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January 12, 2016

Via Electronic Mail and U.S. Mail

Jenna Whitlock
Acting State Director, Utah State Office
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, UT 81401-1345

Re: Greater Monument Butte Final Environmental Impact Statement

Dear State Director Whitlock:

We are writing on behalf of Newfield Exploration Company (Newfield) regarding the Final Environmental Impact Statement (FEIS) for the Greater Monument Butte In-Fill Oil and Gas Development Project (Monument Butte Project). Newfield appreciates the hard work of Bureau of Land Management (BLM) staff in both the Vernal Field Office and State Office in completing the FEIS, a process that began over six years ago. Newfield has appreciated the collaborative and thoughtful approach your staff brought to this process.

Newfield is writing to object to the last minute efforts of the Environmental Protection Agency's (EPA) Region 8 staff to introduce a new set of mitigation "recommendations," ostensibly pursuant to National Environmental Policy Act (NEPA), in an apparent (and unlawful) attempt to circumvent the comprehensive process established in the Clean Air Act (CAA) for addressing violations of a National Ambient Air Quality Standard (NAAQS).

It is important to state emphatically that EPA itself lacks the statutory, legal and regulatory authority to impose the mitigation program it seeks to leverage BLM into adopting. Thus, Newfield also is convinced that if adopted, EPA's last-minute mitigation demands would place the BLM in the role of regulating air quality and managing a complex air quality program in the absence of any statutory authority to do so. Moreover, BLM lacks the staff, resources, budget, and expertise to administer and oversee such a complex regulatory air program that EPA is pushing BLM to adopt.

Finally, the mitigation program EPA insists that the BLM adopt was proposed long after the NEPA public comment period elapsed, in contravention of the NEPA process, and in contravention of the extensive and detailed air mitigation program that BLM and EPA worked with Newfield over the course of several years to develop, which is adopted and reflected in the existing FEIS. As a result, the

administrative record is barren of a rationale and supporting materials for the unprecedented air quality regulatory program BLM is considering. The entire FEIS and any subsequent Record of Decision (ROD) are therefore at risk.

Newfield strenuously objects to EPA's last-minute attempt, outside the regular NEPA process and without any statutory or regulatory authority, to inject significant and unevaluated mitigation requirements into the FEIS.

## A. Background

The Monument Butte Unit is the largest in the United States and is being developed in an oil and gas field that has been in development for over 40 years, and where more than 3,000 wells already have been drilled. The impacts of oil and gas development in the Unit previously were analyzed and approved in the Castle Peak Eightmile Flat Record of Decision and EIS in 2005. Notably, the project area possesses no wilderness characteristics, sage grouse, or sensitive wildlife species. Within BLM's multiple-use mandate, this area is well suited to the development of oil and gas resources.

The FEIS, which has been more than six years in the making, analyses a proposed infill drilling program for 5,750 wells (3,250 oil and 2,500 natural gas). The proposal would minimize surface disturbance by requiring that 87% of new wells be drilled from existing well pads. In addition, the proposal includes an extension of state-of-the-art water recycling facilities that would continue the ability to recycle 98 percent of produced water. The FEIS also contemplates that Newfield could use state-of-the-art Gas and Oil Separation Plants to reduce emissions to the atmosphere and reduce truck traffic and associated fugitive dust. These are industry-leading environmental measures that would be lost if this project cannot be pursued.

Newfield began meeting with BLM about this project in 2009. Scoping on this project began in 2010, and led to the publication of a Draft Environmental Impact Statement (DEIS) in 2013. The DEIS was released to the public for an extensive comment period. Understanding that air quality was a critical resource, both BLM and Newfield engaged EPA extensively throughout the NEPA process. BLM, EPA, and Newfield reached agreement on a path forward for an ozone impact analysis and a comprehensive set of mitigation measures, which are reflected in the FEIS. As required under NEPA, BLM thoroughly evaluated the environmental impacts of the proposed action as well as a set of alternatives, and evaluated and identified a wide range of potential mitigation measures to avoid, minimize, or eliminate environmental impacts, including impacts to air quality. The FEIS includes a comprehensive list of mitigation measures, including extensive Applicant Committed Environmental Protection Measures (ACEPM).

