impacts can  
21 lead to increased absences from schools and work, emergency room visits,  
22 hospitalizations, and deaths.

23 15. As a state in the arid southwest, New Mexico is also experiencing the  
24 adverse effects of climate change and will suffer additional impacts in the future.  
25 Average temperatures in New Mexico have been increasing 50% faster than the  
26 global average over the past century. According to the Third U.S. National Climate  
27 Assessment, streamflow totals in the Rio Grande and other rivers in the Southwest  
28 were 5% to 37% lower between 2001 and 2010 than the 20th century average flows.

1 Projections of further reduction of late-winter and spring snowpack and subsequent  
2 reductions in runoff and soil moisture pose increased risks to water supplies needed  
3 to maintain cities, agriculture, and ecosystems. Drought and increased temperatures  
4 due to climate change have caused extensive tree death across the Southwest.

5 Winter warming due to climate change has exacerbated bark beetle outbreaks by  
6 allowing more beetles, which normally die in cold weather, to survive and  
7 reproduce. According to a 2015 study by scientists at Los Alamos National  
8 Laboratories, greenhouse gas-driven warming may lead to the death of 72 percent  
9 of the Southwest's evergreen forests by 2050, and nearly 100% mortality of these  
10 forests by 2100.

11 16. Plaintiffs also have an interest in preventing adverse water quality, air  
12 quality, environmental justice, and other impacts from fossil fuel development,  
13 transport, and combustion. For example, millions of tons of coal have been  
14 transported through California in open rail cars to ports in Los Angeles, Long  
15 Beach, Stockton, and Richmond, areas that are surrounded by low-income and  
16 minority communities that are already disproportionately impacted by  
17 environmental pollution. A 2015 study published in the journal Atmospheric  
18 Pollution Research found that the passage of a diesel-powered, open-top coal train  
19 resulted in nearly twice as much particulate matter emissions as a diesel-powered  
20 freight train. According to a 2017 report by the Bay Area Air Quality Management  
21 District, particulate matter emissions from the storage and handling of significant  
22 quantities of bulk materials such as coal present an environmental and public health  
23 concern because small dust particles cause or contribute to a wide variety of serious  
24 health problems, including asthma, bronchitis, cardio-vascular diseases, and cancer.

25 17. In addition, coal from federal leases affected by Secretarial Order 3348  
26 is, and would be, transported by rail across Washington. In particular, coal from  
27 the Powder River basin is shipped to or through the state. According to the  
28 Washington Department of Transportation, the baseline number of trains in 2015

1 numbered 70 per day on some track segments; under some projections involving  
2 increased coal transportation infrastructure, that baseline number could reach 122  
3 per day on those track segments. Studies predict increases in both rail and  
4 vehicular wait times from increased coal transport through the state, including in  
5 major metropolitan areas.

6 18. A number of states in the east, such as New York, suffer injury from air  
7 quality harms caused by conventional pollutants such as nitrogen oxides that power  
8 plants east of the Mississippi River emit when they burn federal coal. These  
9 emissions react in the atmosphere to form ozone that blows into New York and  
10 other eastern states and provokes premature death and illness.

11 19. Plaintiffs have an interest in ensuring that the public receives appropriate  
12 compensation when these fossil fuel resources are extracted and produced on public  
13 lands. Defendants' decision to restart the federal coal leasing process without  
14 addressing the outdated structure for management of federal coal will impact the  
15 amount of royalties received by the States and the federal government from the  
16 extraction of this public resource. As a result of the adverse impacts from the  
17 combustion of federal coal, Plaintiffs and other states and local governments incur  
18 costs for health care, water storage and flood control facilities, infrastructure  
19 protection, and other responsive actions. Under the current system of determining  
20 the "fair market value" of the leases, BLM does not recoup those costs.

21 20. Plaintiffs also rely on Defendants' compliance with the procedural and  
22 substantive requirements of NEPA to obtain timely and accurate information about  
23 activities that may have significant adverse impacts on public lands and impacts  
24 within their States, and to meaningfully participate in decision-making processes.  
25 Plaintiffs have suffered legally cognizable harm because of Defendants' actions, as  
26 they have been aggrieved by the termination of the required environmental review  
27 of the federal coal leasing program and the lifting of the leasing moratorium. For  
28 example, Washingtonians have expressed acute interest in the federal coal program,



1 and in the environmental review process required by NEPA. During the  
2 programmatic EIS scoping process halted by Secretarial Order 3348, BLM received  
3 comments from more Washington residents than from any other state – 182 out of a  
4 total 1239 individual commenters. This demonstrates a very high degree of concern  
5 with the federal coal program among Washington residents, and a deep  
6 involvement in the NEPA process terminated by the Secretary of the Interior.

