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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KANE COUNTY, UTAH; BIG HORN COUNTY, WYOMING; CHAVES COUNTY, NEW MEXICO; CUSTER COUNTY, IDAHO; GARFIELD COUNTY, COLORADO; MODOC COUNTY, CALIFORNIA; and DOÑA ANA SOIL AND WATER CONSERVATION DISTRICT, NEW MEXICO,

Petitioners,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; SALLY JEWELL, in her official capacity as Secretary of the Interior; UNITED STATES BUREAU OF LAND MANAGEMENT; and NEIL KORNZE, in his official capacity as Director of the United States Bureau of Land Management,

Respondents.

Case No. _____

PETITION FOR REVIEW OF FINAL AGENCY ACTIONS

1. Petitioners Kane County, Utah; Big Horn County, Wyoming; Chaves County, New Mexico; Custer County, Idaho; Garfield County, Colorado; Modoc County, California; and Doña Ana Soil and Water Conservation District, New Mexico, (collectively referred to as "Petitioners") hereby petition the Court for review of the Resource Management Planning Rules, 81 Fed. Reg. 89580-89671 (Dec. 12, 2016) (to be codified at 43 C.F.R. pt. 1600) (the "2016 Planning Rules" or the "Rules"), adopted by the United States Bureau of Land Management ("BLM"), an agency within the United States Department of the Interior ("Interior Department").

2. In developing and adopting the 2016 Planning Rules, the BLM failed to coordinate with Petitioners and to provide for meaningful involvement of Petitioners' officials in the development of the Rules, as required by Section 202(c)(9) of the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1712(c)(9). Therefore, the 2016 Planning Rules were developed and adopted without observance of the procedure required by law and are unlawful. *See* 5 U.S.C. § 706(2)(D).

3. In developing and adopting the 2016 Planning Rules, the BLM also failed to comply with the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321–4370e, the rules of the Council on Environmental Quality ("CEQ") implementing NEPA, 40 C.F.R. §§ 1500–1508, and the rules of the Department of the Interior implementing NEPA, 43 C.F.R. pt. 46, by failing to prepare an environmental impact statement or even an environmental assessment to evaluate the impacts of the Rules on the human environment. Therefore, the 2016 Planning Rules were developed and adopted without observance of the procedure required by law and are unlawful. *See* 5 U.S.C. § 706(2)(D).

4. In addition, the 2016 Planning Rules violate FLPMA by unlawfully limiting the ability of Petitioners and local governments to coordinate with the BLM on the development of land use plans, land use regulations, and land use decisions for public lands, and by marginalizing the requirement that BLM land use plans be consistent with local land use plans and programs to the maximum extent permitted under FLPMA and other federal laws governing the administration of the public lands. *See* 43 U.S.C. § 1712(c)(9). Therefore, the 2016 Planning

Rules are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and are unlawful. *See* 5 U.S.C. § 706(2)(A), (C).

5. The 2016 Planning Rules are part of the Department of Interior's Climate Change Adaptation Program,[1] and were developed and adopted in order to implement this program. *See* Resource Management Planning, Proposed Rules, 81 Fed. Reg. 9674, 9678–9679 (Feb. 25, 2016) (the "Proposed 2016 Planning Rules"); *see also* Secretary of the Interior Order No. 3289 (Sep. 14, 2009) (amended Feb. 22, 2010);[2] U. S. Dept. of Interior, *Climate Change Adaption Plan* (2014).[3] This official policy is closely related to another Interior Department program, the Landscape-scale Mitigation Program.[4] *See* Secretary of the Interior Order No. 3330 (Oct. 13, 2013),[5] U.S. Dept. of Interior, *Public Lands Policy, Landscape-Scale Mitigation Policy*, 600 DM 6 (Oct. 23, 2015).[6] The 2016 Planning Rules are also intended to implement aspects of that program as well. *See* 81 Fed. Reg. at 9679.

6. The Interior Department's Climate Change Adaptation Program and its Landscape-scale Mitigation Program are official actions that consist of systematic and connected agency decisions allocating agency resources to implement discrete executive directives, and will

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[1] As used herein, the Climate Change Adaption Program includes several interrelated policy documents, including, but not limited to, Secretary of the Interior Order No. 3289 (Sep. 14, 2009) (amended Feb. 22, 2010) and the Department of the Interior, *Climate Change Adaption Plan* (2014).

[2] *Available at:* http://www.usbr.gov/watersmart/docs/so3289A1.pdf (last visited Dec. 7, 2016).

[3] *Available at:* https://www.doi.gov/sites/doi.gov/files/migrated/greening/sustainability_plan/upload/2014_DOI_Climate_Change_Adaptation_Plan.pdf (last visited Dec. 7, 2016).

[4] As used herein, the Landscape-scale Mitigation Program includes several interrelated policy documents, including, but not limited to, Secretary of the Interior Order No. 3330 (Oct. 13, 2013) and the Deptartment of the Interior, *Public Lands Policy, Landscape-Scale Mitigation Policy*, 600 DM 6 (Oct. 23, 2015).

[5] Available at: https://www.doi.gov/sites/doi.gov/files/migrated/news/upload/Secretarial-Order-Mitigation.pdf (last visited Dec. 7, 2016).

[6] *Available at:* https://www.doi.gov/sites/doi.gov/files/uploads/TRS%20and%20Chapter%20FINAL.pdf (last visited Dec. 7, 2016).

substantially alter the planning, management, and use of the public lands, as evidenced by the adoption of the 2016 Planning Rules. *See* 40 C.F.R. § 1508.18(b)(1), (4) (definition of "major federal action"). Consequently, these programs are subject to NEPA. *See, e.g.*, Michael Boots, Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies: Effective Use of Programmatic NEPA Reviews, 13–15 (Dec. 18, 2014).[7]

7. In adopting and implementing the Climate Change Adaptation Program and the Landscape-scale Mitigation Program, the Interior Department made no effort to comply with NEPA. Nor did the Interior Department coordinate with Petitioners and other local governments in accordance with FLPMA Section 202(c)(9), even though these programs include inventory, planning, and management activities that directly relate to and concern the public lands. Consequently, these programs were adopted and are being implemented by the BLM and other Interior Department agencies without observance of the procedures required by law and are unlawful. *See* 5 U.S.C. § 706(2)(D).

8. Petitioners submitted detailed comments on the Proposed 2016 Planning Rules to the BLM on May 25, 2016, which raised the issues set forth herein. A copy of Petitioners comments are attached hereto as Exhibit A.

9. In addition to commenting, Petitioners wrote letters to BLM Director Neil Kornze and to Kristin Bail, BLM Acting Assistant Director for Resources and Planning, requesting that the BLM coordinate with them on the 2016 Proposed Planning Rules pursuant to FLPMA Section 202(c)(9). However, the BLM refused to coordinate with Petitioners, and instead asserted erroneously that the development and adoption of the 2016 Planning Rules are not subject to the requirements of FLPMA Section 202(c)(9).

JURISDICTION AND VENUE

10. This Court has jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as defendant), and 2201 (declaratory judgment), and the

[7] *Available at:* http://energy.gov/nepa/downloads/final-guidance-effective-use-programmatic-nepa-review (last visited Dec. 7, 2016).

Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551–559, 701–706. The claims presented arise under FLPMA, 43 U.S.C. §§ 1701–1787, NEPA, 42 U.S.C. §§ 4321–4370e, and the APA.

11. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Petitioner Kane County, Utah, resides within the District of Utah, a substantial part of the events or omissions giving rise to the claim took place in Utah, and the State of Utah contains some 22 million acres of public lands—over 40 percent of the land within the State—that are managed by the BLM, and therefore, are subject to and affected by the 2016 Planning Rules.

12. The APA requires courts to hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; is contrary to law or in excess of statutory jurisdiction; or is taken without observance of procedure required by law. *See* 5 U.S.C.§ 706(2)(A), (D).

13. The 2016 Planning Rules are a final agency action subject to review in this Court. *See* 5 U.S.C. §§ 702, 704; *see also Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994).

14. The Climate Change Adaptation Program and the Landscape-scale Mitigation Program are final agency actions designed to prescribe and implement policy and are subject to review in this Court. In the alternative, certain specific Interior Department actions prescribing and implementing the Climate Change Adaptation Program and the Landscape-scale Mitigation Program are final agency actions subject to review in this Court. *See* 5 U.S.C. §§ 702, 704; *see also Olenhouse*, 42 F.3d at 1580.

15. Petitioners have no other adequate remedy by which they can obtain redress for the Interior Secretary's and the BLM's failure to comply with the requirements of FLPMA, NEPA, and the APA in adopting and implementing the 2016 Planning Rules, the Climate Change Adaptation Program, and the Landscape-scale Mitigation Program, and therefore seek judicial review pursuant to the APA. *See* 5 U.S.C. § 704.

PARTIES

16. Petitioners are all counties or, in the case of the Doña Ana Soil and Water Conservation District, a governmental district, located in the western United States and have significant areas of BLM-managed public lands within their jurisdictional boundaries. These BLM-managed lands impact each Petitioner's land and resource planning and related activities that are essential to the health, safety, and welfare of their citizens.

17. Petitioner Kane County is a is a rural county located in southern Utah. Its estimated population is about 7,000 people. Its county seat and largest city is Kanab. Kane County contains more than 2.6 million acres of land, of which nearly 85 percent is owned by the federal government. Much of that land is managed by the BLM. Kane County's economy and its citizens depend on this land for ranching, outdoor recreation, and tourism. In addition, these lands are heavily used by the public and provide access to and across public lands for police, fire and other emergency services. Consequently, Kane County's ability to coordinate with the BLM on land use planning and management activities is critical to the county's ability to effectively plan and manage the lands and services within its jurisdictional boundaries.

18. As a political subdivision of the State of Utah, Kane County is duly vested with governmental power and authority to provide for and protect the public health, safety, and welfare of its citizens. Because of the large amount of BLM-administered land within Kane County, the manner in which those lands are managed have a major impact on the County, and impacts the ability of the County to properly plan and manage the lands and services within its jurisdiction.

19. Pursuant to the authority delegated by the State of Utah, Kane County has adopted the Kane County Resource Management Plan ("Kane County's Plan") which establish goals, objectives, and implementation actions to guide future decision-making. Because of the substantial amount of federal and state land within the county, Kane County's Plan includes sections addressing uses of federal and state land, including BLM-administered land, as well as coordination with the BLM and other federal and state agencies on land use planning and

management issues. It includes planning and land use policies that concern the conservation and productive use of the environment and natural resources, including policies that address community stability, land disposition and use, cultural concerns and resources, water resources, agricultural activities, pest and noxious weed control, forestry and forest products use, recreation, wildlife, fisheries and wilderness, mineral resources, energy, and access and transportation. Kane County's Plan implements Kane County's authority and legal interests in managing and protecting the environment and natural resources within the county.

