

REPORT TO THE NELL NEWMAN FOUNDATION**JANUARY 27, 2018****I. SUMMARY**

The Western Environmental Law Center (“WELC”) uses the power of the law to safeguard the public lands, wildlife, and communities of the American West in the face of a changing climate. The last 18 months have proven to be one of the most intense periods of advocacy in our organization’s history, a product of the opportunities we held as the sun set on the Obama administration, the challenges presented by the dawn of the Trump administration, and the looming, existential threat of climate change to the West.

In this context, the Nell Newman Foundation’s support has proven immensely helpful, supporting our ability to advance ecological and community resilience as a core, driving thematic behind our mission-driven legal advocacy while concurrently navigating our way through uncharted (and unsettled) political waters.

Below, in Section II.A, we provide a brief overview of our overall organization strategic direction. In Section II.B, we provide a more detailed summary of a major advocacy campaign that has evolved over the course of the last 18 months and will continue into the future. This campaign exemplifies our intent to build resilience at the specific confluence of public lands, climate change, and fossil fuel issues. The Nell Newman Foundation’s general operating grant supported this effort, as shown by our financial report, attached separately.

II. STRATEGIC PROGRAM ADVOCACY**A. WELC’s Overarching Strategic Approach**

Over the course of 2016, we worked behind the scenes to help shepherd various conservation initiatives through the Obama administration, including a new federal rule to cut methane pollution and waste from oil and gas drilling on public lands, mining withdrawals on the Rogue-Siskiyou National Forest to guard against a 100,000-acre nickel mining proposal, expansion of the Cascade-Siskiyou National Monument, and various public lands rules and policies that broadly amplified public lands conservation protections. Much of this work was intended to build momentum into the next administration and to accelerate rule and policy reforms, an intent that assumed Hillary Clinton would prevail. That assumption proved wrong.

Recognizing that we had to pivot swiftly in the wake of the November 2016 election, we proffered a four-part approach that furthered our strategic goal to foster resilience while also building upon our tried-and-true approach to the law: using the right tool in the right place at the right time. We committed ourselves, broadly, to: (1) hold the line against federal-level rollbacks and attacks; (2) creatively seek the “open spaces” of advocacy that were less vulnerable to the Trump administration’s machinations; (3) cultivate forward-looking strategies

to set the stage for accelerated, proactive action once the political context changed for the better; and (4) build power with our partners, clients, and communities. This approach has proved impactful and operated as a driving force behind our new strategic plan, approved in September 2017 (and attached separately), that will govern our advocacy through 2021, including our American West Public Lands Oil and Gas Campaign, which we detail below.

B. American West Public Lands Oil and Gas Campaign

1. Campaign Overview

Too long a sacrifice zone, the American West has suffered the brunt of unchecked fossil fuel development. Public lands from New Mexico's Greater Chaco region to Colorado's North Fork Valley to Montana and Wyoming's Powder River Basin have been scarred by oil and gas fracking. This has flooded our atmosphere with carbon, slowed our transition to clean energy, and undermined conservation and community protections. Moreover, the West now finds itself in a new geologic epoch: the Anthropocene. In this new epoch, humanity threatens the very fabric of the earth's ecological and community systems. This is evidenced by the fact that the world has warmed by more than 1.0°C, with the last four years serving as the warmest four years ever recorded on Earth.

To address this challenge, we are in the midst of a multi-year campaign targeting oil and gas fracking on public lands managed by the U.S. Bureau of Land Management ("BLM"). BLM has sold the rights to drill for oil and gas on 27 million acres of public lands. Of that total, the oil and gas industry has already built a vast web of industrial-scale infrastructure on 12.5 million acres of public lands, including nearly 100,000 oil and gas wells with associated pipelines, compressor stations, and other equipment. With advancements in fracking technology as well as myriad and highly problematic industry-friendly government actions, such as poor policies and planning, below-cost lease sales, taxpayer subsidies, and obscenely low royalty rates, there is no end in sight for oil and gas production on public lands.

