

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

West Slope Colorado Oil and Gas Association,

Plaintiff,

v.

Sally Jewell, in her official capacity as the Secretary  
of the United States Department of the Interior;

United States Department of the Interior;

Daniel M. Ashe, in his official capacity as the  
Director of the United States Fish and Wildlife  
Service;

United States Fish and Wildlife Service;

Ruth Welch, in her official capacity as the State  
Director of the Bureau of Land Management  
Colorado State Office;

Bureau of Land Management Colorado State Office;

Kent Walter, in his official capacity as Field  
Manager of the Bureau of Land Management White  
River Field Office,

Defendants.

Civil Action No.  
2014-cv-02764

---

**MOTION OF GARFIELD COUNTY, COLORADO TO  
PARTICIPATE AS  
*AMICUS CURIAE* WITH SUPPORTING BRIEF**

---

Garfield County, Colorado, pursuant to Fed. R. App. P. 29, respectfully moves this Court for leave to file the Brief Supporting the Opening Brief of West Slope Colorado Oil and Gas Association (“WSCOGA”) attached hereto. The position of Garfield County is to support the WSCOGA argument seeking reversal of the decision of the Interior Board of Land Appeals (“IBLA”) upholding the September 23, 2013 Decision Record issued by the Field Manager, White River Colorado Field Office, Bureau of Land Management (“BLM”), authorizing Colorado State University to seed and transplant the threatened Dudley Bluffs twinpod (*Lesquerella obcordata*) (“twinpod”) and Dudley Bluffs bladderpod (*Physaria congesta*) (“bladderpod”) into research plots located on BLM-managed lands in Rio Blanco County (“EA/DR”).

As grounds for this motion, *amicus* would provide to the Court that:

1. Garfield County, Colorado (“County”) is a political subdivision of the State of Colorado organized under Article XIV of the Colorado Constitution.
2. The County’s interest in this matter derives from the facts that while the twinpod and bladderpod are currently known to grow exclusively, including in the area of the Piceance Creek, in Rio Blanco County that these plants are self-populating through pollination. The FWS Western Colorado Field Office’s June 2008 5-year review Summary and Evaluation (“FWS-WCFO 5-year review”) of the twinpod and bladderpod provides “element distribution modeling indicates that there may be additional tracts of suitable habitat beyond the known occupied habitat for

both species.” The Piceance Basin is also located in Garfield County. Further, according to the FWS-WCFO 5-year review the twinpod and bladderpod “additional survey work has expanded the known distribution and abundance of both species.” The County is concerned the bladderpod and twinpod may, indeed, move into Garfield County and the precedent set by the EA/DR is counter to the procedural process. The BLM is obligated to comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § §4321-4370h, and the Endangered Species Act, (“ESA”), 16 U.S.C. §§ 1531-1599, prior to authorizing projects so that they do not harm threatened or endangered species.

3. The research plots and any new twinpods and bladderpods that self-propagate from the research populations are threatened under the ESA. Based on Garfield County’s proximity to Rio Blanco County and the fact that the specific habitat in the Piceance Basin is similar to that located in Garfield County the County is concerned about the failure of the BLM and FSW to follow the correct procedures in making the EA/DR. The failure to follow such process substantially increases the likelihood that the County, and other interested parties, will not be heard on the merits prior to the decision of the BLM-WCFO if this issue arises in Garfield County. While the County does not currently have a financial interest in this litigation, the potential for this situation to arise again in another County after this

EA/DR has been “approved” by the IBLA and affirmed by the federal court is substantial and tangible.

4. The County asserts the attached brief will assist the Court in considering the issues presented in this case. The attached brief explains the potential harm to the County if the IBLA’s decision is not overturned, which would allow the BLM to ignore procedural due process for counties where any threatened or endangered species might be found. The attached brief therefore emphasizes the BLM’s NEPA obligations regarding consultation with local governments on land use matters, procedural due process, and explains that application of the ESA Section 10(j) process, 16 U.S.C. § 1539(j), must allow the County to be heard on the matter.

5. This filing is timely because this motion and the attached brief are being filed on the date specified for the filing of proposed amicus briefs supporting WSCOGA’s petition by this Court’s April 8, 2015 Order Granting Joint Motion to Amend the Joint Case Management Plan.

6. Undersigned counsel consulted with counsel for plaintiff WSCOGA and counsel for the several federal defendants about the filing of the instant motion and attached brief. Counsel for plaintiff advised that WSCOGA has consented to the County’s participation and counsel for the several federal defendants advised that the United States objects to the filing of this Motion and attached brief.

Wherefore, the County respectfully requests that this Court grant leave to file the attached Brief of Garfield County, Colorado in Support of Plaintiff West Slope Colorado Oil and Gas Association's Opening Brief.

Respectfully submitted this 29th day of April, 2015.