7 21. Without the benefit of the hard look at the current environmental impacts  
8 of the coal leasing program that a lawful, up-to-date environmental impact review  
9 would provide, Defendants’ decision to restart the coal leasing program does not  
10 even acknowledge, let alone address, the harms to Plaintiffs from the leasing  
11 program. Preparation of an updated programmatic EIS that identifies and evaluates  
12 those impacts will provide additional information that could result in a different  
13 decision regarding the federal coal leasing program – a termination of the program,  
14 modification of the program, or other restrictions that would redress Plaintiffs’  
15 injuries. Accordingly, Plaintiffs have standing to bring this action.

16 22. Defendant Ryan Zinke is Secretary of the Interior and is sued in his  
17 official capacity. Mr. Zinke has responsibility for implementing and fulfilling the  
18 Department’s duties under NEPA and signed the Secretarial Order at issue.

19 23. Defendant United States Bureau of Land Management is an agency of the  
20 United States government that is charged with managing the federal coal leasing  
21 program and bears responsibility, in whole or in part, for the acts complained of in  
22 this Complaint.

23 24. Defendant United States Department of the Interior is an agency of the  
24 United States government which oversees the United States Bureau of Land  
25 Management and bears responsibility, in whole or in part, for the acts complained  
26 of in this Complaint.

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28

## STATUTORY BACKGROUND

### I. NATIONAL ENVIRONMENTAL POLICY ACT.

25. NEPA is the “basic national charter for the protection of the environment.” 40 C.F.R. § 1500.1. The fundamental purposes of NEPA are to ensure that “environmental information is available to public officials and citizens before decisions are made and before actions are taken,” and that “public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(b)-(c).

26. To achieve these purposes, NEPA requires the preparation of a detailed EIS for any “major federal action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). In addition to review of site-specific actions, the types of “major Federal action” subject to NEPA review include:

Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based ... and adoption of programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

40 C.F.R. § 1508.18(b)(2)-(3); *see also id.* § 1502.4(b) (“Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs ... . Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking”). The Supreme Court has found that a programmatic EIS for the federal coal program is required by NEPA because the program “is a coherent plan of national scope, and its adoption surely has significant environmental consequences.” *Kleppe v. Sierra Club*, 427 U.S. 390, 400 (1976).

27. In an EIS, a federal agency must analyze the direct, indirect, and cumulative impacts of its action. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.7,

1 1508.8. “Direct effects” are those “caused by the action and occur at the same time  
2 and place.” 40 C.F.R. § 1508.8(a). Indirect impacts “are caused by the action and  
3 are later in time or farther removed in distance, but are still reasonably foreseeable.”  
4 *Id.* § 1508.8(b). A “cumulative impact” is “the impact on the environment which  
5 results from the incremental impact of the action when added to other past, present,  
6 and reasonably foreseeable future actions regardless of what agency (Federal or  
7 non-Federal) or person undertakes such other actions. Cumulative impacts can  
8 result from individually minor but collectively significant actions taking place over  
9 a period of time.” *Id.* § 1508.7. As relevant here, the Ninth Circuit Court of  
10 Appeals has found that “[t]he impact of greenhouse gas emissions on climate  
11 change is precisely the kind of cumulative impacts analysis that NEPA requires  
12 agencies to conduct.” *Center for Biological Diversity v. Nat’l Highway Traffic*  
13 *Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008).

14 28. An agency cannot rest on the conclusions made in an EIS as issued on a  
15 given date. Instead, NEPA requires an agency to supplement a past EIS when there  
16 are “significant new circumstances or information relevant to environmental  
17 concerns and bearing on the proposed action or its impacts.” 40 C.F.R. §  
18 1502.9(c)(1)(ii); *see also Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 374  
19 (1989) (agency retains a continuing obligation to take a “hard look at the  
20 environmental effects of its planned action, even after a proposal has received  
21 initial approval”). In determining when a supplemental EIS is required, an agency  
22 must “apply a rule of reason,” not supplementing “every time new information  
23 comes to light,” but continuing to maintain a “hard look” at the impact of agency  
24 action when the “new information is sufficient to show that the remaining action  
25 will affect the quality of the human environment in a significant manner or to a  
26 significant extent not already considered.” *Marsh*, 490 U.S. at 373–74.