At the same time, there is a growing moral and policy imperative to keep upwards of 85% of carbon reserves in the ground to address the worsening climate crisis, in particular on public lands. Globally, fossil fuels that can be produced from existing oil fields, gas fields, and coal mines contain sufficient carbon to easily exceed a 2°C carbon guardrail set by the Paris Climate Agreement, with oil and gas fields alone containing sufficient carbon to exceed the 1.5°C guardrail, with existing BLM fossil fuel leases, if fully developed, holding the potential to release upwards of 43 gigatons of carbon dioxide equivalent (CO_{2e}). Breaking either of the Paris Climate Agreement's these guardrails would risk the immense suffering of our public lands, wildlife, and communities. But even so, every single metric ton of climate pollution we keep in the ground, and every tenth of a degree of warming we can avoid, would ameliorate that suffering.

Our campaign is designed to address this sobering challenge by achieving two visionary goals. First, we intend to secure the managed phase-out of oil and gas drilling on public lands, with an end to all new oil and gas leasing by no later than 2026 and to the approval of new drilling

permits by no later than 2036. This ambitious phase-out would help the U.S., despite the Trump administration's actions, conform to the Paris climate agreement's 2.0°C (and ideally 1.5°C) guardrail and to weaken the power and social license of the fossil fuel industry. Second, by removing the threat of oil and gas, we intend to herald a new era of landscape-level public lands protection initiatives. These initiatives would foster ecological and community resilience in the face of a warming climate, with a focus on watershed and wildlife protection, carbon sequestration, and the provision of sustainable goods and services to communities reliant on public lands. Focusing on resilience reflects the critical need to account for intensifying climate change impacts to our public lands and to offer a compelling justification for increased public lands and wildlife protections. In our advocacy, we heed Aldo Leopold's call to "think like a mountain" and work with communities to advance action that protects, restores, and connects communities with the landscapes around them.

2. Campaign Cases & Projects

To achieve our above-described goals, our strategy, as carried out over the last 18 months, has centered on a combination of federal policy advocacy and place-based legal advocacy.

At the policy level, we engaged in two key federal regulatory and policy initiatives spearheaded by the Obama administration. First, promulgation of new rules by BLM mandating the reduction of methane pollution and waste from oil and gas drilling carried out on public lands. And, second, the promulgation of new guidance by the Council on Environmental Quality ("CEQ") that directs federal agencies—including BLM—to account for climate change through National Environmental Policy Act ("NEPA") reviews.

We were successful on both fronts. In November 2016, BLM issued a rule ("BLM Methane Rule") that, once fully implemented, would slash methane pollution and waste from oil and gas drilling on public lands each and every year equivalent to the emissions caused by 3.2 - 3.3 million passenger vehicles. And earlier, in August 2016, CEQ issued its final guidance to federal agencies directing how they should account for climate change in their NEPA reviews.

The Trump administration aggressively attacked each initiative. Unfortunately, because CEQ's NEPA guidance was merely guidance, they were able to roll it back with the stroke of a pen (i.e., via Executive Order). While that Trump administration decision was not challengeable in federal court, it also inadvertently created significant legal uncertainties that we can now exploit through place-based engagement, which we discuss below. The BLM Methane Rule has, fortunately, proven far more durable, a product of the fact that federal law that obligates the Trump administration to go through a public rulemaking process that constrains BLM's discretion and creates rich opportunities for defensive legal challenge.

We have leveraged these formidable bedrock legal constraints through judicial, administrative, and legislative advocacy. On January 6, 2017, we—along with our partners—defeated an attempt by the oil & gas industry and several states (Wyoming, North Dakota, Texas, Montana) to enjoin the BLM Methane Rule's implementation. On May 10, 2017, we defeated a legislative

