

Coal Bed Methane Litigation -- 03/02/04

Case	Date Complaint & Answer Filed	Cause Number	Court & Judge	Complaint Allegations	Relief Requested	Status
<p>Northern Plains Resource Council, Inc. v. Fidelity Exploration & Production Company</p>	<p>Complaint filed June 23, 2000 First Amended Complaint filed June 26, 2000 Answer filed August 30, 2000</p>	<p>CV 00-105-BLG-SEH</p>	<p>United States Supreme Court Ninth Circuit Court of Appeals Montana Federal District Court, Great Falls Division, United States District Court Judge Sam E. Haddon</p>	<p>Count 1: Discharge of pollutants without a NPDES or MPDES Permit into Squirrel Creek. Violation of CWA § 301(a). CWA § 402 permit required. Count 2: Discharge of pollutants without a NPDES or MPDES Permit into Tongue River. Violation of CWA § 301(a). CWA § 402 permit required.</p>	<p>A. Issue a declaratory judgment that defendants have violated and continue to violate the CWA; B. Enjoin defendants from operating their CBM wells in such manner as will result in further violations of the CWA. In particular, plaintiff seeks an order enjoining defendants from discharging any CBM well waste water to waters of the US without a permit, and enjoining operations of any CBM wells until such time as a permit authorizing discharges is obtained; C. Order defendants to pay civil penalties of up to \$25,000 per day of violation for violations since at least December 1, 1999, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a), including those listed in Appendix A, and violations committed subsequent to those identified in the complaint; D. Authorize plaintiff, for the period beginning on the date of the Court's order and running for two years after the defendants achieve compliance with the CWA, to sample or arrange for sampling of any discharge of pollutants from the CBM wells, with the costs of the sampling to be borne by defendants; E. Order defendants to provide plaintiff, for a period beginning on the date of the Court's order and running for one year after defendants achieve compliance with the CWA, with a copy of all reports and other documents which defendants submit to EPA, to the Regional Administrator of the EPA, or to the DEQ regarding defendants' discharges or NPDES or MPDES permit at the time it is submitted to these authorities; F. Issue a remedial injunction ordering defendant to pay the cost of environmental restoration or remediation deemed necessary and proper by the Court to ameliorate the water degradation caused by defendant's violations; G. Award plaintiffs its costs, including attorney and expert witness fees, as authorized by 33 U.S. C. § 1362(d) and 28 U.S.C. § 2414(d); and H. Award such other relief as this Court deems appropriate.</p>	<p>The U.S. Supreme Court denied Fidelity's Petition for Writ of Certiorari. Proceedings on liability, civil penalties, and attorneys fees are pending at the District Court level. 9th Circuit Decision Questions on appeal 1. Whether the CBM discharge water is a "pollutant" within the meaning of the CWA 2. Whether Montana law can exempt Fidelity from obtaining National Pollution Discharge Elimination System (NPDES) permits under the CWA. Finding 1. Unaltered groundwater produced in association with methane gas extraction, and discharged in the river, is a pollutant within the meaning of the CWA. 2. States cannot create exemptions to the CWA, whether or not the EPA has delegated permitting authority to the state.</p>