In a break from the regular process, on May 15, 2015, long after the public comment period had closed and BLM completed the FEIS, EPA forwarded to BLM additional comments and mitigation recommendations over and above those EPA appropriately provided at the DEIS stage. At that stage, BLM already had disclosed and evaluated air quality issues, including potential exceedances of the NAAQS for ozone. EPA has never, to Newfield's knowledge, explained the reasons for its break from precedent.

It was apparent from EPA's May 2015 comments that the agency poorly understood the project and BLM's coverage of air quality issues in the FEIS. For example, EPA recommended elimination of existing evaporation ponds, even though Newfield does not operate any existing evaporation ponds. EPA required the immediate use of Tier IV engines for drill rigs and hydraulic fracturing, even though Newfield had previously explained that the technology was not readily available in the Uinta Basin at this time. Similarly, EPA recommended that Newfield retrofit existing pneumatic controllers to meet regulatory provisions specified in 40 CFR 60, Subpart OOOO, despite Newfield's pre-existing commitment to replace or retrofit existing high-bleed pneumatic devices (see section 2.2.12.1.3 of the FEIS). EPA also proposed that BLM require Newfield to utilize bottom-filling of tanker trucks to reduce fugitive emissions, something that the state of Utah already requires and which Newfield already does.

Finally, EPA recommended that BLM require Newfield to control volatile organic compound (VOC) emissions from new storage tanks regardless of their potential to emit. EPA offered up no explanation or rationale for such a requirement, which is especially perplexing since EPA already had concluded in a separate rulemaking that it is not cost-effective to control VOC emissions from tanks emitting less than 4 tons/year. Neither did EPA provide a cost-effectiveness or technical analysis of this element of the agency's proposal.

Newfield documented its technical and legal concerns on these EPA proposals in a letter to BLM dated June 19, 2015, and a copy of this letter is attached for ease of reference.

To the best of Newfield's knowledge, BLM staff continued to engage with staff at EPA Region VIII in an effort to resolve the continuing disagreement about the FEIS's treatment of air quality issues. At some point, EPA and BLM developed an entirely new draft proposal for mitigating air quality issues associated with the project. That proposal, discussed in detail below, would require BLM to establish a regulatory program to ensure there is no net increase of VOC emissions from stationary sources.

As Newfield understands the proposal, Newfield would have to achieve emissions reduction from existing minor sources – sources not involved in the project evaluated in the FEIS – before Newfield could initiate any new activity that would result in VOC emissions. Apparently, BLM would develop annual emission balance sheets to track and quantity emissions reductions and emissions increases, and would decline to authorize new activities if Newfield had not accumulated sufficient credits to offset emissions from new activities. One of the many unknowns about this proposal is how either BLM or Newfield would project future emissions or how (or if) BLM would adjust the balance sheet to reflect actual as opposed to projected emissions.

EPA and BLM's new proposal emerged from thin air. Nothing of its kind was identified or evaluated in the DEIS. The FEIS does not include either a description of such a proposal or its mechanics, or the statutory basis for such a proposal. The FEIS does not purport to provide an analysis of the cost-effectiveness of this draft proposal. Neither does the FEIS provide an estimate of the reductions potentially achievable or an analysis of whether it would be remotely possible for Newfield to ever generate sufficient "credits" to allow it to conduct the infill development that is at the core of the

FEIS, much less the estimated costs of attempting to do so. Simply put, the EPA-BLM proposal raises far more questions than it answers.