27 29. The Council on Environmental Quality (“CEQ”), which was created to  
28 administer NEPA and promulgated its implementing regulations, has stated that

1 “[a]s a rule of thumb ... if the EIS concerns an ongoing program, EISs that are more  
2 than 5 years old should be carefully reexamined to determine if the criteria in  
3 Section 1502.9 compel preparation of an EIS supplement.” 46 Fed. Reg. 18,026  
4 (Mar. 23, 1981) (CEQ Memorandum to Agencies: Forty Most Asked Questions  
5 Concerning CEQ’s NEPA Regulations, Question 32).

## 6 **II. FEDERAL LAND MANAGEMENT STATUTES.**

7 30. The MLA authorizes and governs the leasing of public lands for the  
8 production of coal and other minerals. Pursuant to the MLA, the Secretary of the  
9 Interior is authorized to lease coal on public lands “as he finds appropriate and in  
10 the public interest,” provided that every sale is made by competitive bid and  
11 provides the public with fair market value. *See* 30 U.S.C. § 201(a)(1). The MLA  
12 further requires that the Secretary only lease coal in a manner that balances “long-  
13 term benefits to the public against short-term benefits.” *Id.* § 201(a)(3). BLM is  
14 the federal agency within the Department tasked with administering the federal coal  
15 leasing program.

16 31. FLPMA establishes the broad framework under which BLM manages  
17 public lands for multiple uses in a way “that will best meet the present and future  
18 needs of the American people.” 43 U.S.C. § 1702(c); *see id.* § 1712(c)(7) (in  
19 developing land use plans, BLM must “weigh long-term benefits to the public  
20 against short-term benefits”). Under FLPMA, Congress declared that it is the  
21 policy of the United States that “public lands be managed in a manner that will  
22 protect the quality of scientific, scenic, historical, ecological, environmental, air and  
23 atmospheric, water resource, and archeological values.” *Id.* § 1701(a)(8). FLPMA  
24 also requires that BLM “receive fair market value of the use of the public lands and  
25 their resources.” *Id.* § 1701(a)(9).

## 26 **III. ADMINISTRATIVE PROCEDURE ACT.**

27 32. Pursuant to the APA, a reviewing court shall “(1) compel agency action  
28 unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside

1 agency action, findings, and conclusions found to be ... arbitrary, capricious, an  
2 abuse of discretion, otherwise no in accordance with law; [or] without observance  
3 of procedure required by law.” 5 U.S.C. § 706. The APA defines “agency action”  
4 to include “the whole or a part of an *agency* rule, *order*, license, sanction, relief, or  
5 the equivalent or denial thereof, or failure to act.” *Id.* § 551(13) (emphases added);  
6 *see id.* § 551(6) (defining “order” to mean “the whole or a part of a final disposition,  
7 whether affirmative, negative, injunctive, or declaratory in form, of an agency in a  
8 matter other than rule making but including licensing”).

## 9 **FACTUAL AND PROCEDURAL BACKGROUND**

### 10 **I. THE FEDERAL COAL LEASING PROGRAM.**

11 33. The United States has the largest demonstrated coal reserves in the world,  
12 with an estimated 477 billion tons of coal, 255 billion tons of which is deemed  
13 recoverable. The United States is the second largest coal producer in the world  
14 behind China. In 2015, 42 percent of all coal produced in the United States came  
15 from public lands.

16 34. BLM is the federal agency charged with managing coal resources on 570  
17 million acres of public lands where the mineral estate is owned by the federal  
18 government. Currently, BLM oversees 306 coal leases encompassing over 475,000  
19 acres in 10 states. Federal coal from the Powder River Basin in Montana and  
20 Wyoming accounts for over 85 percent of this production. Over the past decade,  
21 BLM-administered leases have produced over 4 billion tons of coal and resulted in  
22 the collection of more than \$10 billion in federal revenue. The recoverable reserves  
23 of federal coal currently under lease are estimated to be sufficient to continue  
24 production at current levels for 20 years.

25 35. According to BLM data, in New Mexico there are 21 federal coal leases,  
26 encompassing 42,756 acres. This is nearly 9% of the 482,691 acres under federal  
27 coal leases nationwide. According to the New Mexico Bureau of Geology and  
28 Mineral Resources, New Mexico ranks 12th in the nation in coal production.