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<p>Northern Plains Resource Council, Inc. v. United States Bureau of Land Management; Gale Norton, in her official capacity as the United States Secretary of Interior; Mat Millenbach, in his official capacity as the Montana Director of the BLM; Fidelity Exploration & Production Company; Pennaco Energy, Inc.; CMS Oil and Gas Company; Quaneco, LLC; Rocky Mountain Gas, Inc.; CCBM, Inc.; Nance Petroleum Corporation; Errebo & Associates, LLC; Big Sky Ranches; Prima Oil & Gas Company; Medallion Exploration; Carribou Land and Livestock Montana, LLC; Phillips Petroleum Company; Raymond Weigel; White Energy Corporation; North American Explorer, Inc.; Westech Energy Corporation; Edge Petroleum Company; Richardson Production Company; Page Blakemore, Jr.; Exok,</p>	<p><i>Complaint</i> filed June 13, 2001 <i>First Amended Complaint</i> filed August 14, 2001 <i>Second Amended Complaint</i> filed March 27, 2002 <i>Fidelity's Answer to Amended Complaint</i> filed May 15, 2002</p>	<p>CV 01-96-BLG-RWA</p>	<p>Ninth Circuit Court of Appeals Montana Federal District Court, Billings Division; Senior District Judge Jack D. Shanstrom; Magistrate Judge Richard W. Anderson</p>	<p><i>Count 1:</i> Leasing CBM minerals without a pre-leasing EIS violates NEPA. <i>Count 2:</i> Issuing oil and gas leases without a SEIS violates NEPA. <i>Count 3:</i> Approval of APDs for the Tongue River CBM project violates NEPA. <i>Count 4:</i> Issuing oil and gas leases without amending RMPs violates FLPMA. <i>Count 5:</i> Leasing CBM resources and approving CBM projects and related APDs without consultation violates NHPA. <i>Count 6:</i> Failing to obtain Section 401 Certification violates CWA.</p>	<ol style="list-style-type: none"> 1. Declare that the BLM violated NEPA by leasing CBM resources in the Powder River and Billings Resource Areas without completing a pre-leasing EIS evaluating the environmental impacts of leasing and considering alternatives to the leases as issued, and without completing a SEIS addressing new information and circumstances relevant to the environmental impacts of leasing and developing such resources; 2. Declare that the BLM violated FLPMA by leasing CBM resources in the Powder River and Billings Resource Areas without amending the relevant RMPs and without updating its resource inventories; 3. Issue an order canceling, or declaring as void ab initio, all oil and gas leases issued by the BLM to those lessees named as defendants in this action and requiring the BLM to complete a pre-leasing EIS evaluating the potential environmental impacts of the leasing and developing CBM resources. In the alternative to canceling or declaring as void ab initio, such leases, issue an injunction suspending such leases and enjoining all surface disturbing activities on such leases of named defendants until the BLM completes a pre-leasing EIS and until the BLM incorporates any stipulations, conditions of approval, and mitigation measures developed during the EIS process into such leases; 4. Enjoin the BLM from issuing APDs and other surface disturbing activities on all the leases identified in Exhibit B that are named Defendants in this action until it complies with NEPA, FLPMA, and NHPA; 5. Enjoin the BLM from issuing additional oil and gas leases in the Billings and Powder River Resource Areas until the BLM is in full compliance with the law as alleged in the complaint; 6. Declare that the BLM violated NEPA by approving APDs for the Tongue River CBM Project without completing an EIS evaluating the environmental impacts of the project and violated NEPA by approving APDs for the project during an ongoing NEPA process, and order that BLM complete an EIS for the Tongue River Project; 7. Declare the BLM has violated the NHPA as alleged in the 	<p>On December 10, 2003, the Court entered a Judgment in a Civil Case which ordered that the Findings and Recommendations of the Magistrate Judge be adopted and the Defendants' motions for summary judgment be granted. Judgment was entered in favor of Defendants and against the Plaintiff.</p> <p>The Plaintiff filed its Notice of Appeal with the Ninth Circuit on December 23, 2003.</p> <p>Appellant's opening brief was due February 27, 2004. Appellee's response briefs are due March 29, 2004.</p>

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<p>Inc.; Cabot Oil & Gas Corporation; John Kerns; and Beartooth Oil & Gas Company</p>					<p>complaint;</p> <p>8. Declare that the BLM's actions as set forth in the complaint are not in accordance with law, without observance of procedures required bylaw, constitute administrative action unlawfully withheld or unreasonable delayed and/or are arbitrary and capricious within the meaning of the APA 5 U.S.C. § 706.</p> <p>9. Declare that the Defendant Fidelity has violated and continues to violate the CWA by failing to obtain certification from the state of MT when applying for APDs by failing to provide BLM with proof of such certification and order Fidelity to pay civil penalties of up to \$27,500 per day of violation for violations of the CWA pursuant to Section 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a);</p> <p>10. Retain jurisdiction of this matter to ensure compliance with this Court's decree; and</p> <p>11. Award plaintiff their reasonable fees, costs, and expenses associated with this litigation as authorized by the CWA, NHPA, and Equal Access to Justice Act, and plaintiff such additional and further relief as the Court may deem just and proper.</p>	