What is abundantly clear, however, is that EPA lacks the authority to impose such a program on its own under the Clean Air Act. Presumably, that is why it is attempting to foist that responsibility on BLM, after the fact and retroactively through the NEPA process. It is BLM that would have to establish a total cap on VOC emissions from oil and gas development associated with the project, identify and quantify acceptable emissions control measures to be implemented by Newfield, and ultimately to determine if any action Newfield might take would generate sufficient emissions credits to allow Newfield to embark on new activities.[1]

It would be impossible for BLM to carry out such a program without evaluating in detail emissions from existing sources (a complex and time-consuming process in and of itself), evaluating the effectiveness of control measures, and assessing the success of those measures taking into account factors like rule effectiveness. BLM then would have to evaluate future activities and both potential associated emissions and presumably actual emissions if a credit account is to be transparent, fair, and usable.[2]

There are many other features to such a cap-and-trade program for VOCs. However, this recitation is sufficient to determine that the EPA-BLM proposal would convert BLM from a land management agency to an air quality regulatory agency. BLM has abundant authority for the former activities, but has none for the latter.

## B. EPA is Unlawfully Attempting to Circumvent Statutorily Established Processes for Controlling Air Quality in Non-Attainment Areas

Newfield presumes that EPA – and BLM – is motivated by a concern that at times in the past ambient levels of ozone in the Uinta Basin have exceeded the national standard. Newfield shares that concern. Newfield has a stellar record for the responsible development of oil and gas in the Uinta Basin and elsewhere. In keeping with that commitment, Newfield has worked collaboratively with the BLM and other state and federal agencies on a wide range of environmental issues.

For example, Newfield is one of several companies that provided financial support and technical expertise to the series of winter ozone studies that are incrementally providing valuable insight into the phenomenon of winter ozone formation. Newfield voluntarily purchased an infrared camera to facilitate implementation of a leak detection and repair program in the basin. Newfield also is pressing forward with its voluntary commitment to replace existing pumpjack engines with clean burning JJJJ-compliant units. Finally, Newfield has committed to a lengthy and comprehensive set of ACEPMs that will

[1] Newfield emphasizes that what EPA, and now BLM, are proposing is to use NEPA to compel reductions in emissions from existing sources that were not part of the NEPA analysis to begin with. Thus, the administrative record is accordingly lacking in any analysis of those sources or the reasonableness of imposing new requirements on those sources.

[2] It is impossible to know in advance the throughput of a well, or the exact configuration of equipment at a specific drilling site or sites. In many cases, projected and actual emissions and production will differ.

significantly reduce emissions of ozone precursors into the atmosphere and provide significant collateral air quality benefits.

Newfield also recognizes that upon completion of the EIS and issuance of a ROD, and before Newfield initiates site specific activities, Newfield will have to secure permits from the appropriate air quality regulatory agency or agencies.

Perhaps more important, the Uinta Basin is currently unclassifiable for ozone. Market forces have resulted in a significant reduction in oil and gas activity in the Uinta Basin and corresponding reductions in emissions. There is no regulatory certainty that the Uinta Basin will be designated as nonattainment for ozone in the foreseeable future.

Newfield also recognizes that if EPA designates the Uinta Basin as nonattainment for ozone at some point in the future, the state, tribe and EPA will be required to develop comprehensive plans to bring the area into attainment and that such plans almost certainly will impose additional control or process requirements on all oil and gas operators in the Basin, including Newfield.

The Clean Air Act provides a certain regulatory path to address a nonattainment designation. The application of the NEPA process to preemptively address a nonattainment designation that may never occur is unnecessary and unwarranted.

Newfield vigorously disputes EPA's apparent view that it is somehow empowered to use its NEPA review authority to take a short-cut around the statutorily established process under the Clean Air Act for identifying and implementing measures to address air quality in the Basin. Neither the Clean Air Act nor NEPA confer any such authority to circumvent the process Congress devised for making such decisions. Whatever EPA's motives might be, it is not free to conjure up complex regulatory programs out of thin air, and seek to impose such programs upon BLM.

### 1. EPA's Regulatory Authority under the Clean Air Act

The CAA, 42 U.S.C. § 7401 *et seq.*, establishes a comprehensive program for controlling and improving air quality through federal and state regulations. As part of the program, the CAA requires EPA to promulgate NAAQS, which set the maximum ambient air concentrations for six pollutants, "the attainment and maintenance of which [...] are requisite to protect the public health" with "an adequate margin of safety." 42 U.S.C. §§ 7408, 7409(b)(1). Thereafter, the CAA instructs EPA to designate areas of the country as attainment, non-attainment or unclassifiable based on whether they comply with EPA established NAAQS. *Id.* § 7407(b)(1). However, the Act prescribes a process by which EPA first must request that governors nominate areas for designation as nonattainment. EPA must then confirm or revise those recommendations. EPA has not yet initiated that process for the Uinta Basin in Utah, even though EPA retains sole discretion in the timing for doing so.