20. In addition, Kane County in the past has engaged in coordination with the BLM to ensure that the BLM's land use management and planning activities recognize and are consistent with the county's land use management goals and objectives, and to furnish advice and assistance to the BLM on issues concerning land use decisions within the county. This includes, for example, coordination relating to a pending grazing amendment to the Grand Staircase-Escalante National Monument Management Plan. Consequently, Kane County has used the coordination process in the past and believes that it is critically important that the BLM coordinate its land use inventory, planning, and management activities with the county's activities, and that the BLM give consideration to Kane County's Plan and ensure that the BLM's land use plans are as consistent as possible with Kane County's Plan to avoid conflicts and ensure harmonious and effective local and regional land use planning and management.

21. Petitioner Big Horn County is a rural county located in north-central Wyoming. Its population is slightly less than 12,000 people, and its county seat is located in Basin. Big Horn County contains just over 2.0 million acres of land, of which 80 percent is federally owned, including some 1.15 million acres of public lands managed by the BLM. Big Horn County's citizens use these federal lands for agriculture, ranching, oil and gas development and production, mining and mineral production, and outdoor recreation. Consequently, the manner in which the BLM manages public lands is critically important to Big Horn County and significantly impacts the county's land use planning and management activities.

22. As a political subdivision of the State of Wyoming, Big Horn County is duly vested with governmental power and authority to provide for and protect the public health, safety, and welfare of its citizens. Pursuant to such authority, Big Horn County has adopted and administers the Big Horn County Land Use Plan to implement comprehensive planning for present and future uses of the land and natural resources within the county. Furthermore, Big Horn County is currently developing a Natural Resource Management Plan for State and Federal Lands ("NRMP"), which should be completed in 2017. The NRMP will amend the county's Land Use Plan for the purpose of defining the goals, objectives, and policies for the management of federal and state lands within the political jurisdiction of Big Horn County, pursuant to Wyoming law.

23. Big Horn County has been involved in federal land use planning and management issues for many years. Big Horn County believes strongly that effective government-to-government coordination between the BLM and local governments is an important part of land and resource planning and management, particularly in counties that contain substantial amounts of public lands. Big Horn County's ability to coordinate with the BLM on land use planning and management activities is important to its ability to effectively plan and manage the lands and resources within its jurisdictional boundaries.

24. Petitioner Chaves County is located in southeastern New Mexico. Its county seat is the City of Roswell. Agriculture is the number one industry in Chaves County, including ranching, farming, dairies, and cheese production. Chaves County contains over 3.8 million acres of land, of which over 1.2 million acres (32 percent) are managed by the BLM. Another one million acres of land (26 percent) are owned by the State of New Mexico. These lands are used for public uses such as grazing, mineral extraction, and recreation. These activities are very important for many county residents and often work in concert with other land uses that take place on private land. Together, these activities contribute to the "custom and culture" of Chaves County.

25. As a political subdivision of the State of New Mexico, Chaves County is duly vested with governmental power and authority to provide for and protect the public health, safety, and welfare of its citizens. Because of the large amount of BLM-administered land within Chaves County, the manner in which those lands are managed have a major impact on the county, and the county must have the ability to effectively participate in planning for and management of these lands through coordination and plan consistency review under FLPMA. Chaves County has adopted a Comprehensive Plan (amended July 2016), which establishes goals, objectives, and implementation actions to guide future decision-making, which, among other things, addresses public lands. The plan implements the County's authority and legal interests in protecting the environment and natural resources within the county. In addition, Chaves County has engaged in coordination with the BLM to ensure that the BLM's land use management and planning activities recognize and are consistent with the county's land use management goals and objectives, and to furnish advice and assistance to the BLM on issues concerning land use decisions within the county.

26. Petitioner Custer County is a rural county located in the center of the State of Idaho, about 100 miles from Boise. Its county seat is Challis. Custer County contains about 3.15 million acres of land, and is the third largest county in Idaho in area. Approximately 97 percent of the land area within Custer County is federally owned, a substantial portion of which is managed by the BLM. Because of the lack of private land, the manner in which federal land is managed is extremely important to Custer County and its citizens, and significantly impacts the county's land use planning and management activities. Custer County's citizens depend on this federal land, including the land managed by the BLM, for ranching, outdoor recreation, mining and mineral production, and related activities.

27. As a political subdivision of the State of Idaho, Custer County is duly vested with governmental power and authority to provide for and protect the public health, safety, and welfare of its citizens. Pursuant to such authority, Custer County has adopted a Comprehensive Plan which, among other things, establishes objectives for the management and use of natural

resources, including: the use of best management practices on all lands throughout the county; access to and across public lands through cooperation with the BLM and Forest Service; and actively participating in the development of public land use policies to ensure the lowest level of adverse impact on the County and its citizens. Custer County's ability to coordinate with the BLM on land use planning and management activities is critical to the county's ability to effectively plan and manage the lands within its jurisdictional boundaries.

28. Petitioner Garfield County is located in western Colorado. Its county seat and largest city is Glenwood Springs. Garfield County is predominately rural with an estimated population of about 60,000 people. It contains nearly 1.9 million acres of land, of which approximately 60 percent is federally owned, including more than 600,000 acres of public lands managed by the BLM. Garfield County's citizens depend on the use of this land for oil and gas development and production, mining and mineral production, ranching, and outdoor recreation. Consequently, the manner in which the BLM manages the public lands and Garfield County's ability to meaningfully participate in the development of BLM land use programs, regulations, and decisions are extremely important.

29. As a political subdivision of the State of Colorado, Garfield County is duly vested with governmental power and authority to provide for and protect the public health, safety, and welfare of its citizens. In accordance with this authority, Garfield County has adopted a Comprehensive Plan that includes planning and land use policies and requirements applicable to the county's unincorporated territory, including public lands administered by the BLM. This plan implements the county's authority and legal interests in protecting the environment and natural resources within the county and ensuring that future development appropriately balances the county's need for economic development with policies to minimize impacts on the natural, scenic, ecological, and wildlife resources within the county.

30. Garfield County has been actively involved in the development of BLM land use plans and programs that affect the County and its lands and resources. For example, the county coordinated with the BLM on the agency's recent Northwest Colorado Greater Sage-Grouse

Land Use Plan Amendments, and adopted its own Greater Sage-Grouse Conservation Plan for public and private lands within the county. Because of the substantial amount of BLM-administered lands within Garfield County and their impact on the county and its citizens, Garfield County must have the ability to significantly participate in planning for and management of these lands, including meaningful government-to-government coordination and plan consistency review in accordance with FLPMA.

31. Petitioner Modoc County is located in the northeastern corner of the State of California. Modoc County has about 9,000 people with one incorporated city, Alturas, as the county seat. The county contains about 2.5 million acres of land, of which approximately 70 percent is federally managed and another 20 percent is dependent on federal water projects for its productivity. The primary industry is agriculture, with ranchers utilizing nearly 2 million acres of BLM-administered land in California and Nevada. Modoc County citizens also depend on public lands for firewood harvesting, flat rock collecting, and outdoor recreation. The management of the public lands within and adjacent to Modoc County is critical for the welfare of the county and its citizens. Therefore, it is very important that Modoc County maintain its ability to have productive, government-to-government engagement with the BLM in the decision-making process regarding their land use plans, policies, and programs.

32. As a political subdivision of the State of California, Modoc County is duly vested with governmental power and authority to provide for and protect the public health, safety, and welfare of its citizens. Modoc County has adopted a comprehensive land use plan which establishes goals, objectives, and implementation actions to guide future decision-making, including the management and use of public lands. The plan implements the county's authority and legal interests in protecting the environment and natural resources within the county. In addition, Modoc County has coordinated with the BLM to ensure that the BLM's land use activities recognize and are consistent with the county's land use management goals and objectives, and to furnish advice and assistance to the BLM on issues concerning land use decisions within the county. Modoc County believes that effective coordination and plan

consistency review in accordance with FLPMA are critical to ensuring harmonious and consistent land use management, and avoiding conflicts that may undermine the county's management goals and objectives.

33. Petitioner Doña Ana Soil and Water Conservation District is located in south-central New Mexico within the boundaries of Dona Ana County. Soil and water conservation districts are independent subdivisions of state government and are governed by locally elected and appointed supervisors. Such districts are authorized by the New Mexico Soil and Water Conservation District Act, N.M. Stat. §§ 73-20-25 through 73-20-48, to conserve and develop the natural resources of the state, provide for flood control, preserve wildlife, protect the tax base, and promote the health, safety, and general welfare of the people of New Mexico. These powers include the power to develop comprehensive plans for natural resource conservation, development, and utilization, such as flood prevention, control and prevention of soil erosion, and the development, utilization and disposal of water.

34. There are slightly more than 2.5 million acres of land in Doña Ana County, of which 75 percent is federally owned. The BLM manages about 55 percent of this land, with the U.S. Department of Defense, U.S. Department of Agriculture, National Park Service, and U.S. Fish & Wildlife Service managing the remainder. In May of 2014, President Obama designated 496,330 acres of the BLM-administered land within Doña Ana County as the Organ Mountains–Desert Peaks National Monument. Because of the large amount of federal land within the Doña Ana Soil and Water Conservation District, it is critical that the development of the land use plans be conducted in a manner that allows full and meaningful government-to-government coordination between the BLM and the District. This interaction assures that natural resources are managed and conserved in a manner consistent with local land use plans.

35. The interests of the Petitioners are sovereign or proprietary in nature. Each Petitioner is a duly recognized unit of local government. Each Petitioner has been delegated authority to plan for and manage land and resource uses within its jurisdictional boundaries to protect and promote the health, safety, convenience, and general welfare of the public. These

powers include the adoption and enforcement of comprehensive land use plans to guide and control the uses of land and resources.

36. Because each Petitioner has within its boundaries significant amounts of public lands that are administered by the BLM, it is critical that the BLM's land inventory, planning, and management activities be closely coordinated with Petitioners, and that Petitioners are able to engage in meaningful government-to-government coordination and plan consistency review with the BLM. In many cases, the public lands within each Petitioner's jurisdictional boundaries are interspersed with private and state land, making it necessary to harmonize land use plans, decisions, and policies to ensure proper local and regional planning and management, and to address problems that cross land-ownership boundaries, such as water resource development and protection; flood and erosion control; controlling invasive species; maintaining access to and across government-controlled land; reducing fuel loads and the risk of wildfire; and properly balancing wildlife protection with ranching, mineral development, and other important resource uses.

