

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**BILL BARRETT CORPORATION,** )  
**1099 18th Street, Suite 2300** )  
**Denver, CO 80202** )

**Plaintiff,** )

v. )

Civil Action No. \_\_\_\_\_

**UNITED STATES DEPARTMENT OF THE** )  
**INTERIOR,** )  
**1849 C Street, N.W.** )  
**Washington, DC 20240;** )

**DIRK KEMPTHORNE, Secretary,** )  
**United States Department of the Interior** )  
**1849 C Street, N.W.** )  
**Washington, DC 20240;** )

**UNITED STATES BUREAU OF LAND** )  
**MANAGEMENT** )  
**1849 C Street, N.W.** )  
**Washington, DC 20240;** )

**and** )

**LARRY CLAYPOOL,** )  
**Wyoming Deputy State Director, Minerals** )  
**and Lands, United States Bureau of Land** )  
**Management,** )  
**5353 Yellowstone** )  
**Cheyenne, WY 82009** )

**Defendants.** )

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND**  
**PETITION FOR REVIEW OF AGENCY ACTION**

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## **GENERAL ALLEGATIONS**

### **Nature of the case**

1. This is an action for judicial review of a decision of the Bureau of Land Management of the United States Department of the Interior authorizing the issuance of a federal coal exploration license. Concurrent with the filing of this Complaint, Plaintiff has filed its motion for a postponement of the effective date of the agency action and a preliminary injunction to restrain Defendants from allowing coal exploration operations to proceed pending review of the agency action.

### **Jurisdiction and venue**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201 and 2202 (declaratory judgment), and the waiver of the United States' sovereign immunity under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the defendants are agencies of the United States and officers of such agencies acting in their official capacities at least one of whom resides in this judicial district.

### **Parties**

4. Plaintiff Bill Barrett Corporation ("Plaintiff or BBC") is a Delaware corporation that is engaged, as material to this action, in the production of coalbed natural gas ("CBNG") in the state of Wyoming pursuant to numerous federal oil and gas leases.

5. Defendant Department of the Interior (“Interior”) is an agency of the United States with responsibility for the management of energy and mineral resources on the public lands of the United States.

6. Defendant Dirk Kempthorne is Secretary of the Interior with responsibility for Interior and the subordinate agencies and officials of Interior whose actions are the subject of this action.

7. Defendant Bureau of Land Management (“BLM”) is a subordinate agency of Interior with responsibility, as material to this action, for the oil and gas leases and coal exploration licenses on the public lands of the United States, including the lands which are the subject of this action.

8. Defendant Larry Claypool (“Claypool”) is the Wyoming Deputy State Director, Minerals and Lands, of BLM. Acting in his official capacity, Claypool issued the BLM decision and the coal exploration license which are the subject of this action.

### **Background**

#### **BTU**

9. BTU Western Resources, Inc. owns and operates the North Antelope/Rochelle surface coal mine in Campbell County, Wyoming (“the Coal Mine”).

10. In 2007, BTU submitted an application to BLM for an exploration license (“the Exploration License”) to drill coal exploration core holes in approximately 10,851.13 acres of land in Campbell County, Wyoming (“the Subject Lands”).

11. The Subject Lands are near the Coal Mine, and BTU proposes the competitive sale of a federal surface coal mining lease in the Subject Lands for future expansion of the Coal Mine.

12. Pursuant to its regulations, BLM cannot sell a federal surface coal mining lease for less than fair market value.

13. BTU intends to drill the exploration core holes in order to obtain additional data regarding the coal within the Subject Lands for purposes of a fair market value determination by BLM.

14. At the time it submitted the application for the Exploration License, BTU did not hold either federal coal leases or federal exploration licenses in the Subject Lands.

### **BBC**

15. Plaintiff BBC holds numerous federal oil and gas leases in the Subject Lands (“the Senior Federal Oil and Gas Leases”) and is producing coalbed natural gas (“CBNG”) from approximately 108 wells in the area (“the BBC Wells”).

16. CBNG is a valuable mineral resource needed to address the immediate energy needs of the United States and is an extremely clean-burning fuel.

17. The BBC Wells produce CBNG using compressors that result in a negative reservoir pressure in the coal seam.

18. Exploration core holes drilled into or through the coal seam will allow air to enter the coal seam and migrate to BBC’s nearby producing wellbores.

19. The instant that oxygen is detected in BBC’s gas stream, the BBC wells will automatically shut down.

20. With the negative reservoir pressure that currently exists, substantial quantities of oxygen will be sucked into the coal reservoir during the proposed coal exploration drilling and coring, and the damage to the coal reservoir will be irreparable.