1           36. The majority of federal coal is used to generate electricity domestically,  
2 accounting for an estimated 14 percent of the Nation’s electricity in 2015 and 11  
3 percent of total U.S. greenhouse gas emissions. Coal is also used for other  
4 processes, including making steel (i.e., metallurgical coal). In 2015, about 8  
5 percent of all U.S. coal was exported, and many coal companies are attempting to  
6 expand exports in the face of decreasing domestic demand, including a proposal to  
7 construct a new bulk export terminal at the former Oakland Army Base in Oakland,  
8 California. The transport, storage, and handling of such coal results in particular  
9 matter emissions that have been shown to cause numerous environmental and  
10 public health concerns.

11           37. BLM manages federal coal pursuant to regulations and a programmatic  
12 EIS that were originally adopted 38 years ago, at a time when the threat of climate  
13 change was not fully appreciated and market conditions, infrastructure development,  
14 scientific understanding, and national priorities were dramatically different. *See* 44  
15 Fed. Reg. 42,584 (July 19, 1979) (Coal Management; Federally Owned Coal);  
16 BLM, Final Programmatic Environmental Statement: Federal Coal Management  
17 Program (“1979 PEIS”). The 1979 PEIS does not consider the climate impacts of  
18 the federal coal program or adequately evaluate other potential environmental  
19 effects, let alone reflect the conditions of the coal industry as it exists today.

20           38. The programmatic EIS was last revisited just six years after BLM  
21 promulgated its coal leasing regulations, when BLM updated those regulations and  
22 completed a limited supplement to the 1979 PEIS in response to recommendations  
23 from the Commission on Fair Market Value Policy for Federal Coal Leasing that  
24 addressed continued irregularities in the leasing process (“1985 Supplement”).  
25 While the 1979 PEIS analyzed seven major alternative coal programs, the 1985  
26 Supplement examined only the continuation of the federal coal management  
27 program and three alternatives: (1) Leasing by Application, (2) Preference Right  
28 and Emergency Leasing, and (3) No New Federal Leasing, *i.e.*, the no action

1 alternative. The 1985 Supplement fails to mention, let alone consider and evaluate,  
2 climate change impacts. BLM’s revised regulations incorporated a two-tiered  
3 leasing structure. First, in certified coal producing regions where exploration and  
4 new mining were occurring, BLM would select tracts for lease sale. Second, in  
5 areas outside of the coal producing regions, mining companies would apply for  
6 specific tracts of lands to be leased, generally adjacent to their existing mines.

7 39. However, between 1987 and 1990, all six certified coal-producing  
8 regions were “decertified” by BLM for various reasons, which had the effect of  
9 making all federal coal leasing happen by industry application. Reliance on leasing  
10 by application substantially impairs the efficacy of competitive lease auctions.  
11 Existing lease holders have a financial incentive to submit applications that propose  
12 tracts adjacent to their existing leases. Since coal mining operations are capital-  
13 intensive and because mining equipment is logistically difficult to move, bidders  
14 closest to a proposed lease can generally outbid all other parties. The result is that  
15 leasing by application auctions frequently have only one bidder and are effectively  
16 noncompetitive, a result that was not contemplated when the current program was  
17 structured.

## 18 **II. RECENT REVIEW OF THE FEDERAL COAL PROGRAM.**

19 40. In recent years, Congress and government watchdogs have criticized  
20 BLM’s outdated structure for management of federal coal. Addressing the statutory  
21 “fair market value” leasing standard under the MLA, the Department’s Office of the  
22 Inspector General in 2013 issued a report concluding that “BLM faces significant  
23 challenges in the areas of coal leasing and mine inspection and enforcement” and  
24 that its management resulted in millions of dollars in lost royalties to the federal  
25 treasury because the agency was “not receiving the full, fair market value for the  
26 leases.” Off. of the Inspector Gen., U.S. Dep’t of the Interior, Coal Management  
27 Program, U.S. Department of the Interior (June 2013), *available at*:

28 <https://www.doioig.gov/sites/doioig.gov/files/CR-EV-BLM-0001-2012Public.pdf>.

1 The Inspector General made several recommendations necessary to “enhance  
2 [BLM’s] coal management program significantly” and recover these lost revenues.

3 41. Also in 2013, the Government Accountability Office (“GAO”) concluded  
4 that BLM had failed to ensure mining companies pay fair market value for leasing  
5 federal coal. U.S. Gov’t Accountability Off., GAO-14-140, Coal Leasing: BLM  
6 Could Enhance Appraisal Process, More Explicitly Consider Coal Exports, and  
7 Provide More Public Information 15 (Dec. 2013), *available at*:

8 <http://www.gao.gov/products/GAO-14-140>. GAO determined that since 1990,  
9 “most” federal coal leases were not sold competitively and had only a single bidder.  
10 In particular, of the 107 tracts that were leased between 1990 and 2012, “sales for  
11 96 (about 90 percent) involved a single bidder ... which was generally the company  
12 that submitted the lease application. More than 90 percent of the lease applications  
13 BLM received were for maintenance tracts used to extend the life of an existing  
14 mine or to expand that mine’s annual production.”