37. The Petitioners' interests in the coordinated planning and management of land and resource uses and plan consistency review are concrete interests that are recognized and protected under FLPMA and NEPA. NEPA requires federal agencies to consider state and local governments' comments on proposed federal actions and to identify and avoid conflicts with state and local government plans, policies, and controls for the area concerned. 42 U.S.C. §§ 4331(a), 4332(2)(C); 40 C.F.R. §§ 1502.16(c), 1506.2(d). FLPMA also commits the BLM to work closely with and to coordinate with state and local governments on the BLM's land use inventory, planning, and management activities. 43 U.S.C. §§ 1712(a), 1712(c)(9), 1714(c)(2)(7). Furthermore, federal land use plans must be consistent with state and local governments' land use plans, unless contrary to federal law or not practicable. 43 U.S.C. § 1712(c)(9).

38. Petitioners have been injured by the violations of FLPMA and NEPA alleged herein. By failing to comply with NEPA in adopting the 2016 Planning Rules and in adopting

and implementing the Climate Change Adaptation Program and the Landscape-scale Mitigation Program, the BLM has impaired each Petitioners' ability to implement and enforce their comprehensive plan and to manage land and resource uses, interfering with the sovereign powers delegated to Petitioners to plan for, manage, and regulate land and resources uses within their jurisdictions.

39. Under NEPA, Petitioners, as local governments with land and resource planning authority, have a procedural right to participate in the NEPA process and protect their interests in the planning and management of the lands and resources within their respective jurisdictional boundaries.

40. One of the purposes of NEPA is to declare a national policy which will encourage productive and enjoyable harmony between man and his environment. 42 U.S.C. § 4321. Congress also declared that "it is the continuing policy of the Federal Government, *in cooperation with State and local governments*, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." *Id.* § 4331(a) (emphasis added).

41. To achieve the goals of NEPA, federal agencies are required to "cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements . . . ." 40 C.F.R. § 1506.2(b). In analyzing the environmental consequences of a proposed action, federal agencies must identify and discuss any inconsistency and possible conflicts with state and local government plans, policies, and controls for the area concerned. 40 C.F.R. §§ 1502.16(c), 1506.2(d).

42. By failing to comply with NEPA, Respondents have injured Petitioners' concrete interests in local and regional land and resource planning and the regulation of land uses within their jurisdictional boundaries. Petitioners have been deprived of their right to submit

information and comments and to participate in the NEPA process, which would ensure that the Respondents receive and consider detailed information regarding significant impacts on the human environment that are relevant to Petitioners' interests in local and regional planning, conserving the land and natural resources within each county, ensuring efficient expenditure of public monies, and promoting the health, safety, convenience, and general welfare of the public. These injuries are exacerbated by the large amounts of public lands within each Petitioner's jurisdictional boundaries, which adversely impacts Petitioners' ability to conduct land use planning and regulation in a coordinated and harmonious fashion.

43. Petitioners have been deprived of their statutory right to meaningfully coordinate with the BLM and to provide advice to the agency in accordance with FLPMA Section 202(c)(9) with respect to the development of the 2016 Planning Rules, which are regulations that govern the planning and management of the public lands. This violation has injured Petitioners' interest in ensuring that the Rules properly recognize and protect Petitioners' ability to fully and effectively coordinate with the BLM on the agency's land use inventory, planning, and management activities and in resolving, to the extent practical, inconsistencies between the BLM's land use plans and Petitioners' land use plans, programs, and policies, in accordance with FLPMA Section 202(c)(9).

44. Petitioners have been injured by the adoption of the 2016 Planning Rules because the Rules significantly diminish their rights under FLPMA Section 202(c)(9) to coordinate with the BLM on the agency's land use inventory, planning, and management activities, and to resolve conflicts between the BLM's land use plans and Petitioners' land use plans, programs, and policies. Petitioners, as local governments with land use planning and regulatory authority and with substantial public lands within their jurisdictional boundaries, are "an object of the action (or foregone action) at issue," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561–562 (1992), because the 2016 Planning Rules improperly limit Petitioners' ability to coordinate with the BLM and prevent effective plan consistency review. In this situation, it is "self-evident" that

Petitioners satisfy the "'irreducible constitutional minimum' of Article III standing," because their rights are being improperly diminished under the challenged agency actions. *Id.* at 560.

45. Petitioners are injured by the Interior Department's adoption and ongoing implementation of the Climate Change Adaptation Program and the Landscape-scale Mitigation Program, which significantly alter the planning for the public lands and how the public lands are managed and used, as more particularly alleged below.

46. The Climate Change Adaptation Program and the Landscape-scale Mitigation Program constitute major federal actions, but were adopted and are being implemented without compliance with NEPA, including the adoption of the 2016 Planning Rules. Petitioners have been deprived of their right to submit information and comments and to participate in the NEPA process, which would ensure that the Respondents receive and consider detailed information regarding significant impacts on the human environment relating to Petitioners' interests in local and regional land use planning, in managing and conserving land and natural resources, in ensuring efficient expenditure of public monies, and in protecting and promoting the health, safety, convenience and general welfare of their citizens.

47. The adoption and implementation of the Climate Change Adaptation Program and the Landscape-scale Mitigation Program constitute Interior Department land use inventory, planning, or management activities concerning the public lands. Therefore, these programs are subject to coordination with Petitioners pursuant to FLPMA Section 202(c)(9). Even though the Climate Change Adaptation Program and the Landscape-scale Mitigation Program are intended to and are changing the manner in which the BLM conducts land use planning and manages the public lands, the Interior Department did not coordinate with Petitioners or otherwise involve Petitioners in the development of these programs. Therefore, Petitioners have been deprived of their statutory right to meaningfully coordinate with the Interior Department, including BLM, with respect to the development of the Climate Change Adaptation Program and the Landscape-scale Mitigation Program, injuring Petitioners' interests in local and regional land use planning,

conserving the land and natural resources within each county, ensuring efficient expenditure of public monies, and promoting the health, safety, convenience, and general welfare of the public.

48. Discrete elements of the Interior Department's Climate Change Adaptation Program and the Landscape-scale Mitigation Program constitute rules within the meaning of the APA, but were adopted without compliance with the APA, including notice and an opportunity to comment. As a result, Petitioners were deprived of their right to participate in the rulemaking process, including the opportunity to submit information and comments about the rule prior to its adoption. This procedural violation has injured Petitioners' concrete interests in land and resource planning and management within their respective jurisdictions.

49. Respondent Interior Department is the executive department of the federal government responsible for the management of the federal public lands as well as the administration of various federal conservation programs. The Department's bureaus and agencies include the BLM, the U.S. Fish and Wildlife Service, the U.S. Geological Survey, and the Bureau of Reclamation.

50. Respondent Sally Jewell is the current Secretary of the Interior and is sued in her official capacity. Secretary Jewell is the Interior Department's most senior official and is responsible for its management and direction. In such capacity, she has ordered Interior Department bureaus and agencies to change how the public lands and their natural resources are managed to address the impacts of climate change, and is responsible for the Interior Department's Climate Change Adaptation Program and its Landscape-scale Mitigation Program.

51. The BLM is an agency within the Interior Department that is responsible for the administration and management of federal public lands pursuant to the requirements of FLPMA and other federal laws. The BLM administers over 245 million surface acres of land, more than any other federal agency in the United States. Much of this land is subject to the BLM's 2016 Planning Rules, which will govern and control how these lands are managed and used.

52. Respondent Neil Kornze is the current Director of the BLM and is sued in his official capacity. Director Kornze is responsible for the BLM's management and direction,

including the adoption of the 2016 Planning Rules and implementation of the Interior Department's Climate Change Adaptation Program and its Landscape-scale Mitigation Program with respect to BLM-managed public lands.

CLAIM 1: THE BLM FAILED TO COORDINATE ON THE 2016 PLANNING RULES IN VIOLATION OF FLPMA

53. FLPMA was enacted by Congress in 1976, and is sometimes called the Organic Act of the BLM. *See* Federal Land Policy and Management Act of 1976, Pub. L. 94-579, 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1701–1787). FLPMA culminated more than a decade of congressional consideration of alternatives for the disposition and management of the nation's remaining public domain. FLPMA reflects Congress's intent to retain the bulk of the public lands in federal ownership, while utilizing the resources of these lands to meet the economic requirements of the nation and the economic benefit of the western United States, where the vast majority of all public lands are located. *See, e.g.*, Frank Greg, *Symposium on the Federal Land Policy and Management Act: Introduction*, 21 ARIZ. L. REV. 271 (1979).

54. FLPMA is based in substantial part on the recommendations of the Public Land Law Review Commission, which was established as an independent federal agency by an act of Congress. The Commission's function was to review the federal public land laws and regulations and recommend a comprehensive public land policy. In its seminal report to the President and to the Congress, ONE THIRD OF THE NATION'S LAND, the Commission explained that state and local units of government "represent the people and institutions most directly affected by Federal programs growing out of land use planning." U.S. Pub. Land Law Rev. Comm'n, ONE THIRD OF THE NATION'S LAND 61 (1970).[8] The Commission believed strongly that state and local governments should be involved in the planning and management of the public lands, and recommended to Congress:

[8] *Available at:* https://archive.org/stream/onethirdofnation3431unit#page/n1/mode/2up (last visited Dec. 7, 2016).

> To encourage state and local government involvement in the planning process in a meaningful way, as well as to avoid conflict and assure the cooperation necessary to effective regional and local planning, the Commission believes that consideration of state and local impacts should be mandatory. To accomplish this, *Federal agencies should be required to submit their plans to state or local government agencies*. . . .
>
> The coordination [between federal agencies and state and local governments] which will be required if the Commission's recommendations are adopted is so essential to effective public land use planning that it should be mandatory. . . . *The Commission recommends, therefore, that Congress provide by statute that Federal action programs may be invalidated by court orders upon adequate proof that procedural requirements for planning coordination have not been observed.*

Id. at 63 (italics in original).

55. The report of the House Interior and Insular Affairs Committee accompanying the House bill (which provided much of the text of FLPMA) similarly stated:

> The underlying mission for the public lands is the multiple use of resources on a sustained-yield basis. Corollary to this is the selective transfer of public lands to other ownership where the public interest will be served thereby. The proper multiple use mix of retained public lands is to be achieved by comprehensive land use planning, *coordinated with State and local planning*.