Generally, EPA designates an area that meets the relevant NAAQS as attainment, while areas that exceed the NAAQS receive a nonattainment designation. *Catawba Cnty., N.C. v. EPA*, 571 F.3d 20, 26 (D.C. Cir. 2009). Alternatively, EPA may designate an area "unclassifiable" if the area

"permit[s] no determination given existing data." *Id.* For all intents and purposes, the CAA treats attainment areas and unclassifiable areas identically. 40 C.F.R. § 51.110(g) ("Attainment area means, unless otherwise indicated, an area designated as either attainment, unclassifiable, or attainment/unclassifiable"); 42 U.S.C. § 7471 (instructing EPA to give the same treatment to "unclassifiable" and "attainment" areas for SIP purposes"). Currently, the Uinta Basin is designated as unclassifiable for ozone.

**2. EPA has limited authority in unclassifiable/attainment areas**

The CAA represents a form of cooperative federalism. The Act prescribes a complex process by which many elements of the Act can be delegated to the individual states. For example, while the Act requires preconstruction review and permitting for certain new and existing major sources of air pollution – through the New Source Review (NSR) program and Title V permitting program – those programs are administered by the state of Utah (except within the Uintah and Ouray Reservation, which is not involved in this FEIS). The NSR program, however, applies only to "major sources" of air pollution. Minor sources in unclassifiable areas—such as those proposed by Newfield and considered in the FEIS—are subject only to minor new source review programs which remain within the purview of the state, not the EPA.[3] 42 U.S.C. § 7410(a)(2)(C).

**3. EPA does not have Authority to Impose its Proposed VOCs Emissions Cap**

If and when an adequate monitoring record demonstrates that the Uinta Basin should be designated as nonattainment for ozone, and the governor requests and EPA confirms such a designation, EPA will then require the state to develop a plan – a state implementation plan, or SIP – that outlines how the state plans to bring the area into attainment.

The Act prescribes the specific elements for such a SIP, depending on how the area is classified (how far the area is from attainment). The worse the air quality, the more ambitious the SIP must be. However, a starting point for every SIP will be the development of a comprehensive air emissions inventory. Typically, a SIP will evaluate a wide range of potential control measures for existing and new sources; that entails a detailed evaluation of cost-effectiveness and technical feasibility for each potential control measure. In all but the least polluted areas, the state must conduct elaborate air quality modeling to assess the effectiveness of the state's planned control measures. And in all but the least polluted areas, the state must offset emissions from new sources with emissions reductions from other sources.

The salient point for purposes of the FEIS is that the Uinta Basin presently is designated as unclassifiable and is therefore treated as an area in attainment under EPA's regulations.[4] 40 C.F.R. §

[3] Minor sources may be subject to EPA review under the nonattainment area program; however, because the Uinta Basin is designated unclassifiable, the nonattainment area program is inapplicable.

[4] EPA's unclassifiable designation for the Uinta Basin has also withstood judicial scrutiny. *Mississippi Comm'n on Envt'l Quality v. EPA*, 790 F.3d 138 (D.C. Cir. 2015).

51.110(g). Specifically, the Uinta Basin had no regulatory air monitoring until April 2011. The absence of pre-2011 regulatory-air-quality monitors in Uinta Basin meant that when EPA conducted the designation process for the 2008 NAAQS in 2013, it had regulatory data for the Uinta Basin for only two of the three years necessary to make a regulatory designation. Consequently, noting that "there are not yet three consecutive years of certified ozone monitoring data available [from Uinta Basin] that can be used to determine the area's attainment status," EPA designated the area as "unclassifiable." *Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards*, 77 Fed. Reg. 30,088, 30,089 (May 21, 2012).