attempt to axe the BLM Methane Rule with the Congressional Review Act (“CRA”), prevailing on a razor thin 51-49 vote in the Senate (leading our political champion, Senator Udall, to give WELC a shout-out on the Senate floor after the vote). On October 4, 2017, we prevailed in our federal court challenge against the Trump administration’s attempt to derail the BLM Methane Rule’s compliance dates. And, on December 19, 2017, we initiated a new challenge against a second, renewed, and expanded attempt to derail the BLM methane rule’s compliance dates, which we are intensively litigating right now. The key win, from our perspective, is the Senate win. This is because the CRA, by its terms, would have prohibited a future administration from issuing a rule that is “substantially the same” as the methane rule. By defeating the Senate attempt to axe the rule with the CRA, we therefore didn’t just preserve the BLM Methane Rule, we preserved BLM’s future rulemaking authority to regulate oil & gas methane pollution and waste. Assuming the political context shifts for the better, this preserved authority will prove critical to proactive action to strengthen conservation protections and to shift BLM towards a management paradigm rooted in resilience.

As we defended BLM’s Methane Rule, we also invested heavily in place-based legal advocacy. Originally, this work was conceived as an opportunity to protect special places and communities and to ultimately press the Obama administration—and what we expected to be its successor, the Clinton administration—to take far more aggressive action to deal with oil and gas drilling on public lands. Once the Trump administration came into power, this work was swiftly repurposed to “hold the line” against the Trump administration, defeat place-based projects, and set positive legal precedent that can catalyze proactive policy reforms (again, once the political context shifts for the better). For example, even as the Trump administration rolled back CEQ’s NEPA guidance directing federal agencies to account for climate change, NEPA’s core statutory mandates (take a hard look at impacts to the environment, consider alternatives, and provide for meaningful public participation) remain, and these mandates provide us with tried-and-true opportunities to compel BLM, regardless of the Trump administration’s actions, to account for climate change and to safeguard special places and communities.

This work centered on a consolidated challenge to 380,000 acres of BLM oil and gas leases sold across Colorado, Utah, and Wyoming as well as separate legal advocacy and challenges in several strategically important landscapes, in particular: (1) New Mexico’s San Juan Basin and Greater Chaco region; (2) Colorado’s Southern Rockies national forests as well as the North Fork and Colorado River valleys; and (3) Wyoming and Montana’s Powder River Basin. Our legal claims, as with the methane rule, leveraged bedrock protections to force an alignment between BLM’s oil and gas program and scientific realities, in particular those realities informed by the Paris Climate Agreement’s 2.0°C (and ideally 1.5°C) guardrail as well as community and place-based concerns, including public health, wildlife protection, and water resource protection.

Our consolidated challenge to oil and gas leases in Colorado, Utah, and Wyoming—which we briefed in 2017—hinges on BLM’s historic failure to complete a comprehensive review of its oil and gas program across the West and reliance, instead, on piecemeal planning and environmental reviews to obscure the true, full impact of oil and gas development to the climate and to special places and communities. If we prevail, we can elevate BLM’s

responsibility to address the total, cumulative climate impact of public lands oil and gas development and perhaps trigger a comprehensive review of BLM's entire public lands oil and gas program by a future administration.

In New Mexico's San Juan Basin and Greater Chaco region, we prosecuted two federal court challenges. In the first, we challenged BLM decisions approving nearly 400 BLM oil and gas drilling permits near or proximate to Chaco Culture Historical Park, the heart of a broader region of immense cultural, public health, and ecological importance to native peoples. The second sought to overturn a 20,000-acre lease sale in the Jemez Mountains on the Santa Fe National Forest, on the eastern edge of the San Juan Basin's oil-rich Mancos shale formation. Both of these cases were fully briefed on the merits in the last 18 months, and we are now awaiting either argument or a decision by the court. As a complement to this litigation, we are engaged in BLM's development of a comprehensive resource management plan that will govern management of the San Juan Basin for at least 10-20 years. We expect a draft resource management plan sometime in the next few months, and the signals we're getting from BLM suggest an ill-advised decision: more oil and gas drilling. Yet the long-term game is far from over. Our advocacy, in coordination with our partners who are building grassroots energy and activism, serves as a tool to cultivate Senators Udall and Heinrich as political champions for Chaco, which will prove essential, down the road, to a potential legislative solution. Moreover, each of New Mexico's senators play an outsized role on public lands conservation law and policy and have moved further in our direction since Trump's election, indicating that Chaco may shape national-scale conservation legislation.