H.R. Rep. No. 94-1163, at 2 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6175, 6176 (emphasis added).

56. As a consequence, FLPMA contains provisions that recognize and protect the rights of state and local units of government to participate in the inventory, planning, and management of the public lands, including FLPMA Section 202(c)(9), 43 U.S.C. § 1712(c)(9).

57. FLPMA Section 202(c)(9) requires coordination with local governments with respect to the Interior Secretary's "land use inventory, planning, and management activities" concerning the public lands, and further requires the Interior Secretary to provide for "meaningful public involvement" of local government officials in "the development of land use programs, land use regulations, and land use decisions for public lands." The BLM has been delegated authority to fulfill and perform the requirements of FLPMA Section 202(c)(9).

58. The development and adoption of rules that govern the planning and management of the public lands constitute an extremely important planning and management activity within

the meaning of FLPMA Section 202(c)(9). In the preamble to the 2016 Planning Rules, for example, the BLM stated: "Land use planning forms the basis of, and is essential to, everything that the [BLM] does in caring for America's public lands." 81 Fed. Reg. at 89580. Consequently, development and adoption of rules that concern the planning and management of the public lands are subject to coordination with states and local governments.

59. On February 25, 2016, the BLM published its proposed rules amending the rules that govern the content, preparation, revision, and amendment of land use plans pursuant to FLPMA. *See* 2016 Proposed Planning Rules, 81 Fed. Reg. at 9674. The 2016 Proposed Planning Rules would dramatically alter the approach used to manage the public lands in accordance with recently created Interior Department programs and departmental directives, including the Climate Change Adaptation Program and the Landscape-scale Mitigation Program. *See id.* at 9678–79.

60. In developing the 2016 Proposed Planning Rules, the BLM did not meaningfully coordinate with state or local governments pursuant to FLPMA Section 202(c)(9).

61. By letter dated April 12, 2016, Petitioners wrote to BLM Director Kornze, requesting that the BLM coordinate with them on the 2016 Proposed Planning Rules pursuant to FLPMA Section 202(c)(9). Petitioners offered to meet with Director Kornze for the purpose of initiating coordination and to work with Director Kornze's staff to make appropriate meeting arrangements. In that letter, Petitioners indicated that Margaret Byfield, the Executive Director of American Stewards of Liberty, would act as their primary liaison and provided Ms. Byfield's contact information.

62. By letter dated April 20, 2016, Ms. Byfield wrote to Director Kornze of behalf of Petitioners and offered to assist in arranging the coordination meeting with Petitioners.

63. Petitioners are informed and believe that Defendant Kornze received Petitioners April 12, 2016 letter requesting coordination and Ms. Byfield's April 20, 2016 letter offering to help arrange the coordination meeting. However, Defendant Kornze did not respond to Petitioners or to Ms. Byfield.

64. By letter dated May 4, 2016, Petitioners wrote to Defendant Kornze, again requesting that that the BLM coordinate with Petitioners on the 2016 Proposed Planning Rules pursuant to FLPMA Section 202(c)(9). Petitioners again offered to meet with Director Kornze and to work with Director Kornze's staff to make appropriate meeting arrangements. Petitioners urged Director Kornze to contact Ms. Byfield as soon as possible to make the necessary meeting arrangements, given that the May 25, 2016 comment deadline on the 2016 Proposed Planning Rules was rapidly approaching.

65. By letter dated May 10, 2016, Kristin Bail, BLM Acting Assistant Director for Resources and Planning, wrote to Ms. Byfield, asserting that the BLM had provided "meaningful public involvement" in the development of the 2016 Proposed Planning Rules by hosting two "public listening sessions" in Sacramento and Denver, holding two "public webinars" after the 2016 Proposed Planning Rules were published, and providing an opportunity to ask questions at a public meeting in Denver. Ms. Bail also indicated that the BLM had made presentations to local governments "through" the National Association of Counties and planned to attend an upcoming conference of that association and looked forward to engaging in dialogue there.

66. By letter dated May 24, 2016, Petitioners responded to Ms. Bail, explaining that the activities noted by Ms. Bail do not satisfy the requirements imposed by FLPMA Section 202(c)(9), and instead show that the BLM believes that states and local governments are just like members of the general public with, at most, a right to provide comments on regulations that significantly alter the management of the public lands. Petitioners again asked that Director Kornze set aside time for meaningful coordination and expressed their commitment to work with Director Kornze to effectively coordinate. Petitioners also requested, in the alternative, that adoption of the 2016 Proposed Planning Rules be postponed to allow time for the completion of coordination and avoid a violation of FLPMA Section 202(c)(9).

67. By letter dated June 21, 2016, Ms. Bail responded to Petitioners' May 24, 2016 letter. In her June 21, 2016 letter, Ms. Bail asserted, on behalf of the BLM, that the development and adoption of the 2016 Proposed Planning Rules are not subject to the requirements of

FLPMA Section 202(c)(9) and that FLPMA Section 202(c)(9) applies only to the development and revision of land use plans.

68. Ms. Bail's interpretation renders much of FLPMA Section 202(c)(9) superfluous. For example, Section 202(c)(9) requires that the Interior Secretary shall "coordinate the land use inventory, planning, and management activities of or for [the public] lands with the land use planning and management programs of . . . the States and local governments within which the lands are located." FLPMA Section 202(c)(9) also requires that the Interior Secretary "shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands." These provisions are rendered meaningless under the BLM's interpretation.

69. By contrast, the BLM conducted government-to-government consultation with federally recognized Indian tribes on the Proposed Planning Rules. The BLM individually contacted each tribe by letter, advised the tribe of the Proposed Planning Rules, and invited each tribe to engage in government-to-government consultation. *See* Government-To-Government Consultation with Indian Tribes Regarding Proposed Planning Rule, BLM Instructional Memorandum 2016-56. (March 10, 2016).[9] In its template letter for contacting each tribe, the BLM explained:

> The Bureau of Land Management (BLM) provides stewardship on approximately 245 million acres of public lands. An important part of the BLM's management of public lands is to outline appropriate uses across the landscape through its land use planning process. A key component of developing land use plans is to identify and consider Tribal concerns through government-to-government consultation with tribal governments. The BLM is currently in the process of revising the regulations and policies that govern how land use plans are developed, and I formally invite you to engage with us in government-to-government consultation. . . .

[9] *Available at:* https://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2016/IM_2016-056.html (last visited Dec. 7, 2016).

> Tribal participation is a vital part of finalizing these regulations. The BLM invites comments and advice regarding any Tribal concerns that the proposed regulatory changes may raise. To facilitate meaningful dialogue, the BLM extends an offer to meet with you in-person to discuss the proposed regulatory changes, or any other issues or concerns.

Id. at Attachment 1 (Tribal Template Letter). The BLM conducted in-person meetings with all tribes that accepted the BLM's request for government-to-government consultation and requested a meeting.

70. Petitioners have been injured by the BLM's refusal to coordinate with them prior to adopting the 2016 Planning Rules, as required by FLPMA Section 202(c)(9). By refusing Petitioners' requests to coordinate, the BLM has injured Petitioners' concrete interests in local and regional land use planning, and the regulation of land and resource uses within their jurisdictional boundaries are impaired. These injuries are exacerbated by the large amounts of public lands and other federal lands within each Petitioner's jurisdictional boundaries, which adversely affects Petitioners' ability to conduct land use planning and regulation in a coordinated and harmonious fashion.

71. Petitioners have no other adequate remedy by which they can obtain redress for the BLM's failure to comply with the requirements of FLPMA Section 202(c)(9) and engage in meaningful coordination with respect to the development and adoption of the 2016 Planning Rules.

72. For the reasons alleged hereinabove, the 2016 Planning Rules were developed and adopted without observance of the procedure required by law.

WHEREFORE, Petitioners pray for relief as follows:

That the Court declare that the 2016 Planning Rules were adopted without observance of the procedures required by law, are unlawful, and order that they be set aside;

That the Court award Petitioners their reasonable attorney's fees and costs of court, as may be permitted by law; and

That the Court grant such other and further relief as may be appropriate to redress Petitioners' injuries and to ensure Respondents' compliance with FLPMA Section 202(c)(9).

CLAIM 2: THE 2016 PLANNING RULES VIOLATE FLPMA SECTION 202(c)(9) BY UNDERMINING EFFECTIVE COORDINATION AND PLAN CONSISTENCY REVIEW

73. As more particularly alleged above in paragraphs 53–57, FLPMA Section 202(c)(9) explicitly recognizes and protects the authority of states and local governments with respect to the planning for and management of the public lands. This provision imposes a number of specific requirements on the BLM to ensure that states and local governments play an important role in the inventory, planning, and management of the public lands. The 2016 Planning Rules significantly limit or marginalize these requirements, and thus conflict with federal law set forth in FLPMA § 202(c)(9), and impair the rights of Petitioners to coordinate on land use planning and ensure that the BLM's land use plans are consistent with Petitioners' land use plans, programs and policies.

74. FLPMA Section 202(c)(9) specifically requires that the BLM, as the Interior Secretary's delegatee, "coordinate" the agency's "land use inventory, planning, and management activities" with "the land use planning and management programs of the States and local governments within which the lands are located." 43 U.S.C. § 1712(c)(9).

75. FLPMA Section 202(c)(9) also requires the BLM to "keep apprised of State, local, and tribal land use plans," "assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands," "assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans," and "provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands." 43 U.S.C. § 1712(c)(9).

76. FLPMA Section 202(c)(9) authorizes the elected and appointed officials of state and local governments to advise the Interior Secretary (and the BLM, as the Secretary's

delegated authority) on the "development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State." 43 U.S.C. § 1712(c)(9). This requires government-to-government coordination between local officials and the BLM on land use plans, guidelines, and regulations affecting the management and use of the public lands, thereby ensuring that the concerns and recommendations of local governments, such as Petitioners, are recognized and addressed. *Id.*

77. FLPMA requires that land use plans adopted by the BLM "be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act." 43 U.S.C. § 1712(c)(9). This obligation is called plan consistency review and is intended to ensure that the BLM land use plans and the land use plans of local governments are consistent, unless another federal law or the purposes of FLPMA itself conflict with and, therefore, preempt the local land use plan's requirements. *Id.*

78. It is also well-established that state and local governments are "free to enforce [their] criminal and civil laws on federal land so long as those laws do not conflict with federal law." *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987) (quoting *Kleppe v. New Mexico*, 426 U.S. 529, 543 (1976) (internal quotation omitted)). Consequently, even though the public lands are owned by the United States, state and local governments have the authority to plan for and regulate activities occurring on the public lands, unless such regulation is preempted by a federal law. The Petitioners, as local governments, exercise these rights through their land use planning and zoning authority, including the adoption and enforcement of their land use plans, programs, and policies. The Petitioners' rights and authorities as units of local government are also recognized and protected by FLPMA Section 202(c)(9) by means of the coordination and plan consistency review requirements imposed on the Interior Secretary and the BLM, acting as the Secretary's delegatee.