If EPA were to determine that the Uinta Basin is not attaining the ozone standard, EPA could require the state to develop a SIP as outlined above. That exercise would yield an emissions inventory, air quality monitoring, and an evaluation of the efficacy of a wide range of emissions control measures, all of which could be evaluated in intricate air quality models. If air quality in the basin were to be classified as "moderate" or worse, the state would have to ensure that emissions from new sources could be offset by emissions reductions elsewhere.[5] That is the process prescribed, in great detail, by the CAA.

Here, however, EPA purports to find in its NEPA review authority the ability to short-circuit that entire process. There is no completed emissions inventory. There has been no evaluation of control measures' cost-effectiveness and technical feasibility. The designation process has not triggered the need to develop an emissions offset program of the kind proposed by EPA. While EPA's concerns may be sincere, their mitigation recommendations must be grounded in process and statutory authority. They fail on both counts.

## C. EPA and BLM Cannot use the NEPA process to Circumvent the Clean Air Act Procedural Guidelines and Impose Emission Restrictions

### 1. The CAA Confers no Regulatory Authority to BLM

The CAA does not provide BLM with legal authority to regulate air emissions or impose emission caps through the NEPA process. *See TOMAC v. Norton*, 433 F.3d 852, 863 (D.C. Cir. 2006) ("The [Clean Air Act], ***and not NEPA***, is the primary force guiding states and localities into NAAQS compliance.") (emphasis added). Instead, as noted above, the CAA generally delegates the "primary responsibility" for ensuring that an area either maintains attainment or progresses towards attainment designation to the states or to recognized tribes. 42 U.S.C. § 7407(a); *Oklahoma Dep't of Envt'l Quality v. EPA*, 740 F.3d 185, 193 (D.C. Cir. 2014).

Further, neither NEPA nor FLPMA authorizes BLM to regulate emissions through EPA's proposed emission cap. First, NEPA is purely a procedural statute that requires the identification and analysis of a proposed action's impact to environmental resources. *See, e.g.*, 42 U.S.C. § 4332(2)(C) (agency is required to prepare a detailed statement on, *inter alia*, "any adverse environmental effects which cannot be avoided should the proposal be implemented"); 40 C.F.R. § 1502.16 (same); *Vt. Yankee*

[5] That is a SIP element that bears a striking resemblance to what EPA s recommending the BLM adopt unilaterally.

*Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978). It does not mandate that a certain outcome be achieved or prohibit any impacts to environmental resources, such as air quality. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

Next, BLM's authority to develop land use plans and otherwise manage federal land under FLPMA does not usurp the air quality authority granted to the states under the CAA. Similar to NEPA, FLPMA requires that BLM only "provide for" the compliance with federal air quality standards when developing federal land use plans, and that it manage the federal lands "in accordance with" the applicable land use plan. *See* 43 U.S.C. § 1712(c)(8) ("[i]n the development of and revision of land use plans, [BLM] shall . . . provide for compliance with applicable pollution control laws . . . ."); 43 U.S.C. § 1732(a).

To "provide for" compliance with the CAA in a Resource Management Plan, BLM simply has to provide lease stipulations or notices that ensure that Applications for Permits to Drill and other site-specific project authorizations include a measure or condition of approval that a lessee must obtain all applicable air permits from the appropriate jurisdictional authority. *Cf. WildEarth Guardians v. Salazar*, 880 F. Supp. 2d 77, 93 (D.D.C. 2012), *aff'd*, 738 F.3d 298 (D.C. Cir. 2013) (stating that "neither the FLPMA nor the implementing regulations required BLM to analyze whether and to what degree the leasing of the . . . tracts would comply with national ozone, PM10, and NO2 standards"); *WildEarth Guardians v. BLM*, 8 F. Supp. 3d 17, 38 (D.D.C. 2014) (finding the same and concluding that BLM satisfied FLPMA by including clauses in the leases requiring compliance with air and water quality standards).