### 15 **III. ACTIONS BY THE OBAMA ADMINISTRATION TO IMPROVE THE FEDERAL COAL** 16 **PROGRAM.**

17 42. On March 17, 2015, due to these concerns and others raised by members  
18 of Congress, interested stakeholders, and the public, Secretary of the Interior Sally  
19 Jewell called for “an honest and open conversation about modernizing the Federal  
20 coal program.” The Department of the Interior subsequently held listening sessions  
21 around the country that summer. The Department heard from 289 individuals  
22 during the sessions and received over 94,000 written comments. The oral and  
23 written comments reflected several recurring concerns, in particular, that American  
24 taxpayers are not receiving a fair return for the leasing of public coal resources; that  
25 the Federal coal program conflicts with the Administration’s climate policy and the  
26 country’s national climate goals; and about the structure of the Federal coal  
27 program in light of current market conditions, including how implementation of the  
28



1 Federal leasing program affects current and future coal markets, coal-dependent  
2 communities and companies, and the reclamation of mined lands.

3 43. On January 15, 2016, Secretary Jewell issued a Secretarial Order  
4 commencing a process to prepare a new programmatic EIS of the federal coal  
5 program and putting in place a moratorium on most new leasing activity until that  
6 review was complete. *See* Secretarial Order No. 3338, Discretionary Programmatic  
7 Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15,  
8 2016) (“Secretarial Order 3338”), *available at*:  
9 <http://elips.doi.gov/ELIPS/0/doc/4271/Page1.aspx>.

10 44. Secretarial Order 3338 cited the Defendants’ legal obligations “to ensure  
11 conservation of the public lands, the protection of their scientific, historic, and  
12 environmental values, and compliance with applicable environmental laws” as well  
13 as Defendants’ “statutory duty to ensure a fair return to the taxpayer.” In  
14 determining that it was appropriate to suspend the issuance of new federal coal  
15 leases while BLM undertook a comprehensive review, the Secretary explained:

16 Lease sales and lease modifications result in lease terms of 20  
17 years and for so long thereafter as coal is produced in  
18 commercial quantities. Continuing to conduct lease sales or  
19 approve lease modifications during this programmatic review  
20 risks locking in for decades the future development of large  
21 quantities of coal under current rates and terms that the PEIS  
22 may ultimately determine to be less than optimal.

23 45. Under NEPA, early in the preparation of an EIS, an agency undertakes a  
24 process known as scoping. 40 C.F.R. § 1501.7; 43 C.F.R. § 46.235. In the scoping  
25 process, the agency describes a proposed agency action and possible alternatives,  
26 and seeks input from States, tribes, local governments, and the public on the  
27 affected resources and the environmental issues raised by the proposed action to  
28 help evaluate what issues the agency should address in the EIS.

46. In March 2016, BLM began a scoping process by issuing a Notice of  
Intent to Prepare a Programmatic Environmental Impact Statement to Review the  
Federal Coal Program and to Conduct Public Scoping Meetings. 81 Fed. Reg.

1 17,720 (Mar. 30, 2016). During the spring and summer of 2016, BLM accepted  
2 more than 214,000 public comments and held six public meetings in various cities  
3 regarding its review of the federal coal program.

4 47. On January 11, 2017, BLM released its Scoping Report on the federal  
5 coal program in which it found that “modernization of the Federal coal program is  
6 warranted.” BLM stated that “[t]his modernization should focus on ensuring a fair  
7 return to Americans for the sale of their public coal resources; addressing the coal  
8 program’s impact on the challenge of climate change; and improving the structure  
9 and efficiency of the coal program in light of current market conditions, including  
10 impacts on communities.” BLM further found that “key areas of analysis for the  
11 PEIS, many of which were identified as priorities by the Secretarial Order, include:  
12 return to the taxpayer, climate impacts/greenhouse gas emissions, socioeconomic  
13 considerations, energy needs (including coal production and exports, as well as  
14 substitution effects), energy prices, other environmental impacts (e.g., water quality  
15 and wildlife), and health impacts.”