GARFIELD COUNTY ATTORNEY'S  
OFFICE

*/s/Heather K. Beattie*

---

Heather K. Beattie

Assistant Garfield County Attorney

108 8<sup>th</sup> Street, Ste. 219

Glenwood Springs, Colorado 80106

(970) 945-9150

[hbeattie@garfield-county.com](mailto:hbeattie@garfield-county.com)

Attorneys for Garfield County

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 29, 2015, a true and correct copy of the foregoing was filed and served via CM/ECF to the following:

Mark S. Pestal: mark.pestal@usdoj.gov

Luther L. Hajek: luke.hajek@usdoj.gov

Bridget K. McNeil: bridget.mcneil@usdoj.gov

Scott M. Campbell: scampbell@popllc.com

Jessica D. B. Brauer: jbrauer@popllc.com

*s/ Heather K. Beattie*  
\_\_\_\_\_  
Heather K. Beattie

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

West Slope Colorado Oil and Gas Association,

Plaintiff,

v.

Sally Jewell, in her official capacity as the Secretary  
of the United States Department of the Interior;

United States Department of the Interior;

Daniel M. Ashe, in his official capacity as the  
Director of the United States Fish and Wildlife  
Service;

United States Fish and Wildlife Service;

Ruth Welch, in her official capacity as the State  
Director of the Bureau of Land Management  
Colorado State Office;

Bureau of Land Management Colorado State Office;

Kent Walter, in his official capacity as Field  
Manager of the Bureau of Land Management White  
River Field Office,

Defendants.

Civil Action No.  
2014-cv-02764

---

**BRIEF *AMICUS CURIAE* OF GARFIELD COUNTY, COLORADO IN  
SUPPORT OF PLAINTIFF WEST SLOPE COLORADO OIL AND GAS  
ASSOCIATION'S OPENING BRIEF**

---

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i  
TABLE OF AUTHORITIES ..... ii  
STATEMENT OF AUTHORSHIP AND SPONSORSHIP..... iii  
CERTIFICATE OF COMPLIANCE WITH FED. R. APP. PRO. 32(a)(7)(B) ..... iv  
INTRODUCTION .....2  
I. The County’s Interests.....2  
II. The BLM’s Failure to Consider the Effect of the Project on the County  
violated the NEPA. ....3  
    A. NEPA Requires the Consideration of the Human Environment. ....3  
    B. The EA/DR’s Failure to take a Systematic and Interdisciplinary Approach to  
the Potential Economic Impacts to the County violates NEPA. ....4  
CONCLUSION.....5



**TABLE OF AUTHORITIES**

**STATUTES**

16 U.S.C. § 1539(j) .....1  
16 U.S.C. §§ 1531-1599 .....1  
42 U.S.C. § §4321-4370h .....1, 2  
42 U.S.C. § 4332 .....3

**OTHER AUTHORITIES**

NEPA Handbook, H-1790 .....4  
ESA Section 10(j) .....1

**RULES**

Fed. R. App. Pro. 29..... iii, iv  
Fed. R. App. Pro. 32..... iv

**REGULATIONS**

40 C.F.R. § 1508.8 .....3  
40 C.F.R. § 1508.14 .....3

## **STATEMENT OF AUTHORSHIP AND SPONSORSHIP**

Pursuant to Fed. R. App. Pro. 29 (c):

This amicus curiae brief was not authored by the counsel of any party to the above-captioned matter; instead, this brief was authored by undersigned counsel, who represents the Board of County Commissioners of Garfield County, Colorado.

No party or party's counsel contributed money for the purpose of funding the preparation or filing of this brief. Similarly, no other person contributed money for the purposes of preparing or submitting this brief.

**CERTIFICATE OF COMPLIANCE WITH FED. R. APP. PRO. 32(a)(7)(B)**

Pursuant to Fed. R. App. Pro. 32 (a)(7)(B), undersigned counsel hereby certifies that this amicus curiae brief complies with the type-volume and page limitations set forth in Fed. R. App. Pro. 29 (d) and 32(a)(7), as this brief consists of 11 pages and 1,441 words.

Garfield County (“the County”) hereby submits this *Amicus Curiae* Brief in Support of the Opening Brief filed by West Slope Colorado Oil and Gas Association (“WSCOGA”), challenging the decision of the Interior Board of Land Appeals upholding the September 23, 2013 Decision Record issued by the Bureau of Land Management (“BLM”) Field Manager, White River Colorado Field Office (“WRFO”), authorizing Colorado State University to seed and transplant the threatened Dudley Bluffs twinpod (*Physaria obcordata*) (“twinpod”) and Dudley Bluffs bladderpod (*Lesquerella congesta*) (“bladderpod”) into research plots located on BLM-managed lands in Rio Blanco County (“EA/DR”).