79. The 2016 Planning Rules unlawfully restrict the rights of Petitioners and other local governments to coordinate with the BLM in accordance with FLPMA Section 202(c)(9),

eliminate effective plan consistency review, and place states and local governments in the same position as the general public, in violation of FLPMA.

80. The 2016 Planning Rules improperly substitute "cooperating agency" status under NEPA in place of the government-to-government coordination required in accordance with FLPMA Section 202(c)(9). *See* 43 C.F.R. § 1610.3-2(b). Under NEPA, cooperating agencies work under the direction of the lead agency—here, the BLM—to satisfy the procedural requirements imposed by NEPA. *See*, *e.g.*, 40 C.F.R. § 1501.6(b) (describing the duties of cooperating agencies); 43 C.F.R. §§ 46.225 ("How to select cooperating agencies."), 46.230 ("Role of cooperating agencies."). The CEQ has warned that "cooperating agency status under NEPA is not equivalent to other requirements calling for an agency to engage another governmental entity in a consultation or *coordination* process . . . ." James Connaughton, Council on Environmental Quality, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act 1 n.1 (Jan. 30, 2002) (emphasis added).[10]

81. The 2016 Planning Rules unlawfully recast coordination under FLPMA Section 202(c)(9) as an "opportunity for review, advice, and suggestions on issues and topics which may affect or influence other agency or other government programs." 43 C.F.R. § 1610.3–2(c). This improperly treats local governments as members of the public at large. FLPMA Section 202(c)(9) requires meaning government-to-government coordination to harmonize land use management and ensure consistency between the BLM's and local governments' land use plans—not simply an opportunity to make suggestions during the plan development process.

82. Similarly, the BLM official responsible for land use plan development is merely required to notify local governments "of any *opportunities for public involvement*" in the preparation or amendment of the plan. 43 C.F.R. § 1610.3–2(c)(3) (emphasis added). This revision unlawfully treats local governments as members of the public at large, and therefore

[10] *Available at:* http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf (last visited Dec. 7, 2016).

violates FLPMA's clear directive for meaningful coordination and plan consistency review with local governments.

83. Under the prior resource management planning rules, the BLM Field Manager, in conducting the analysis of the management situation, was required to consider "[s]pecific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes." 43 C.F.R. § 1610.4-4(e) (2015; superseded). The BLM Field Manager was also required to consider the "[d]egree of local dependence on resources from public lands." 43 C.F.R. § 1610.4-4(g) (2015; superseded). These requirements have been eliminated by the 2016 Planning Rules.

84. The 2016 Planning Rules improperly narrow the scope of plan consistency review by defining the term "consistent with officially approved and adopted plans" as meaning that the BLM's land use plans "are compatible with the terms, conditions, and decisions of officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law *and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations*, and subject to the qualifications in § 1610.3-3." 43 C.F.R. § 1601.0-5 (emphasis added). Similarly, the 2016 Planning Rules provide that BLM land use plans shall be consistent with the land use plans of "of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal laws *and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations*." 43 C.F.R. § 1610.3-3(a) (emphasis added). By contrast, FLPMA Section 202(c)(9) states that the BLM's land use plans "shall be consistent with State and local plans to the maximum extent [the BLM] finds consistent with federal law and the purposes of this Act." 43 C.F.R. § 1712(c)(9). FLPMA does not refer to "regulations," or to the "purposes, policies and programs of such laws."

85. Under the 2016 Planning Rules, plan consistency review is primarily accomplished through the State Governor's office at the end of the planning process, improperly

bypassing local governments and their duly elected officials. *See* 43 C.F.R. § 1610.3-3(b). Under FLPMA Section 202(c)(9), coordination must take place with local governments, and consistency review concerns those governments' officially approved land use plans, policies, programs. The State Governor is not authorized to represent local governments nor is the State Governor knowledgeable about the land use plans, programs, and policies of local governments.

86. The BLM's prior planning rules also required, in accordance with FLPMA, that agency guidance governing the development of land use plans be "as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected." 43 C.F.R. § 1610.3-1(d)(1) (2015; superseded). The BLM was also required to identify "areas where the proposed guidance is inconsistent with such policies, plans or programs," explain why such inconsistencies exist, and "indicate any appropriate methods, procedures, actions and/or programs" that may resolve such inconsistencies. 43 C.F.R. § 1610.3-1(d)(2), (3) (2015; superseded). These requirements have been eliminated by the 2016 Planning Rules. This is particularly problematic because recent Interior Department policies, guidance, and direction, which have not undergone coordination, NEPA review, or even public notice and comment, will now be used to develop land use plans. *See* 81 Fed. Reg. at 9678–79 (discussing "related executive and secretarial direction" and the "Planning 2.0 initiative"). This violates FLPMA Section 202(c)(9).

87. Once the land use plan development process begins, government-to-government coordination should be an ongoing process in order to satisfy FLPMA Section 202(c)(9) and to ensure plan consistency to the maximum extent practical. The 2016 Planning Rules specifically require that the BLM "initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of" land use plans. 43 C.F.R. § 1610.3-1. Yet FLPMA Section 202(c)(9) does not distinguish between the rights of Indian tribes and local governments with respect to coordination. The same requirement should apply to local

governments to ensure meaningful and effective coordination on the BLM's land use planning and management activities, including the preparation and amendment of land use plans.

88. The 2016 Planning Rules also contain provisions that protects the rights of states to coordinate and ensure plan consistency review. For example, the BLM is authorized to enter into written agreements with governors and their designated representatives on the process for and procedural topics concerning land use plan development and adoption. 43 C.F.R. § 1610.3-2(c). No such process exists under the 2016 Planning Rules for local governments, however. Indeed, there are no opportunities for coordination by local governments, other than submitting comments like members of the public, until the draft environmental impact statement has been released for comment, at which point local governments must notify the BLM of any apparent inconsistency between the proposed land use plan and the local government's land use plan or waive their rights to consistency review. 43 C.F.R. § 1610.3-3(a)(2).

89. The bottom line is that the 2016 Planning Rules contain no provisions that impose a specific and enforceable obligation to coordinate with local governments. Consequently, the 2016 Planning Rules conflict with FLPMA Section 202(c)(9) and undermine the right of local governments to coordinate on the BLM's land use inventory, planning, and management activities, include land use plan development and adoption. Furthermore, plan consistency review is relegated to the end of the planning process by improperly conducting plan consistency review with the Governor's office rather than with the local governments that administer and enforce their land use plans, in violation of FLPMA Section 202(c)(9).

WHEREFORE, Petitioners pray for relief as follows:

That the Court declare that the 2016 Planning Rules are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and order that they be set aside;

That the Court award Petitioners their reasonable attorney's fees and costs of court, as may be permitted by law; and

That the Court grant such other and further relief as may be appropriate to redress Petitioners' injuries and to ensure Respondents' compliance with FLPMA.

CLAIM 3: THE 2016 PLANNING RULES WERE ADOPTED IN VIOLATION OF NEPA

90. The BLM has adopted and is implementing the 2016 Planning Rules in violation of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321–4370e, as well as the rules implementing NEPA issued by the Council on Environmental Quality ("CEQ"), 40 C.F.R. pts. 1500–1508, and the Department of the Interior, 43 C.F.R. pt. 46, by relying on a categorical exclusion from NEPA.

91. The purpose of NEPA is to promote informed decision-making by ensuring that "environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). NEPA is intended to ensure that the agency will have available, and consider, information concerning the impacts of its actions on the human environment, and further requires federal agencies to take a "hard look" at the environmental consequences of their actions. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989).

92. The BLM failed to comply with NEPA by improperly relying on a categorical exclusion ("CE") from NEPA review for actions which are "entirely procedural in nature" and do not "involve any of the extraordinary circumstances listed in [the BLM's NEPA regulations], 43 C.F.R. § 46.215." Thus, the BLM refused to prepare an environmental impact statement, or even an environmental assessment, prior to implementing the 2016 Planning Rules.

93. A proposed federal agency action may be categorically excluded from analysis under NEPA in limited circumstances. The CEQ's regulations allow federal agencies to adopt procedures to categorically exclude certain actions "which have been found to have no [significant] effect" on the human environment. 40 C.F.R. § 1508.4. By definition, these CEs

are intended to be limited "to situations where there is an insignificant or minor effect on the environment." *Alaska Ctr. for the Env't v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999).

94. Furthermore, even if a proposed action appears to fit the CE involved, an agency may not use a CE when "extraordinary circumstances" exist. *See California v. Norton*, 311 F.3d 1162, 1168 (9th Cir. 2002) (citing 40 C.F.R. § 1508.4). "Extraordinary circumstances has been defined as those "in which a normally excluded action *may* have significant environmental effect." *Id.* at 1168 (emphasis added).

95. The CEQ's regulations specifically define "major federal actions" under NEPA to include "new or revised agency *rules, regulations, plans, policies, or procedures*." 40 C.F.R. § 1508.18(a) (emphasis added). The CEQ's regulations also state that federal actions subject to NEPA may include "formal documents establishing an agency's policies which will result in or substantially alter agency programs" and "plans . . . which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based." *Id*. at § 1508.18(b)(1), (2). The 2016 Planning Rules substantially alter the process to be followed and the issues that will be considered by the BLM in adopting and amending its land use plans. The Rules also are part of and implement new Interior Department programs that are intended to alter and control the use of the public lands to address climate change, as more particularly alleged below. Therefore, the Rules are the type of action subject to review under NEPA.

96. The manner in which the public lands are managed has significant impacts that trigger the preparation of an environmental impact statement under NEPA. The BLM administers some 247 million acres of land—more land in the United States than any other agency. Ninety-nine percent of this land is located in 11 western States and Alaska. *See* Congressional Research Service, *Federal Land Ownership: Overview and Data*, tab. 2 (Dec. 29, 2014).[11] The BLM itself stated in the preamble to the 2016 Planning Rules that it "manages ten

[11] *Available at:* https://fas.org/sgp/crs/misc/R42346.pdf (last visited Dec. 7, 2016).

percent of the land in the United States and 30 percent of the nation's minerals." 81 Fed. Reg. at 89580.