16 48. In particular, with regard to climate change, BLM noted that U.S. federal  
17 coal production and combustion were responsible for about 11 percent of U.S.  
18 greenhouse gas emissions in 2014. The agency stated that climate change caused  
19 by human emission of greenhouse gases threatens public health and welfare in  
20 many ways, including increased heat waves, more frequent and intense storms,  
21 reduced water supplies, increase wildfires, flooding, and sea level rise. BLM  
22 acknowledged it thus has a legal obligation to consider these issues:  
23 “Consideration of the implications of Federal coal leasing for climate change, as an  
24 extensively documented threat to the health and welfare of the American people,  
25 falls squarely within the factors to be considered in determining the public interest.”

26 49. In addition to addressing climate change, several other factors not  
27 adequately considered in the 1979 PEIS or 1985 Supplement warrant supplemental  
28 environmental review. These include harm to public lands and wildlife from coal

1 mining, air quality impacts from coal transport and combustion, and the disposal of  
2 coal ash, which contains hazardous constituents. Moreover, the environmental  
3 justice impacts related to coal mining and downstream activities such as coal  
4 transport and export have never been adequately considered.

5 50. Furthermore, significant changes in the coal industry during the past few  
6 decades must be addressed. For example, coal has fallen out of favor for electricity  
7 production domestically and is no longer needed to secure American energy  
8 independence. According to BLM, “there has been a consistent decline in coal-  
9 fired electricity generation,” which made up 50% of U.S. generation in 2005 but  
10 fell to 33% by 2015. Coal production fell from 1.13 billion tons to less than 0.9  
11 billion tons during this same time period, and such decline was expected to  
12 continue. BLM noted several reasons for this softening market and decrease in coal-  
13 fired generating capacity, including the decrease in natural gas prices and the aging  
14 coal fleet, among others. In addition, BLM found that “[r]enewable energy, such as  
15 wind and solar, have also become more cost competitive and widely available over  
16 the past 5 years.” As a result, U.S. coal resources are increasingly being shipped  
17 and consumed abroad, and American citizens – while bearing the many external  
18 costs of the program – do not enjoy the concomitant benefits.

19 51. Finally, as discussed above, the federal coal leasing program has failed to  
20 fulfill legal mandates to ensure a fair economic return to American taxpayers due to  
21 changes in the federal coal leasing process.

22 52. As BLM summarized in the Scoping Report, “[t]he last time the Federal  
23 coal program received a comprehensive review was in the mid-1980s, and most of  
24 the existing regulations were promulgated in the late 1970s and have been only  
25 slightly modified since that time. The direct, indirect, and cumulative impacts of  
26 the Federal coal program have not been fully analyzed under the National  
27 Environmental Policy Act (NEPA) in over thirty years.”  
28

1           53. Consequently, BLM stated that it would move forward with the  
2 preparation of a draft programmatic EIS by January 2018 regarding the  
3 modernization of the federal coal leasing program using the information received  
4 during the scoping process, and issue a final PEIS by January 2019.

5 **IV. PRESIDENT TRUMP’S EXECUTIVE ORDER AND SECRETARIAL ORDER 3348.**

6           54. On March 28, 2017, President Donald Trump issued an Executive Order  
7 entitled “Promoting Energy Independence and Economic Growth” (“Executive  
8 Order”). 82 Fed. Reg. 16,093 (Mar. 31, 2017). Among other provisions, the  
9 Executive Order stated: “The Secretary of the Interior shall take all steps necessary  
10 and appropriate to amend or withdraw Secretary’s Order 3338 dated January 15,  
11 2016 (Discretionary Programmatic Environmental Impact Statement (PEIS) to  
12 Modernize the Federal Coal Program), and to lift any and all moratoria on Federal  
13 land coal leasing activities related to Order 3338. The Secretary shall commence  
14 Federal coal leasing activities consistent with all applicable laws and regulations.”  
15 *Id.* at 16,096.

16           55. On March 29, 2017, Secretary of the Interior Ryan Zinke issued  
17 Secretarial Order 3348, entitled “Concerning the Federal Coal Moratorium,” which  
18 revoked Order 3338, restarted the federal coal leasing program, and terminated the  
19 environmental review process. Specifically, Secretarial Order 3348 notes that the  
20 PEIS “is estimated to cost many millions of dollars and would be completed no  
21 sooner than 2019, even with robust funding.” Secretarial Order 3348 states that  
22 “the public interest is not served by halting the Federal coal program for an  
23 extended time, nor is a PEIS required to consider potential improvements to the  
24 program.” Secretarial Order 3348 then directs BLM “to process coal lease  
25 applications and modifications expeditiously in accordance with regulations and  
26 guidance existing before the issuance of Secretary’s Order 3338,” and commands  
27 that “[a]ll activities associated with the preparation of the Federal Coal Program  
28 PEIS shall cease.” Secretarial Order 3348 states that it is “effective immediately.”