### **Introduction**

The BLM-WRFO’s EA/DR authorized locating the research plots of twinpod and bladderpod in specific areas in Rio Blanco County. The EA/DR classifies the research populations and any new twinpods and bladderpods that self-propagate from the research populations as threatened under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1599. The BLM should have followed the statutorily defined ESA Section 10(j) process, 16 U.S.C. § 1539(j), to allow the County to have a voice in the process that clearly affects their rights and obligations. The EA/DR is legally inadequate because of the BLM’s failure to involve the County in its National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h, analysis and failure to consider the socio-economic impacts of the proposal on the County.

## I. The County's Interests

The County's interest in this matter derives from the facts that while the twinpod and bladderpod are currently known to grow exclusively in the area of the Piceance Creek in Rio Blanco County that they are self-propagating through pollination. The United States Fish and Wildlife Services Western Colorado Field Office's June 2008 5-year review Summary and Evaluation ("FWS-WCFO 5-year review") of the twinpod and bladderpod provides "element distribution modeling indicates that there may be additional tracts of suitable habitat beyond the known occupied habitat for both species." The Piceance Basin is also located in Garfield County. Further, according to the FWS-WCFO 5-year review of the twinpod and bladderpod "additional survey work has expanded the known distribution and abundance of both species."

The County is concerned the bladderpod and twinpod may move into Garfield County and the precedent set by the EA/DR is counter to the required procedural process. The BLM is obligated to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § §4321 et seq., prior to authorizing any projects so that they do not harm threatened or endangered species. Specifically, NEPA was designed to declare a national policy which will encourage productive and enjoyable harmony between man and his environment. Additionally, the BLM's implementation of the NEPA process in this case was inadequate because it failed

to consider any impacts of the project on the “human environment”, specifically the socio-economic impact of its decision.

**II. The BLM’s Failure to Consider the Effect of the Project on the County violated the NEPA.**

A. NEPA Requires the Consideration of the Human Environment.

NEPA requires that federal agencies use a systematic and interdisciplinary approach when making recommendations on federal legislation or major federal actions, 42 U.S.C. § 4332(A)-(C), including analysis of the potential social and economic impacts of the proposed action. 40 C.F.R. § 1508.14. Specifically, 40 C.F.R. § 1508.14 provides:

“Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (§ 1508.8)). This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

This required analysis recognizes that there are direct and cumulative economic impacts to governments, which are particularly important to local governments, because “socio-economic impacts are usually indirect and largely fall on communities and local government institutions, by definition located outside BLM-managed lands.” BLM Handbook, H-1790-1, § 6.8.4. The Handbook goes on to provide that the BLM, “[i]n supporting local and State efforts to mitigate socioeconomic impacts,... ‘may provide information and other assistance, sanction local activities, encourage community and project proponent agreements, and cooperate with responsible officials to the fullest extent feasible’ (BLM Handbook of Socio-Economic Mitigation, IV-2).” *Id.*

B. The EA/DR’s Failure to take a Systematic and Interdisciplinary Approach to the Potential Economic Impacts to the County violates NEPA.

The EA/DR failed to include any substantive analysis of either the economic impact of the proposed action on the County or mitigation measures that could be imposed to reduce resource conflicts and economic burdens to the County. The potential cost to the County, not just of the potential issues for maintenance of county roads, but also for the potential impact of less revenue from oil and gas taxes leaves the EA/DR significantly lacking in its systematic approach. The BLM is required to take such an approach, yet, instead the EA/DR’s discussion of the affected

environment simply provides that “there would not be any substantial changes to local social or economic conditions.” EA/DR at 11.

The lack of consultation with the County left the EA/DR lacking the information it was required to integrate into its assessment. This matter was not adequately analyzed in the EA/DR, which lead to a flawed finding of no significant impact on the local government. The NEPA analysis was inadequate, arbitrary and capricious and should therefore be set aside by this Court.

### **Conclusion**

For the reasons discussed herein, we respectfully request that this Court set aside the EA/DR because as drafted and implemented it violates NEPA.

Respectfully submitted this 29<sup>th</sup> day of April, 2015.

GARFIELD COUNTY ATTORNEY’S  
OFFICE

*/s/Heather K. Beattie*

Heather K. Beattie

Assistant Garfield County Attorney

108 8<sup>th</sup> Street, Ste. 219

Glenwood Springs, Colorado 80106

(970) 945-9150

[hbeattie@garfield-county.com](mailto:hbeattie@garfield-county.com)

Attorneys for Garfield County



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 29, 2015, a true and correct copy of the foregoing AMICUS BRIEF was filed and served via CM/ECF to the following:

Mark S. Pestal: mark.pestal@usdoj.gov

Luther L. Hajek: luke.hajek@usdoj.gov

Bridget K. McNeil: bridget.mcneil@usdoj.gov

Scott M. Campbell: scampbell@popllc.com

Jessica D. B. Brauer: jbrauer@popllc.com

*/s/ Heather K. Beattie*

---