In New Mexico and Colorado's Southern Rockies, we engaged in once-in-a-generation forest plan revisions for the Carson National Forest (1.5 million acres), Santa Fe National Forest (1.6 million acres), Rio Grande National Forest (1.8 million acres), and the jointly managed Grand Mesa, Uncompahgre, and Gunnison national forests (3.2 million acres). We seek to prevent and at least ameliorate the impacts of oil and gas development and to advance proactive resilience protections across this broad, interconnected region of national forests. We also seek, with Amigos Bravos, administrative conservation designation for the Valle Vidal on the Carson National Forest and a separate designation for a 170,000-acre network of administratively protected "Wetland Jewels" that we've identified on the Carson and Santa Fe national forests to protect watershed health and integrity and downstream water supplies.

Also in Colorado, we furthered our longstanding commitment to the North Fork Valley, which we've thus far protected from BLM oil and gas lease sales. But the risk intensified in 2017, with BLM moving forward with oil and gas fracking projects. Accordingly, in October 2017, we challenged, in federal court, a 146-well oil and gas fracking project approved in the North Fork Valley. At the same time, we provided legal and technical comments, with the expectation that litigation will prove necessary, regarding a proposed comprehensive resource management plan for the entire North Fork Valley. This litigation, which we expect later in 2018, will serve as a critical tactical step to preserve long-term legislative options to conserve the North Fork Valley's rich farm and ranchlands and surrounding watersheds and wildlife-rich public lands. Elsewhere in Colorado, we prosecuted a legal challenge to a 2016 BLM resource management

plan that will govern oil and gas decision-making for the next 20 years in the Colorado River Valley and Piceance Basin. The decision projects over 15,000 new oil and gas wells across the region, with upwards of 4,200 wells on public lands. This case is now fully briefed and we're awaiting either argument or a decision by the court.

In Montana and Wyoming's Powder River Basin, an energy sacrifice zone, we challenged two BLM oil and gas resource management plans, which, together, project 18,000 new oil and gas wells (as well as expanded coal mining) across 10 million acres. This case is now fully briefed and, based on oral argument in federal court this past November, we're cautiously optimistic that we'll receive a favorable decision in the coming months.

Our legal advocacy has been complemented by Freedom of Information Act ("FOIA") requests and litigation to ensure government transparency. Records obtained through FOIA are used to investigate prospective legal action and to expose the Trump administration's disregard for public interest conservation protections. In addition, we have boosted our communications capacity and engagement, integrating our communications team into our legal advocacy teams to ensure that we're winning not only in courts of law, but also in courts of public opinion.

3. Looking Forward

Demand for our legal capacity—in particular, our capacity to use the right legal tool in the right place and at the right time (whether litigation, administrative engagement, collaboration, or legislative and policy action)—has intensified and we expect will continue to intensify. With regard to public lands oil and gas fracking, we hope to amplify our campaign to hold the line against the Trump administration. Critically, however, we have conceived of this campaign as an opportunity to set the stage for future, proactive action by setting positive legal precedent and building power with our partners. Thus, for example, we are advancing legal arguments designed to reform the way public lands agencies account for climate costs through use of the "social cost of carbon" and to force agencies, through NEPA reviews, to analyze the role that their actions play relative to global and downscaled regional and local carbon budgets. To build power, we have also forged a partnership with WildEarth Guardians and Earthworks to provide regional-scale vision and leadership on oil and gas public lands advocacy to the conservation community. Longer term, we envision pulling together our various public lands campaigns (in 2017, we also invested heavily in spinning up a defensive campaign to safeguard Pacific Northwest forests and public lands) into a cohesive whole as a mechanism to advance an expansive suite of conservation reforms to better protect public lands across the West.

III. CONCLUSION

We're deeply grateful for the Nell Newman Foundation's support—and, indeed, the sustained, longstanding support that you have helped provide to us over the years. We're happy to answer any questions you may have and we look forward to future conservations.