97. How the BLM manages these public lands has dramatic impacts on the Western States and, in particular, rural counties and communities, such as the Petitioners, whose citizens depend on the use of public lands for livestock grazing, mineral exploration and production, timber production, outdoor recreation, and other purposes. Furthermore, the manner in which the BLM manages the public lands has a significant impact on local governments, such as Petitioners, which are responsible for land use planning and management within their jurisdictional boundaries, as alleged above.

98. The BLM itself has acknowledged this situation, explaining in the preamble to the 2016 Planning Rules that the new resource planning rules are needed to address resource issues that adversely impact states and local governments:

> The BLM and its stakeholders, including State and local governments, are experiencing an increased number of practical challenges, including unexpected delays, higher expenses, and expanded legal challenges in managing these lands. Resource issues, such as invasive species, wildfire, energy production and transmission, and wildlife conservation, cross traditional administrative and jurisdictional boundaries, making current planning less efficient and more costly to implement.

81 Fed. Reg. at 89580. The manner in which the 2016 Planning Rules address these serious resource issues, including their impact on local governments such as Petitioners, has a significant impact on the human environment.

99. The BLM clearly intends the 2016 Planning Rules to have a substantive impact on the management and use of the public lands. For example, the preamble to the 2016 Proposed Rules states that their purpose is to allow the BLM to address "landscape-scale" resource issues, such as wildfire, habitat connectivity, and the demand for renewable and non-renewable energy resources, and to respond more effectively to environmental and social changes. *See* 81 Fed. Reg. at 9674; *see also id.* at 89580. These issues are also very important to local governments, such as Petitioners, and are addressed in their land use plans and programs, as alleged above.

Yet the 2016 Planning rules undermine effective coordination with local governments and limit plan consistency review, exacerbating these environmental problems and preventing a consistent and coordinated response to them.

100. The 2016 Planning Rules are intended to implement numerous environmental and energy policy directives, including the Interior Department's Climate Change Adaptation Program and the Landscape-scale Mitigation Program, described more particularly below. The latter programs are intended to change the way the Interior Department conducts planning and management of the public lands. *See, e.g.*, Secretary of the Interior Order No. 3289 (Sep. 14, 2009) (amended Feb. 22, 2010) ("The realities of climate change require us to change how we manage the land, water, fish and wildlife, and cultural heritage and tribal lands and resources we oversee."). The BLM has stated that implementation of these new and controversial Interior Department programs is a primary reason for adopting the 2016 Planning Rules. *See, e.g.*, 81 Fed. Reg. at 89584-85; *id.* at 9678–79.

101. For much the same reason, NEPA review is mandated by the high degree of uncertainty about the effects of the 2016 Planning Rules on the planning, management, and use of the public lands. A proposed action is "highly controversial" for purposes of NEPA when there is a "substantial dispute about the size, nature, or effect of the major Federal action." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). Examples of aspects of the Proposed Rules that are highly uncertain and must be further analyzed by the BLM include:

a. The BLM's use of new and untested "landscape-scale" and "ecosystem-based management" approaches to planning and resource management;

b. The BLM's new emphasis on climate change, the effects of which are highly controversial and speculative, in planning for and managing the public lands;

c. The BLM's use of the so-called "mitigation hierarchy" to identify planning issues and restrict or limit future land and resource uses;

d. The BLM's adoption of the new Rules to implement controversial Secretarial and agency programs, such as the Climate Change Adaptation Program and the

Landscape-Scale Mitigation Program, which lack any legal basis and have not undergone NEPA review or public review and comment, but will dictate future land and resource planning and management;

e. The BLM's elimination of the requirement that "the impact on local economies" be considered, and instead allowing the "impacts of resource management plans on resource, environmental, ecological, social, and economic conditions" to be evaluated "at relevant scales";

f. The BLM's shift in focus from traditional public land uses, including the "principal or major uses" identified in FLPMA, to ecosystem-based management and land preservation; and

g. The BLM's dramatic changes in the requirements governing coordination with state and local governments and plan consistency review, as alleged hereinabove, which will severely restrict these requirements, and impairing the ability of local governments to address land and resource issues with the BLM in an effective and coordinated fashion.

102. By contrast, the BLM's sister agency, the U.S. Forest Service, completed a robust NEPA review and issued a programmatic environmental impact statement[12] prior to adopting its new rules governing land management planning for the National Forest System lands in 2012.

103. As implemented, the 2016 Planning Rules result in current and future environmental harm to the Petitioners and their concrete interests in land and resource management, as more particularly alleged above. Because the 2016 Planning Rules significantly impair the informational and coordination rights of local governments, the BLM will be making program and project decisions without the consideration of the specific issues important to many local governments in the West, including Petitioners. Failing to properly consult and coordinate with local governments may lead to, for example, the overgrowth of invasive plant and animal species to the detriment of native species; compromised quality and availability of water supply; and increased risk and frequency of wildfire, causing more destruction from hotter-burning wildfire, just to name a few. In addition, the BLM's violations and failure to coordinate could

[12] *Available at* http://www.fs.usda.gov/detail/planningrule/home/?cid=stelprdb5349164 (lasted visited Dece. 9, 2016).

also jeopardize the health and safety of Petitioners' residents by affecting their ability to access federal land and provide emergency services and resources to their citizens.

WHEREFORE, Petitioners pray for relief as follows:

That the Court declare that the 2016 Planning Rules were adopted without observance of the procedures required by law and are arbitrary, capricious, an abuse of discretion, or otherwise unlawful, and order that they be set aside;

That the Court award Petitioners their reasonable attorney's fees and costs of court, as may be permitted by law; and

That the Court grant such other and further relief as may be appropriate to redress Petitioners' injuries and to ensure Respondents' compliance with NEPA.

CLAIM 4: THE INTERIOR DEPARTMENT HAS ADOPTED AND IS IMPLEMENTING ITS CLIMATE CHANGE ADAPTATION PROGRAM IN VIOLATION OF NEPA, FLPMA, AND THE APA.

104. The 2016 Planning Rules are part of a larger Interior Department program called the Climate Change Adaptation Program. As the BLM explained in the preamble of the 2016 Proposed Planning Rules, the 2016 Planning Rules are necessary to implement that program. 81 Fed. Reg. at 9678–79. As more particularly alleged below, the Interior Department has ignored its NEPA responsibilities and has failed to coordinate with affected state and local governments, including Petitioners, on the program components that affect the BLM's inventory, planning, and management activities concerning the public lands. Finally, key program documents constitute rules within the meaning of the APA, but were adopted by the Interior Department without complying with the procedural mandates of the APA, including notice and an opportunity for comment.

105. The CEQ's regulations implementing NEPA define "major federal action" to include the "adoption of official policy," such as "formal documents establishing an agency's policies which will result in or substantially alter agency programs." 40 C.F.R. § 1508.18(b)(1).

Under this definition, "major federal actions" also include the "adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive." *Id.* § 1508.18(b)(4). In addition, the CEQ's regulations instruct federal agencies to "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." *Id.* § 1502.4(b).

106. A recent CEQ memorandum also explains the types of federal actions subject to programmatic NEPA review, expanding on 40 C.F.R. § 1508.18. *See* Michael Boots, Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies: Effective Use of Programmatic NEPA Reviews, 13–15 (Dec. 18, 2014) ("Boots Memorandum").[13] "Adopting official policy" is described as a "[d]ecision to adopt in a formal document an official policy that would result in or substantially alter agency programs." *Id.* at 13. "The programmatic analysis for such a decision should include a road map for future agency actions with defined objectives, priorities, rules, or mechanisms to implement objectives." *Id.*

107. The Boots Memorandum also describes an additional category of action, "adopting agency programs," as a "decision to proceed with a group of concerted actions to implement a specific policy or plan, e.g., an organized agenda with defined objectives to be achieved during implementation of specified activities." *Id.* This type of programmatic action includes, for example, "[a] new agency mission or initiative" and "[p]roposals to substantially redesign existing programs." *Id.*

108. As alleged below, the Interior Department's Climate Change Adaptation Program meets these CEQ criteria, and is a major federal action subject to NEPA.

109. The Interior Department's Climate Change Adaptation Program consists of a series of discrete, concerted actions with clearly defined objectives by which the Department has

[13] *Available at:* http://energy.gov/nepa/downloads/final-guidance-effective-use-programmatic-nepa-review (last visited Dec. 7, 2016).

adopted and is systematically implementing Climate Change Adaptation Program. Each of these discrete actions is final agency action within the meaning of the APA.

110. The first action is Secretarial Order No. 3289, Amendment No. 1–Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural Resources. This order directed Interior Department bureaus and agencies, including the BLM, to develop landscape-scale strategies for responding to climate change. *See* 81 Fed. Reg. 89584; *id.* at 9678. The Order provides: "The realities of climate change require us to change how we manage the land, water, fish and wildlife, and cultural heritage and tribal lands and resources we oversee." Secretarial Order No. 3289 (Amendment No. 1) at 1.

111. The next action is the Interior Department's official "Climate Change Policy"[14] The BLM explained that the Climate Change Policy "directs [Interior Department] bureaus and agencies to 'promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems.'" 81 Fed. Reg. at 9678–79; *see also id.* at 89584.

112. The Interior Department's Climate Change Policy imposes a number of requirements on Interior Department agencies and bureaus, including:

a. "Consider climate change when developing or revising management plans, setting priorities for scientific research and assessments, and making major investment decisions."

b. "Use well-defined and established approaches, as appropriate, for managing through uncertainty, including: (1) vulnerability assessments, (2) scenario planning, (3) adaptive management, and (4) other risk management or structured decision making approaches. . . ."

c. "Promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems."

d. "Advance approaches to managing linked human and natural systems that help mitigate the impacts of climate change, including:

[14] Codified in Interior Departmental Manual 523 DM 1 (Dec. 20, 2012), *available at:* https://www.doi.gov/sites/doi.gov/files/migrated/ppa/upload/Chapter-1-Climate-Change-Policy.pdf (last visited Dec. 7, 2016).