21. This problem is exacerbated by the fact that the proposed exploration core holes are in close proximity to the BBC wells and use air as the circulating medium during drilling and coring.

22. Because of the permeability and porosity of the coal and the fact that CBNG is being produced from the coal reservoir under negative pressure, oxygen introduced into the coal reservoir by coal exploration drilling and coring will rapidly spread over an extensive area. As a result, it will be impossible to purge the wells and the producing reservoir of oxygen following the completion of BTU's coal exploration program.

23. As a consequence, the coal exploration drilling program proposed by BTU will adversely affect and unreasonably interfere with BBC's production of CBNG under the Senior Federal Oil and Gas Leases and result in the waste of CBNG reserves and irreparable damage to BBC's vested senior leasehold rights.

#### **The BLM proceedings**

24. Upon learning of BTU's application for the Exploration License, BBC contacted BLM and informed it of the serious threat posed by the drilling of the proposed coal exploration core holes to BBC's production of CBNG under the Senior Federal Oil and Gas Leases.

25. On October 11, 2007, representatives of BLM and BBC met in Cheyenne, Wyoming to discuss the situation.

26. On October 15, 2007, BBC sent a letter (“the October 15 Letter”) to BLM summarizing the discussions at the October 11, 2007 meeting.

27. In the October 15 Letter, BBC explained that the drilling program proposed by BTU would destroy production from the BBC Wells due to oxygen contamination and that this situation would be exacerbated by the fact that the BBC Wells produce CBNG under a negative pressure vacuum.

28. At the October 11, 2007 meeting and in the October 15 Letter, BBC emphasized that BLM should not issue the Exploration License because BTU’s proposed drilling and coring activities would adversely affect and unreasonably interfere with BBC’s production of CBNG and adversely affect its valid existing rights under the Senior Oil and Gas Leases.

29. On November 2, 2007, BLM requested additional information from BBC including a map showing the locations of the BBC Wells and the Senior Oil and Gas Leases that would be affected by BTU’s proposed coal exploration drilling operations and other pertinent information.

30. On December 12, 2007, BBC sent BLM a letter (“the December 12 Letter”) concerning the threatened oxygen contamination around the Subject Core Holes and a map depicting the locations of the Senior Oil and Gas Leases and the BBC Wells.

31. The BBC Wells are handled by two compressors. The BC1 compressor handles 81 wells while the Alley Oop compressor handles 27 wells. A shut down of either compressor is triggered when the oxygen sensors detect an oxygen level of only ten parts per million (“ppm”) in the gas stream (the “Contaminated Gas Level”) for a period of ten minutes.

32. BBC's December 12 Letter informed BLM that, given the compressor/well configuration, oxygen contamination of only one of the producing BBC Wells can result in the shut down and loss of production from dozens of BBC Wells.

33. The December 12 Letter also provided BLM with detailed information concerning the likely impacts of BTU's proposed coring program on BBC's Wells in the Porcupine field based upon BBC's experiences in the Pronghorn field, another CBNG field exhibiting low reservoir pressure situated only 35 miles to the north of the Porcupine field. BBC also informed BLM that oxygen contamination in the Porcupine field (i.e. in the Subject Lands) will be even more severe and far reaching than in the Pronghorn field because there is greater permeability in the coal and negative vacuum pressure in the Porcupine field.

34. BBC also informed BLM that it has produced over 13 billion cubic feet ("BCF") of CBNG from the BBC Wells since 2004, and current production is still averaging 6.0 million cubic feet per day ("MMCFD"). In addition, BBC informed BLM that over the next six to eight years, it expects to produce an additional 5.2 BCF to 6.5 BCF of CBNG. If the price of CBNG rises, the life of the BBC Wells could be extended significantly beyond 2016. Thus, BBC informed BLM that there still is a significant CBNG reserve to be produced from the Porcupine Field and that such production is threatened by BTU's proposed coring program.

35. On March 4, 2008, BLM sent BBC a letter ("the March 4 Letter") indicating that, notwithstanding the information provided by BBC regarding the threat of oxygen contamination to the BBC Wells, BLM intended to issue the Exploration License. The March 4 Letter ignored the detailed data, information, and analyses set forth in BBC's December 12 Letter and summarily concluded that "it is difficult to translate this example [of oxygen contamination in

the Pronghorn field] to the situation that might exist in the area of the proposed coal exploration.” BLM’s March 4 Letter also sought to impose an impossibly high burden of proof on BBC regarding the threat of oxygen contamination, stating that “there is a lack of sufficient data for definitive analysis” and thus required BBC to prove future events with absolute certainty rather than with a reasonable degree of certainty based upon past experience, available data, and reasoned analysis.