Generally, BLM's adoption of a ROD for a NEPA document is programmatic and will not authorize any surface disturbing activities or air emissions. It is not until BLM receives an application for a permit to drill (APD) that development becomes a possibility. *Cf. Northern Alaska Envt'l Ctr. v. Kempthorne* (*NAEC*), 457 F.3d 969, 977 (9th Cir. 2006) (discussing the stages of oil and gas leasing and development for purposes of NEPA analysis). As such, it is at the APD stage that the state or EPA's permitting obligations under the CAA are triggered to ensure a project's compliance federal air quality laws. *See, e.g.*, 42 U.S.C. § 7506(c). Yet here, BLM would be usurping the state's air quality regulatory authority.

Here, should BLM incorporate a VOC emissions cap into the Record of Decision (ROD) for the Monument Butte Project, it will unlawfully arrogate the State of Utah's and EPA's Clean Air Act permitting authority. Accordingly, the inclusion of EPA's proposed emission cap in the ROD will constitute an unlawful exercise of BLM authority and would impermissibly bypass the procedures set forth in the CAA. BLM should instead rely upon the analysis contained in the FEIS conducted in accordance NEPA and FLPMA.

**2. BLM has fully complied with NEPA and FLPMA**

BLM's analysis of the Greater Monument Butte In-Fill Project satisfies the impact disclosure requirements of NEPA and is entirely consistent with the policy objectives embodied by FLPMA. Conversely, EPA is attempting to unfairly hijack the NEPA process and insert expansive mitigation

measures into the ROD which have not been analyzed and have not gone through the necessary NEPA process.

As detailed above, NEPA only requires the full disclosure of the impacts to environmental resources, the assessment of possible mitigation measures, and the consideration of comments from consulting agencies, such as EPA. *See* Part I.C.1 *supra.* The FEIS fulfills each of these requirements. BLM conducted an extensive and probing assessment of the environmental impacts contemplated by the Monument Butte Project. Further, BLM, Newfield, and EPA developed a series of ACEPMs as well as mitigation and adaptive management protocols governing subsequent site-specific project requests

In preparing the FEIS and conducting the NEPA process, BLM also complied with its FLPMA obligations. In particular, the mitigation measures and ACEPMs developed in conjunction with EPA provide for the "protect[ion] [of] the quality of . . . [the] air . . . ." 43 U.S.C. § 1701(8). Yet, despite EPA's involvement in developing the air quality control measures incorporated in the FEIS, it is now implicitly rejecting those measures as insufficient in favor of an emissions cap and other measures that have no legal basis and lack any technical support. Similarly, BLM has not developed an administrative record that would support the adoption of additional mitigation measures, including an emissions cap.

In short, EPA's arbitrary about-face with respect to the need for further mitigation requirements must be rejected by BLM. The FEIS constitutes a thorough environmental impact analysis of the Monument Butte Project that satisfies BLM's obligations under NEPA and FLPMA.

### 3. BLM Complied with the NEPA MOU

The air quality mitigation and other measures incorporated into the FEIS were developed in accordance with the *Memorandum of Understanding Among U.S. Department of Agriculture, U.S. Department of the Interior, and Environmental Protection Agency Regarding Air Quality Analysis and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process* (MOU) and should not be discarded because of EPA's untimely proposal for an emissions cap and other mitigating measures. The MOU establishes a straightforward process for collaboration between the agencies to provide for the efficient assessment and protection of air quality. EPA's proposal ignores this process.

BLM, as the "Lead Agency" under the MOU, is responsible for the identification and evaluation of "reasonable mitigation and control measures." MOU § VI.A. Of course, the identification of mitigation and design features is a collaborative effort between the agencies. *Id.* at § V.E. Because the MOU's objective is to, in part, increase the efficiency of the NEPA review process, the MOU instructs that the agencies consult early in that process to enable the effective review of air impacts and protection measures. *Id.* Further, the MOU's review process stresses the importance of a science-based approach to analyzing air impacts and measures needed to minimize those impacts as required by the law. *See, e.g., id.* at Preamble.

Here, the analysis conducted by BLM in the FEIS and its collaboration with EPA fully comport with the MOU's objectives and requirements. Newfield and BLM engaged with EPA extensively over a

two year period regarding the parameters for an air quality analysis and mitigation program. In 2012, BLM and EPA reached agreement on a path forward that was also technically and economically viable for the project proponent.