> Protect diversity of habitat, communities and species;
>
> Protect and restore core, unfragmented habitat areas and the key habitat linkages among them;
>
> Anticipate and prepare for shifting wildlife movement patterns;
>
> Maintain key ecosystem services;
>
> Monitor, prevent, and slow the spread of invasive species . . .; and
>
> Focus development activities in ecologically disturbed areas when possible, and avoid ecologically sensitive landscapes, culturally sensitive areas, and crucial wildlife corridors."

Climate Change Policy, 523 DM 1, at 2–3. These requirements are incorporated in varying degrees into the BLM's 2016 Planning Rules, which, as alleged above, adopt landscape-scale, ecosystem-based management strategies; focus on "ecosystem services" while deemphasizing traditional uses of the public lands; incorporate "adaptive management" into land use planning; and impose new mitigation and monitoring requirements through BLM land use plans, substantially changing planning for and the management of the public lands, while restricting the rights of local governments to coordinate and ensure plan consistency under FLPMA.

113. The next action that implements the Climate Change Adaptation Program is the Department of the Interior Climate Change Adaptation Plan for 2014. According to the BLM, the 2014 Climate Change Adaptation Plan "provides guidance for implementing 523 DM 1 [the Climate Change Policy] and 'Executive Order No. 13653—Preparing the United States for the Impacts of Climate Change' (78 FR 66819)." 81 Fed. Reg. at 9679; *see also id.* at 89584. The 2014 Climate Change Adaptation Plan "directs the [Interior Department] bureaus and agencies to strengthen existing landscape level planning efforts; use well-defined and established approaches for managing through uncertainty, such as adaptive management; and maintain key ecosystem services, among other important directives." 81 Fed. Reg. at 9679; *see also id.* at 89585.

114. The 2014 Climate Change Adaptation Plan states that it focuses "on the Department's work to address climate change through implementation of Executive Order 13653

and the Department's Climate Change Adaptation Policy (523 DM 1)." 2014 Climate Change Adaptation Plan at 2. The Plan contains a list of climate change adaptation priorities for each of the Department's agencies and bureaus. The Plan specifically identifies "strengthening existing landscape level planning efforts" as a priority action for the BLM. *Id.* at 11.

115. The 2014 Climate Change Adaptation Plan also describes the Interior Department's "Climate Change Adaptation Policy," which is identified as "official policy" and is based on the Climate Change Policy codified in the Interior Department Manual 523 DM 1. *Id.* at 16–19. The Plan also sets forth the "guiding principles" that "the Department and its component bureaus and offices adhere to" in addressing climate change. *Id.* at 19-26. These guidelines include the use of "ecosystem-based management" principles (called "EBM") to manage land and resources, and approaches "to enhance the ability of ecosystems and wildlife populations to absorb change and maintain key qualities and services." *Id.* at 20–22. These principles are incorporated into the BLM's 2016 Planning Rules and, as alleged above, affect how the public lands are managed and used.

116. The Climate Change Adaptation Program is recognized as a discrete and specific program within the Interior Department, with annual program funding projected to be $110 million during fiscal year 2014. *See* Jane A. Leggett, Richard K. Lattanzio and Emily Bruner, *Federal Climate Change Funding from FY2008 to FY2014*, 11 (Cong. Research Serv., Sept. 13, 2013).[15]

117. The BLM has stated that the changes made to its regulations governing resource management planning in the 2016 Planning Rules "will assist in effectively implementing" the Climate Change Adaptation Program as well as the Landscape-scale Mitigation Program. 81 Fed. Reg. at 9679; *see also id.* at 89585.

118. The secretarial orders, the 2012 Climate Change Policy, and 2014 Climate Change Adaptation Plan are final agency action within the meaning of the APA. Each action is

[15] *Available at:* https://www.hsdl.org/?view&did=745047 (last visited Dec. 7, 2016).

final, *i.e.*, it marked the consummation of the Interior Department's decision-making process, and was not tentative or uncertain. Moreover, each action had and continues to have legal consequences because they have required Interior Department agencies and bureaus, including the BLM, to change the way they manage land and resources, as the BLM has explained in adopting the 2016 Planning Rules to implement these actions and change how the public lands are managed. *See* 81 Fed. Reg. at 9679.

119. The secretarial orders, the 2012 Climate Change Policy, and 2014 Climate Change Adaptation Plan are "formal documents establishing an agency's policies which will result in or substantially alter agency programs" and, moreover, are a "group of concerted actions to implement a specific policy or plan" and constitute "systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive." 40 C.F.R. § 1508.18(b)(1), (4).

120. The Interior Department did not conduct NEPA review on the secretarial orders, the 2012 Climate Change Policy, or the 2014 Climate Change Adaptation Plan prior to issuing them, nor has the Interior Department conducted NEPA review on the larger program itself. Therefore, the Climate Change Adaptation Program was adopted and is being implemented by the BLM and other Interior Department agencies and bureaus in violation of NEPA and the rules implementing NEPA issued by the CEQ, 40 C.F.R. pts. 1500–1508, and the Interior Department, 43 C.F.R. pt. 46. This failure injured Petitioners by depriving them of their right to submit comments and information during the NEPA process, as more particularly alleged above.

121. The Climate Change Adaptation Program is subject to coordination under FLPMA Section 202(c)(9). This statute requires that the Interior Secretary "provide for meaningful public involvement of States and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands." Secretarial Order No. 3289 (Amendment No. 1), the Interior Department's Climate Change Policy, and the 2014 Climate Change Adaptation Plan

collectively constitute a land use program that concerns the management and use of the public lands. But no attempt to coordinate with affected states and local governments has been made by the Interior Department, injuring Petitioners' concrete interests in land and resource use planning and management, which are recognized and protected under FLPMA Section 202(c)(9) as alleged above.

122. Secretarial Order No. 3289 (Amendment No. 1), the Interior Department's Climate Change Policy, and the 2014 Climate Change Adaptation Plan are "rules" within the meaning of the APA. Under the APA, a "rule" is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4). Secretarial Order No. 3289 (Amendment No. 1), the Interior Department's Climate Change Policy, and the 2014 Climate Change Adaptation Plan adopt, implement, and prescribe requirements that must be undertaken by Interior Department agencies and bureaus to address the impacts of climate change on land and resources that they manage. As alleged above, the BLM has adopted the 2016 Planning Rules to comply with these requirements.

123. In adopting Secretarial Order No. 3289 (Amendment No. 1), the Interior Department's Climate Change Policy, and the 2014 Climate Change Adaptation Plan, the Interior Department failed to comply with the rulemaking requirements of the APA, including notice and an opportunity for comments prior to the adoption of each of these rules. This failure injured Petitioners by depriving them of their right to submit comments and evidence during the rulemaking process.

WHEREFORE, Petitioners pray for relief as follows:

That the Court declare that Secretarial Order No. 3289 (Amendment No. 1), the Interior Department's Climate Change Policy, and the 2014 Climate Change Adaptation Plan were adopted and are being implemented without observance of the procedures required by law and

are arbitrary, capricious, an abuse of discretion, or otherwise unlawful, and order that these actions be set aside;

That the Court award Petitioners their reasonable attorney's fees and costs of court, as may be permitted by law; and

That the Court grant such other and further relief as may be appropriate to redress Petitioners' injuries and to ensure Respondents' compliance with NEPA and the rules implementing NEPA issued by the CEQ, 40 C.F.R. pts. 1500–1508, and the Interior Department, 43 C.F.R. pt. 46, FLPMA, and the APA in adopting and implementing the Climate Change Adaptation Program.

CLAIM 5: THE INTERIOR DEPARTMENT HAS ADOPTED AND IS IMPLEMENTING ITS LANDSCAPE-SCALE MITIGATION PROGRAM IN VIOLATION OF NEPA, FLPMA AND THE APA.

124. The 2016 Planning Rules also are part of a larger Interior Department program called the Landscape-scale Mitigation Program. As the BLM explained in the preamble of the 2016 Proposed Planning Rules, the Rules incorporate and implement that program. 81 Fed. Reg. at 9679; *see also id.* at 89585. The Landscape-scale Mitigation Program is closely related to and is connected with the Climate Change Adaptation Program, as the former program has adopted and is implementing many of the same land and resource use requirements and approaches as the Climate Change Adaptation Program. Therefore, these programs are connected actions within the meaning of NEPA. *See* 40 C.F.R. § 1508.25.

125. As more particularly alleged below, in adopting and implementing the Landscape-scale Mitigation Program, the Interior Department has ignored its NEPA responsibilities and has failed to coordinate with affected states and local governments, including Petitioners, on the program components that affect the BLM's inventory, planning, and management activities concerning the public lands. Furthermore, key program components constitute rules within the

meaning of the APA but were adopted by the Interior Department without complying with the procedures mandated by the APA, including notice and an opportunity for comment.

126. The CEQ's regulations implementing NEPA define "major federal action" to include the "adoption of official policy," such as "formal documents establishing an agency's policies which will result in or substantially alter agency programs." 40 C.F.R. § 1508.18(b)(1). Under this definition, "major federal actions" also include the "adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive." *Id.* at § 1508.18(b)(4). In addition, the CEQ's regulations instruct federal agencies to "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." *Id.* at § 1502.4(b).

127. A recent CEQ memorandum also explains the types of federal actions subject to programmatic NEPA review, expanding on 40 C.F.R. § 1508.18. *See* Boots Memorandum. "Adopting official policy" is described as a "[d]ecision to adopt in a formal document an official policy that would result in or substantially alter agency programs." *Id.* at 13. "The programmatic analysis for such a decision should include a road map for future agency actions with defined objectives, priorities, rules, or mechanisms to implement objectives." *Id.*

128. The Boots Memorandum also describes an additional category of action, "adopting agency programs," as a "decision to proceed with a group of concerted actions to implement a specific policy or plan, e.g., an organized agenda with defined objectives to be achieved during implementation of specified activities." *Id.* This type of programmatic action includes, for example, "[a] new agency mission or initiative" and "[p]roposals to substantially redesign existing programs." *Id.*

129. As alleged below, the Interior Department's Landscape-scale Mitigation Program meets these CEQ criteria, and is a major federal action subject to NEPA. This program is closely related to and is connected with the Climate Change Adaptation Program, which is also a major federal action under NEPA for the reasons alleged hereinabove.

130. Like the Climate Change Adaptation Program, the Interior Department's Landscape-scale Mitigation Program consists of a series of discrete, concerted actions with clearly defined objectives by which the Interior Department has adopted and is systematically implementing this program. Each of these discrete actions is final agency action within the meaning of the APA.