1 **FIRST CLAIM FOR RELIEF**  
2 **(Failure to Conduct Environmental Review in Violation of NEPA and the APA;**  
3 **42 U.S.C. § 4332(2)(C); 5 U.S.C. § 706)**

4 56. Paragraphs 1 through 55 are realleged and incorporated herein by  
5 reference.

6 57. NEPA requires federal agencies to take a “hard look” at the  
7 environmental consequences of a proposed activity before taking action. *See* 42  
8 U.S.C. § 4332. To achieve this purpose, a federal agency must prepare an EIS for  
9 all “major Federal actions significantly affecting the quality of the human  
10 environment.” *Id.* § 4332(2)(C); 40 C.F.R. § 1502.3. In an EIS, a federal agency  
11 must analyze the direct, indirect, and cumulative impacts of its action. *See* 42  
12 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.7, 1508.8. NEPA’s requirements extend to  
13 programs such as the federal coal leasing program. *Kleppe*, 427 U.S. at 400.

14 58. Defendants’ issuance of Secretarial Order 3348, which revoked  
15 Secretarial Order 3338 and restarted the federal coal leasing process, constituted a  
16 major federal action significantly affecting the quality of the human environment.  
17 *See* 40 C.F.R. § 1508.18(b)(2)-(3) (“major federal action” subject to NEPA review  
18 includes “adoption of programs, such as a group of concerted actions to implement  
19 a specific policy or plan; [and] systematic and connected agency decisions  
20 allocating agency resources to implement a specific statutory program or executive  
21 directive”); *id.* § 1502.4(b) (“Environmental impact statements may be prepared,  
22 and are sometimes required, for broad Federal actions such as the adoption of new  
23 agency programs.”). These significant impacts include, but are not limited to,  
24 climate change, harm to public lands and wildlife from coal mining, air quality  
25 impacts from coal transport and combustion, the disposal of coal ash, and impacts  
26 to environmental justice communities.

27 59. Defendants’ decision to issue Secretarial Order 3348 to restart the federal  
28 coal leasing program without first preparing an EIS was arbitrary and capricious, an

1 abuse of discretion, and contrary to the requirements of NEPA and the APA, and  
2 accordingly violated NEPA and the APA. 42 U.S.C. § 4332(2)(C); 5 U.S.C. §  
3 706(2). Consequently, Secretarial Order 3348 should be held unlawful and set  
4 aside.

## 5 **SECOND CLAIM FOR RELIEF**

### 6 **(Failure to Prepare a Supplemental PEIS in Violation of NEPA and the APA;** 7 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(c)(1)(ii); 5 U.S.C. § 706)**

8 60. Paragraphs 1 through 59 are realleged and incorporated herein by  
9 reference.

10 61. Pursuant to NEPA, an agency cannot rest on the conclusions made in an  
11 EIS. Instead, NEPA requires an agency to supplement a past EIS when there are  
12 “significant new circumstances or information relevant to environmental concerns  
13 and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

14 62. Here, there are significant new circumstances and information that  
15 required Defendants to supplement its prior 1979 PEIS and 1985 Supplement prior  
16 to taking action to restart the federal coal leasing program. These significant new  
17 circumstances and information include, but are not limited to, the impact of the  
18 program on climate change, air quality, environmental justice, and other  
19 environmental issues; whether and to what extent there is a continued need for  
20 federal coal leasing in light of current market conditions; and the need to ensure a  
21 fair return to Americans for the sale of public coal resources due to significant new  
22 circumstances in how federal leasing is conducted.

23 63. Defendants’ decision to issue Secretarial Order 3348 to restart the federal  
24 coal leasing program while ceasing the ongoing environmental review that  
25 Defendants’ themselves admitted was warranted just several months ago, without  
26 any rational justification, was arbitrary and capricious, an abuse of discretion, and  
27 contrary to the requirements of NEPA and the APA, and accordingly violated  
28 NEPA and the APA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(c)(1)(ii); 5 U.S.C.

1 § 706(2). Consequently, Secretarial Order 3348 should be held unlawful and set  
2 aside.

### 3 **THIRD CLAIM FOR RELIEF**

#### 4 **(Undertaking Federal Coal Leasing in Violation of the MLA and the APA;** 5 **30 U.S.C. § 201(a)(1), (3); 5 U.S.C. § 706)**

6 64. Paragraphs 1 through 63 are realleged and incorporated herein by  
7 reference.