36. On April 1, 2008, BBC filed with BLM a protest of the March 4 Letter (“the Protest”). In the Protest, BBC reviewed the history of prior discussions and also provided BLM with newly-obtained evidence regarding oxygen contamination of BBC Wells caused by BTU’s drilling of a water well (“the Reno Water Well”) in the Subject Lands. The drilling of this water well resulted in oxygen contamination in two BBC Wells, situated 1,680 and 2,500 feet, respectively, away from the drilling location, notwithstanding precautionary measures employed by BBC in an effort to avoid oxygen contamination.

37. In addition, in response to BLM’s demand for a scientific study of the Porcupine Field and the likely consequences of drilling coal exploration core holes, BBC commissioned a study by an independent consultant. That study analyzed the permeability of the producing coal seams in the Porcupine Field and the minimum safe distance for drilling into the coal seams to avoid a risk of significant oxygen contamination. Given the proximity of the proposed core drilling to the BBC Wells, the study concluded that “if any of the ten proposed core holes are drilled, oxygen will be introduced into the producing coal seam reservoir and subsequently, into the BBC gas gathering system, resulting in system shutdown and significant loss of production and revenue.”

38. Finally, BBC's April 1, 2008 Protest informed BLM how the drilling of each of the Proposed Core Hole locations is likely to result in far greater and further reaching oxygen contamination than occurred as a result of the drilling of the Reno Water Well. Accordingly, the Protest requested BLM to reconsider its March 4 Letter proposing to authorize the drilling of the coal exploration core holes.

39. On August 12, 2008, BLM issued its decision ("the BLM Decision") dismissing BBC's protest and proposing to issue the Exploration License to BTU.

40. The BLM Decision was served on BBC on August 13, 2008.

#### **The IBLA proceedings**

41. The Interior Board of Land Appeals ("IBLA"), an agency of Interior, is responsible for reviewing BLM decisions.

42. On September 12, 2008, BBC timely filed with the IBLA a Notice of Appeal of the BLM Decision and a Petition for Stay pending review by the IBLA.

43. On or about September 25, 2008, the State of Wyoming filed with the IBLA its motion for leave to file amicus brief and its opposition to BBC's petition for stay.

44. On or about September 26, 2008, BLM filed with the IBLA its opposition to BBC's Petition for Stay.

45. On or about September 26, 2008, BTU filed with the IBLA its opposition to BBC's petition for stay.

46. On October 14, 2008, BBC filed its Reply Brief and Request for Hearing with the IBLA.

### **Exhaustion of Administrative Remedies**

47. The BLM Decision was not effective during the time for filing a notice of appeal with the IBLA. 43 C.F.R. § 4.21(a)(1).

48. In addition, as a result of BBC's Notice of Appeal and Petition for Stay, the BLM Decision remained ineffective pending a ruling by the IBLA on the Petition for Stay. 43 C.F.R. § 4.21(a)(2).

49. By Interior regulation, a BLM decision becomes effective immediately after the IBLA denies or partially denies a petition for stay or fails to act on the petition within forty-five calendar days after the expiration of the time for filing a notice of appeal. 43 C.F.R. § 4.21(a)(3) and (b)(4).

50. The IBLA failed to act on BBC's Petition for Stay within forty-five calendar days after its filing.

51. Accordingly, notwithstanding that BBC's Appeal and Petition for Stay still are pending before the IBLA, the BLM Decision has become final agency action subject to judicial review under 5 U.S.C. § 704. 43 C.F.R. § 4.21 (c).

52. No further appeal from the BLM Decision lies within Interior. 43 C.F.R. § 4.21(d).

### **Issuance of the Exploration License**

53. On December 30, 2008, BLM gave notice of the issuance of the Exploration License to BTU, effective as of that date.

54. Pursuant to Section 4 of the Exploration License, BTU is entitled to begin operations at any time after the issue date of the license.

55. On January 5, 2008, BTU informed BBC that it intends to begin drilling operations under the Exploration License as early as January 8, 2009.

56. Accordingly, BBC now files its Complaint for judicial review of the BLM Decision. BBC also files its motion to postpone the effective date of the Exploration License and to preserve status or rights pending conclusion of these review proceedings and for a temporary restraining order and preliminary injunction restraining Defendants from allowing coal exploration operations to proceed pending judicial review on the merits.

**FIRST CLAIM FOR RELIEF**  
**(Administrative Procedure Act)**

57. BBC incorporates by reference the preceding allegations of this Complaint.

58. Pursuant to 5 U.S.C. § 705, on such conditions as may be required and to the extent necessary to prevent irreparable injury, this Court should issue all necessary and appropriate process to postpone the effective date of the BLM Decision and the Exploration License and to preserve status or rights pending conclusion of judicial review proceedings.