Moreover, at the DEIS stage, BLM responded to EPA's comments on air quality and mitigation, as it was required to do by NEPA and the MOU. Newfield also agreed to a comprehensive list of ACEPMs, and to an adaptive management strategy to account for the dynamic and changing nature of air quality in the Uinta Basin.

EPA's last-minute proposal frustrates the entire MOU process. Irrespective of the legality of the emissions cap demanded by EPA, its proposal seeks to include mitigation and design features at the very end of the NEPA process, unsupported by any technical analysis. EPA's action is the precise conduct the MOU is intended to avoid. *See* MOU § I (setting forth the MOU's objectives).

Therefore, EPA's belated attempt to impose new and unevaluated mitigation and other measures on the Monument Butte Project outside of and contrary to the MOU process should be rejected by BLM. As required by the MOU, BLM went the extra mile in analyzing air quality impacts, and collaborated with EPA and other agencies. No further action is required of BLM.

**D. The EPA-BLM Proposal is Unlawful and Unworkable**

The core element of the EPA-BLM proposal would mandate "no net increases in emissions of VOCs from stationary sources encompassed by the Monument Butte project area." According to EPA-BLM, that goal would be achieved by first reducing emissions from existing sources, before BLM would allow Newfield to initiate any new emitting activities. BLM would be in the position of verifying the operator's actions, determining if emissions reduction activities have been achieved, evaluating the potential sources of offsetting emissions, and quantifying those emissions reductions.

Remarkably, BLM and EPA propose that the program would apply regardless of mineral or surface ownership, though not surprisingly the BLM-EPA proposal provides no basis for that assertion. Taken as a whole, this proposal would involve BLM personnel in detailed management of air quality matters within the project area.

The list of items not covered by this proposal is extensive, and Newfield lists only some of the potential implications of this proposal. First, the proposal contains no rationale for this proposal. It does not explain why the mitigation measures contained in the final EIS are inadequate. Neither does it evaluate the potential emissions reductions to be achieved, nor does it assess the resultant benefits (if any) to air quality in the basin. There is no basin-wide emissions inventory against which this measure can be compared. There was no analysis to evaluate the potential impact of this new program (though it may be that there are no commercially available air dispersion models sufficiently granular to identify any air quality benefits from this new proposal).

Conversely, this proposal is premised on the notion – though no where explained – that there is a sufficiently large inventory of potential emissions reductions available from existing sources to permit

Newfield to undertake the proposed action. It may well be that no such surplus of potential offsetting emissions reductions exists, meaning that Newfield would find it impossible to actually fulfill its lease obligations. It is almost certainly true that many of the emissions controls that may be imagined would not be cost-effective; that would significantly drive up the cost of operating in the Basin.

Newfield reiterates that neither BLM nor EPA has conducted even a rudimentary assessment of what additional cost-effective measures may exist in the project area.[6]

The proposal is, for all intents and purposes, a project-wide cap on VOC emissions that requires offsetting emissions reductions, all within an area currently designated as unclassifiable. The proposal provides no information on how emissions reductions achievable from existing sources would be treated in, or when the area is designated as nonattainment. Would they be credited to Newfield? Or would Newfield be at risk of being required to make even more emissions reductions as part of a SIP that the state of Utah ultimately adopts? In fact, would there be any remaining cost-effective measures that could be implemented?[7]

EPA and BLM are proposing not only a cap on emissions but also implicitly are demanding implementation of measures that may not be cost-effective and are arrived at outside of the nonattainment process specified by the CAA. What will be Newfield's obligations when EPA finalizes its NSPS subpart OOOOa regulations for new and modified sources in the oil and gas sector. More important, what will be Newfield's obligations if EPA finalizes the Control Technique Guidelines (CTGs) to be used as reference points for states developing SIP that include sources in the oil and gas sector? Will the cap on emissions continue to apply? Will measures instituted by Newfield have to be adjusted to correspond with the provisions of NSPS subpart OOOOa and the CTGs? If EPA were using the regular, statutorily mandated process, Newfield would have some regulatory certainty in managing air emissions. The EPA-BLM proposal provides only uncertainty.