8 65. The MLA authorizes the Secretary of the Interior to lease the production  
9 of coal on public lands if it is “in the public interest.” 30 U.S.C. § 201(a)(1). The  
10 MLA further requires that every sale of such mineral be made by competitive bid  
11 and provide the public with “fair market value.” *Id.* The Secretary may only lease  
12 coal in a manner that balances “long-term benefits to the public against short-term  
13 benefits.” *Id.* § 201(a)(3).

14 66. Prior to the issuance of Secretarial Order 3348, Defendants failed to  
15 complete an environmental review that identified and evaluated the numerous  
16 impacts of the federal coal leasing program or the public interest and long-term  
17 benefits of ending or limiting the scope of the program. The public interest  
18 includes consideration of environmental effects of a planned leasing program.  
19 Moreover, there are significant long-term benefits to the public in addressing  
20 climate change and other environmental impacts of coal leasing. These impacts  
21 include, but are not limited to, avoiding, reducing, or mitigating the effect of the  
22 coal leasing program on climate change, air quality, environmental justice, and  
23 other environmental problems. There are also significant long-term benefits to the  
24 public in ensuring a fair return to Americans for the sale of public coal resources.  
25 Defendants’ current management of the federal coal leasing program fails to  
26 provide the public with “fair market value” for the sale of these public resources.

27 67. Defendants’ decision to issue Secretarial Order 3348 to undertake federal  
28 coal leasing was arbitrary and capricious, an abuse of discretion, and contrary to the

1 requirements of the MLA and the APA, and accordingly violated the MLA and the  
2 APA. 30 U.S.C. § 201(a)(1), (3); 5 U.S.C. § 706(2). Consequently, Secretarial  
3 Order 3348 should be held unlawful and set aside.

4 **FOURTH CLAIM FOR RELIEF**  
5 **(Undertaking Federal Coal Leasing in Violation of FLPMA and the APA;**  
6 **43 U.S.C. § 1701(a); 5 U.S.C. § 706)**

7 68. Paragraphs 1 through 67 are realleged and incorporated herein by  
8 reference.

9 69. In managing public lands for multiple uses, FLPMA requires that  
10 Defendants manage such lands “in a manner that will protect the quality of  
11 scientific, scenic, historical, ecological, environmental, air and atmospheric, water  
12 resource, and archeological values,” and that Defendants “receive fair market value  
13 of the use of the public lands and their resources.” 43 U.S.C. § 1701(a)(8)-(9).

14 70. Prior to the issuance of Secretarial Order 3348, Defendants failed to  
15 complete an environmental review that would evaluate whether public lands subject  
16 to the federal coal leasing program are being managed in a manner that will protect  
17 the quality of scientific, scenic, historical, ecological, environmental, air and  
18 atmospheric, water resource, and archeological values. Defendants’ current  
19 management of the federal coal leasing program also fails to provide the public  
20 with “fair market value” for the sale of these public resources.

21 71. Defendants’ decision to issue Secretarial Order 3348 to undertake federal  
22 coal leasing was arbitrary and capricious, an abuse of discretion, and contrary to the  
23 requirements of FLPMA and the APA, and accordingly violated FLPMA and the  
24 APA. 43 U.S.C. § 1701(a); 5 U.S.C. § 706(2). Consequently, Secretarial Order  
25 3348 should be held unlawful and set aside.

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28



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request that this Court:

3 1. Issue a declaratory judgment that Defendants acted arbitrarily,  
4 capriciously, and contrary to law, abused their discretion, and failed to follow the  
5 procedure required by law in their issuance of Secretarial Order 3348, in violation  
6 of NEPA, the MLA, FLPMA, and the APA;

7 2. Issue a mandatory injunction compelling Defendants to set aside  
8 Secretarial Order 3348 for failure to comply with NEPA, the MLA, FLPMA, and  
9 the APA;

10 3. Issue a prohibitory injunction barring Defendants from taking any further  
11 actions to process coal lease applications and modifications or otherwise  
12 undertaking any federal coal leasing unless and until Defendants comply with  
13 NEPA, the MLA, FLPMA, and the APA by preparing a comprehensive  
14 environmental analysis in the form of a supplemental programmatic EIS for the  
15 federal coal leasing program;

16 4. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees;

17 5. Award such other relief as the Court deems just and proper.

18  
19 Dated: May 9, 2017

Respectfully submitted,

20 /s/ Roger Sullivan  
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