59. Pursuant to 5 U.S.C. § 706(2)(A), this Court should hold unlawful and set aside the BLM Decision and the Exploration License on the grounds that they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

60. Pursuant to 5 U.S.C. § 706(2)(B), this Court should hold unlawful and set aside the BLM Decision and the Exploration License on the grounds that they are contrary to constitutional right, power, privilege, or immunity.

61. Pursuant to 5 U.S.C. § 706(2)(C), this Court should hold unlawful and set aside the BLM Decision and the Exploration License on the grounds that they are in excess of statutory jurisdiction, authority, or limitations or short of statutory right.

**SECOND CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

62. BBC incorporates by reference the preceding allegations of this Complaint.

63. BBC is a properly interested party entitled to invoke this Court's power and authority to grant the declaratory relief requested herein.

64. BBC desires a judicial determination and declaration that the BLM Decision and the Exploration License are contrary to law and BBC's vested rights under the Senior Federal Oil and Gas Leases.

65. A dispute and actual controversy has arisen between BBC and BLM concerning the matters alleged herein.

66. A judicial determination pursuant to 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. 57 is necessary and appropriate at this time.

67. The declaratory judgment sought herein will terminate the uncertainty and controversy giving rise to this action.

**THIRD CLAIM FOR RELIEF**  
**(Temporary Restraining Order; Preliminary and Permanent Injunction)**

68. BBC incorporates by reference the foregoing allegations of the Complaint.

69. BBC has a substantial likelihood of prevailing on the merits of this action.

70. BBC will suffer irreparable injury if BLM is not enjoined from allowing coal exploration operations to commence or continue pursuant to the Exploration License.

71. The requested injunction will not substantially injure other interested parties.
72. The public interest will be furthered by issuance of the requested injunction.
73. Accordingly, a temporary restraining order and injunctive relief should enter preliminarily and permanently enjoining Defendants from allowing coal exploration operations to proceed under the Exploration License in contravention of BBC's rights under the Senior Oil and Gas Leases.

### **PRAYER FOR RELIEF**

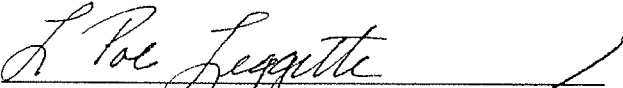
WHEREFORE, Plaintiff prays that this Court:

1. Issue all necessary and appropriate process to postpone the effective date of the Exploration License pending the conclusion of review proceedings, and, upon conclusion of such proceedings, hold unlawful and set aside the BLM Decision and the Exploration License;
2. Declare the BLM Decision and the Exploration License to be contrary to law and BBC's vested rights under the Senior Federal Oil and Gas Leases;
3. Issue a temporary restraining order and enjoin Defendants preliminarily and permanently from allowing coal exploration operations to proceed under the Exploration License in contravention of BBC's vested rights under the Senior Oil and Gas Leases;
4. Award BBC its costs and reasonable fees and expenses of attorneys pursuant to 28 U.S.C. § 2412 or other applicable statute or rule; and
5. Award BBC such other and further relief as this Court deems just and proper.

Dated this 6<sup>th</sup> day of January, 2009.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: 

L. Poe Leggette (DC Bar #430136)  
801 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2623  
Telephone: 202-662-4646  
Fax: 202-662-4643  
Email: [pleggette@fulbright.com](mailto:pleggette@fulbright.com)

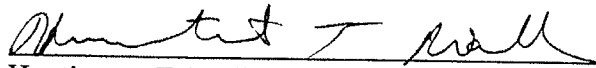
DUCKER, MONTGOMERY,  
ARONSTEIN & BESS, P.C.

Joel W. Cantrick  
(Motion for leave to appear pro hac vice filed)  
1560 Broadway, Suite 1400  
Denver, CO 80202  
Telephone: 303-861-2828  
Facsimile: 303-861-4017  
Email: [jcantrick@duckerlaw.com](mailto:jcantrick@duckerlaw.com)  
Attorneys for Plaintiff Bill Barrett Corporation

Address of Plaintiff Bill Barrett Corporation:  
1099 18<sup>th</sup> Street, Suite 2300  
Denver, CO 80202

VERIFICATION

Pursuant to LCvR 5.1(h), I verify under penalty of perjury that the allegations of the foregoing Complaint are true and correct.

  
\_\_\_\_\_  
Huntington T. Walker, Senior Vice President - Land  
Bill Barrett Corporation