131. The preamble to the BLM's 2016 Proposed Rules states that "recent directives associated with renewable energy development and mitigation practices emphasize the importance of a collaborative, landscape-scale approach," which the 2016 Planning Rules will implement on the public lands. 81 Fed. Reg. at 9679. The BLM stated in the preamble to the 2016 Proposed Rules that these policies and directives are driving the agency's proposed changes in the planning and management of the public lands:

> "Secretarial Order 3330—Improving Mitigation Policies and Practices of the Department of the Interior," issued on October 31, 2013, called for the development of a [Interior Department]-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. The April 2014 report, "A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior," provides direction to implement such an approach. And the Departmental Manual was revised in October 2015, to include direction to all bureaus and agencies for implementation of this approach to resource management (600 DM 6).

Id.; *see also id.* at 89585 (same). Thus, as with the case of the Interior Department's Climate Change Adaptation Program, there are a series of interconnected secretarial orders, departmental manual directives, and departmental reports that mandate the imposition of new mitigation requirements, which the BLM's 2016 Planning Rules will implement without compliance with NEPA or coordination with local governments, such as Petitioners.

132. The impetus for this new Interior Department program is Secretarial Order No. 3330, entitled "Improving Mitigation Policies and Practices of the Department of the Interior." By this Order, Secretary Jewell established "a Department-wide mitigation strategy that will ensure consistency and efficiency in the review and permitting of infrastructure development

projects and in conserving our Nation's valuable natural and cultural resources." Secretarial Order No. 3330 at 1.

133. In Secretarial Order No. 3330, Secretary Jewell emphasized the close relationship between the Climate Change Adaptation Program and the Landscape-scale Mitigation Program, including shifting to landscape-scale planning and management of federal lands:

> Secretary's Order 3289, dated September 2009 and amended in February 2010, directed the Department's senior leadership to execute a coordinated Department-wide strategy to increase scientific understanding and development of effective adaptive management tools to address the impacts of climate change on our natural and cultural resources. . . . In response to Secretary's Order 3289, the Department has already developed climate adaptation policies, plans, and strategies and will continue to further develop important climate adaptation tools. As the Department continues to review development projects and identify associated mitigation, it must consider the effects of climate change and incorporate landscape-level strategies to address these impacts into any mitigation framework.

Id. at 2.

134. The basic framework for the Landscape-scale Mitigation Program is set forth in an Interior Department task force report to the Secretary called "A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior" (the "2014 Task Force Report").[16] This report established a series of "guiding principles for landscape-scale mitigation," which are accomplished through, among other things, the BLM's land use plans adopted pursuant to FLPMA. *Id.* at 9–12. The first task force guideline, for example, requires that "landscape-scale approaches" be incorporated into "all facets of development and conservation planning, project review, and mitigation implementation," as the BLM is now doing through the adoption of the 2016 Planning Rules. 2014 Task Force Report at 9. Other guidelines include employing the so-called "mitigation hierarchy," using "advanced mitigation planning," and fostering "resilience" to address climate change. The 2014 Task Force Report also states that these "mitigation strategies" should be incorporated into the planning documents

[16] *Available at:* https://www.doi.gov/sites/doi.gov/files/migrated/news/upload/Mitigation-Report-to-the-Secretary_FINAL_04_08_14.pdf (last visited Dec. 7, 2016).

adopted by Interior Department agencies and bureaus, "such as Bureau of Land Management (BLM) resource management plans." *Id.* at 10. These principles are incorporated into the 2016 Planning Rules.

135. The 2014 Task Force Report again emphasizes the interrelationship between the Interior Department's Climate Change Adaptation Program and the Landscape-scale Mitigation Program, stating:

> The Department's climate change adaptation policy, issued in December 2012, requires the Department and its bureaus to "use the best available science to increase understanding of climate change impacts, inform decision making, and coordinate an appropriate response to impacts on land, water, wildlife, cultural and tribal resources, and other assets." It also established the Department's policy to promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems and consider climate change when developing or revising management plans, setting priorities for scientific research and assessments, and making major investment decisions.

Id. at 11.

136. The 2014 Task Force Report identifies a series of "near-term deliverables" intended to incorporate these new land and resource planning and management principles and policies into the activities of the BLM and other Interior Department agencies and bureaus. *Id.* at 14–15.

137. One of the "deliverables" is the development of a new Department Manual chapter for implementing the principles and procedures set forth in the 2014 Task Force Report. This new chapter was issued on October 23, 2015. Implementing Mitigation at the Landscape-scale (Oct. 23, 2015), codified in the Interior Departmental Manual 600 DM 6.[17] According to the explanation in the departmental transmittal sheet,[18] this new manual chapter "reaffirms the Department's authority to require and determine the scope of compensatory mitigation;

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[17] *Available at:* https://www.doi.gov/sites/doi.gov/files/uploads/TRS%20and%20Chapter%20FINAL.pdf (last visited Dec. 7, 2016).

[18] *Available at:* https://www.doi.gov/sites/doi.gov/files/uploads/TRS%20and%20Chapter%20FINAL.pdf (last visited Dec. 7, 2016).

establishes a goal for the conservation outcome of mitigation investments; enumerates standards when implementing landscape-scale mitigation approaches, and; [*sic*] outlines responsibilities of bureaus and offices in fulfilling the goals established in [Secretarial Order No.] 3330."

138. The new Landscape-scale Mitigation Program was discussed by the Deputy Secretary of the Interior, Michael Connor, in a press release entitled "A 21st Century Approach to Balancing Development and Conservation of Public Resources," issued on November 3, 2015.[19] In that press release, Deputy Secretary Connor summarized the Interior Department's new regulatory program governing land and resource management:

> [T]oday the Interior Department issued a new Departmental policy. This new policy, stemming from Secretary Jewell's first Secretarial Order [3330], identifies the key principles and processes needed to implement a landscape-scale mitigation approach to, as the Secretary noted introducing her Order at the National Press Club in 2013, help "balance the inherent tensions that can exist with development and conservation." The policy follows through on a commitment made in a 2014 report to the Secretary from her Energy and Climate Change Task Force: Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior. *With the Departmental policy in place, the Bureau of Land Management (BLM) and the Fish and Wildlife Service will soon also provide policies to further implement this approach through their programs*. [Emphasis added.]

139. Consistent with Deputy Secretary Connor's public statement, the U.S. Fish and Wildlife Service—another Interior Department agency—has issued two mitigation policies: (1) U.S. Fish and Wildlife Service Mitigation Policy, 81 Fed. Reg. 83440 (Nov. 21, 2016); and (2) Endangered Species Act Compensatory Mitigation Policy, 81 Fed. Reg. 61032 (Sept. 2, 2016) (draft policy). These policies were issued by the U.S. Fish and Wildlife Service to comply with, and are intended to implement, Secretarial Order No. 3330, the 2014 Task Force Report, and the mitigation program described in Department Manual Chapter 600 DM 6. *See* 81 Fed. Reg. at 83440 (explaining the reason for issuing the new policy).

[19] *Available at:* https://www.doi.gov/blog/21st-century-approach-balancing-development-and-conservation-public-resources (last visited Dec. 7, 2016).

140. In February 2016, the BLM issued the 2016 Proposed Planning Rules to implement the Landscape-scale Mitigation Program on the public lands. The BLM has stated that the changes made to its regulations governing resource management planning in the 2016 Planning Rules "will assist in effectively implementing" the Landscape-scale Mitigation Program, as well as the Climate Change Adaptation Program. 81 Fed. Reg. at 9679.

141. Like the documents establishing and implementing the Interior Department's Climate Change Adaptation Program documents, the documents establishing the Landscape-scale Mitigation Program, including Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6), are "formal documents establishing an agency's policies which will result in or substantially alter agency programs" and, moreover, are a "group of concerted actions to implement a specific policy or plan" and constitute "systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive." 40 C.F.R. § 1508.18(b)(1), (4). Yet none of these program elements, or the larger program itself, which will dramatically alter the programs of Interior Department bureaus and agencies, has undergone NEPA review. This constitutes a violation of NEPA and the rules implementing NEPA issued by the CEQ, 40 C.F.R. pts. 1500–1508, and the Interior Department, 43 C.F.R. pt. 46. This violation has injured Petitioners by depriving them of their right to submit comments and information during the NEPA process, as more particularly alleged above.

142. The documents establishing the Landscape-scale Mitigation Program, including Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6), are also subject to coordination under FLPMA Section 202(c)(9). As alleged above, that statute requires that the Interior Secretary "provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands." The policies and

directives described above, which collectively constitute a discrete departmental program, clearly constitute a "land use program" and will significantly alter the way planning and management of public lands will be conducted. But no attempt to coordinate with affected states and local governments has been made by the Interior Department or the BLM, injuring Petitioners' concrete interests in land and resource use planning and management, which are recognized and protected under FLPMA Section 202(c)(9) as alleged above.

143. Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6) are final agency action within the meaning of the APA. Each action is final, *i.e.*, it marked the consummation of the Interior Department's decision-making process, and was not tentative or uncertain. Moreover, each action had, and continues to have, legal consequences because they have required Interior Department agencies and bureaus, including the BLM and the U.S. Fish and Wildlife Service, to change the way they manage land and resources, as the BLM has explained in adopting the 2016 Planning Rules. *See* 81 Fed. Reg. at 89585; *id.* at 9679.

144. Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6) are "rules" within the meaning of the APA. Under the APA, a "rule" is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4). Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6) adopt, implement, and prescribe requirements that must be undertaken by Interior Department agencies and bureaus. As alleged herein above, the BLM has adopted the 2016 Planning Rules to comply with these requirements.

145. In adopting Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6), the Interior Department and the BLM failed to comply with the

rulemaking requirements of the APA, including notice and an opportunity for comments prior to the adoption of each of these rules. This failure injured Petitioners by depriving them of their right to submit comments and evidence during the rulemaking process.

WHEREFORE, Petitioners pray for relief as follows:

That the Court declare that Secretarial Order No. 3330, the 2014 Task Force Report, and the Interior Department Manual chapter entitled "Implementing Mitigation at the Landscape-scale" (codified at 600 DM 6) were adopted and are being implemented without observance of the procedures required by law and are arbitrary, capricious, an abuse of discretion, or otherwise unlawful, and order that these actions be set aside;

That the Court award Petitioners their reasonable attorney's fees and costs of court, as may be permitted by law; and

That the Court grant such other and further relief as may be appropriate to redress Petitioners' injuries and to ensure Respondents' compliance with NEPA, FLPMA and the APA in adopting and implementing the Landscape-scale Mitigation Program.

//

DATED this12th day of December, 2016.

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