For example, EPA and BLM also have proposed a Leak Detection and Repair (LDAR) element as a new mitigation requirement. However, the proposal is so vague that it is impossible to know what the LDAR program would entail. More important, it is impossible to predict how this BLM-imposed program would comport with the LDAR program that is certain to be included within the final subpart OOOOa regulations. To make matters worse, BLM merely offers to "reassess the need for this program" if future regulations are finalized. That means Newfield would have to guess at the contours of EPA's final regulations, and bear the risk of starting over if Newfield guesses wrong.

It is not surprising that the proffered rationale for this strategy covers approximately one page. As a result, the administrative record remains barren of any meaningful evaluation of the potential

[6] Since EPA's May 2015 recommendations included measures that EPA itself had determined were not cost-effective, Newfield can only surmise that EPA never evaluated what cost-effective control measures may be available to Newfield.

[7] In fairness to BLM, it is impossible to answer these questions because it is also impossible to predict what the state of Utah may decide to include in any SIP that it ultimately may complete, under the process prescribed by the Clean Air Act. That underscores the inherent weakness of EPA's recommendation.

emissions reductions achievable, or at what cost, or for what air quality benefit. As such, this proposal is the personification of arbitrary and capricious action.

## E. Accepting EPA's Latest Mitigation and Air Emission Program Demands Will Set a Significant Negative Precedent for BLM

The BLM is not acting in a vacuum as it considers EPA's latest mitigation proposal. If BLM accedes here, EPA will demand the same mitigation for all other NEPA documents in process in the basin, and eventually will require the application of these (or other) mitigation measures to projects long since approved. That will force BLM to confront head on its ability to unilaterally amend or revise existing RODs, enmeshing BLM in significant controversy throughout the basin. Yet oil and gas activities occurring on private and state lands, and outside BLM's purview, will continue to operate under the rules adopted by the state of Utah, leaving BLM's lessees at a competitive disadvantage.

BLM also will soon confront questions of how its actions will affect any plans to develop oil and gas from private and state minerals and surface. It is difficult to imagine any scenario that does not entail diminished exploration and production within the project area, and private and state mineral owners will have little recourse.

There is no reason to assume that EPA will not begin making similar demands in areas where it concludes, without accountability or transparency, that air quality is being degraded. BLM will then have to confront the challenge of responding to EPA mitigation "recommendations" in Wyoming, North Dakota, Montana, New Mexico, and elsewhere. There is no reason to believe that EPA's mitigation "recommendations" will be confined to air quality in the future; it may well be that EPA will soon be inserting itself in any manner of environmental aspects of resource management on federal lands.

The impacts on BLM's already-constrained staff resources are easy to imagine. Just in the Monument Butte project area, BLM's limited air quality staff will be taking on large new air quality management responsibilities. The resource demands on BLM staff will increase as EPA seeks to impose the same mitigation "recommendations" on other energy projects in the basin, both new and existing. Aside from the fact that BLM lacks the authority to undertake those duties, it also lacks the human resources to do so.

## F. Conclusion

For the better part of six years, Newfield has worked closely with BLM, and even EPA, to complete an EIS that would withstand scrutiny and would protect both human health and the environment. Newfield sincerely believes the FEIS achieves that goal and reflects the concerted efforts of both BLM staff and Newfield's team.

Newfield deeply regrets EPA's last-minute intervention to convince BLM to adopt infeasible mitigation measures, without analysis or evaluation. EPA is overreaching in attempting to use NEPA to leverage significant, last-minute mitigation recommendations that lawfully should be pursued as part of the process laid out by the CAA.

Newfield remains committed to finding a fair resolution to this issue and to finalizing a NEPA process that has already lasted six years. We would be happy to discuss this matter with you in the hope of finding a solution that is fair and reasonable.

BEATTY & WOZNIAK, P.C.

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Enclosure

Courtesy Copies:

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Aaron Moody, Office of the Solicitor, Department of the Interior
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