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Tongue River Water Users' Association, Northern Plains Resource Council, Inc., and Montana Environmental Information Center, Inc. v. Montana Department of Environmental Quality, Fidelity Exploration & Production Company	<p><i>Complaint (TRWUA)</i> filed April 23, 2001 <i>First Amended Complaint (TRWUA)</i> filed May 17, 2001 <i>Fidelity's Answer</i> filed June 5, 2001</p> <p><i>Complaint (NPRC)</i> filed on April 23, 2001 <i>First Amended Complaint (NPRC)</i> filed May 17, 2001 <i>Fidelity's Answer</i> filed June 5, 2001</p>	<p>CDV-2001-258 BDV 2001-258</p> <p>Consolidated on August 13, 2001</p>	<p>Montana First Judicial District Court, Lewis and Clark County; Honorable Jeffrey M. Sherlock</p>	<p><i>Count 1:</i> Failed to conduct nondegradation review. <i>Count 2:</i> Inadequate permit conditions. <i>Count 3:</i> Inadequate public involvement. <i>Count 4:</i> Amended permit is void. <i>Count 5:</i> Breach of contract. <i>Count 6:</i> Violations of water wasting statute (claim withdrawn). <i>Count 7:</i> Violations of the Montana Environmental Policy Act. <i>Count 8:</i> Violation of the Fundamental Right to a Clean and Healthful Environment and the Duty to Maintain and Improve a Clean and Healthful Environment. <i>Count 9:</i> Violation of the right to use any water for any useful and beneficial purpose.</p>	<p>A. Issue a declaratory judgment declaring that DEQ violated the law for each and every violation of the law alleged in the complaint, including that the MPDES permit as amended is void and of no effect; B. Amend ARM 17.30.715(1) to conform it to governing statutes; C. Determine and declare that the regulatory basis relied upon by DEQ to exempt the permit from non-degradation review as applied in the case at bar violates the MT Constitution Article II, Section 3 and Article IX, Section 1; D. Order DEQ to perform non-degradation review under § 74-5-303. MCA, before any new MPDES permits to Fidelity, its successors or assigns or any other CBM developers are issued; E. Order Fidelity to stop wasting water as required by MT law; F. Issue a permanent injunction preventing Fidelity, its successors or assigns or any other CBM developers from discharging CBM water into the Tongue River or any other water of the state of MT until such time as lawfully issued MPDES permits are issued; G. Declare that pumping of the groundwater associated with Fidelity's, its successors or assigns CBM development violates the water rights of TRWU and its members, and violates Article IX, Section 3 of the MT Constitution; and H. Award Plaintiffs' costs and attorney's fees and grant such other relief as the Court deems just and proper.</p>	<p>Fidelity has submitted an application to the DEQ for renewal of Fidelity's MPDES permit. Depending upon the outcome of Fidelity's permit renewal, DEQ's issuance of the new permit may moot this case or the Plaintiffs may move to dismiss.</p>

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Northern Plains Resource Council, Inc. v. Fidelity Exploration & Production Company	Complaint filed August 27, 2001 Answer filed October 2, 2001	CV 01-137-BLG-RWA	Montana Federal District Court, Billings Division; United States District Judge, Richard F. Cebull; Magistrate Judge Richard W. Anderson	<p><i>Count 1:</i> Fidelity discharged dredge or fill material into waters of the U.S. by constructing numerous wastewater impoundments in intermittent streams. Violated CWA § 301. CWA § 404 permit required.</p> <p><i>Count 2:</i> Fidelity discharged dredge or fill material into waters of the U.S. by constructing 12 outfall structures into the Tongue River. Violation of CWA § 301. CWA § 404 permit required.</p> <p><i>Count 3:</i> Fidelity discharged dredge or fill material into waters of the U.S. by constructing natural gas and water pipelines crossing the Tongue River, Squirrel Creek, and intermittent streams. Violation of CWA § 301. CWA § 404 permit required.</p> <p><i>Count 4:</i> Fidelity discharged dredge or fill material into waters of the U.S. by constructing roads through Squirrel Creek and intermittent streams. Violation of CWA § 301. CWA § 404 permit required.</p>	<ol style="list-style-type: none"> 1. Issue a declaratory judgment that the defendant has violated and continues to violate the CWA; 2. Enjoin defendant from operating its CBM project in a manner that will result in further violation of the CWA; 3. Order defendant to remove all dredge material or fill material from the Tongue River, Squirrel Creek, and intermittent streams running through the Tongue River CBM Project, and enjoin defendant from using such impoundment stream beds as disposal or collection facilities for wastewater produced by CBM wells; 4. Order defendant to pay civil penalties of up to \$27,000 per day of violation of violations since at least September 1999, pursuant to Section 309(d) and 505(a) of the CWA, 33 U.S.C. § 1319(d) and 1365(a), including those violations listed in Appendix B, and violations committed subsequent to those identified in the complaint; 5. Order defendant to provide plaintiff, for a period beginning on the date of the Court's order and running for five years after the defendant achieved compliance with the CWA, with a copy of all reports and other documents which defendant submits to the MT DEQ, EPA, or Army Corps of Engineers regarding defendant's discharges at the time it is submitted to these authorities; 6. Issue a remedial injunction ordering defendant to pay the cost of any environmental restoration or remediation deemed necessary and proper by the Court to ameliorate the water degradation cause by the defendant's violations; 7. Retain jurisdiction of this matter to ensure compliance with this Court's decree; 8. Award plaintiff their reasonable fees, costs, and expenses associated with this litigation as authorized by the CWA, 33 U.S.C. § 1365(d) and 28 U.S.C. § 2412(d); and 9. Grant plaintiff such additional and further relief as the Court may deem just and proper. 	<p>The parties have reached a settlement agreement which has been submitted to Judge Anderson for his approval.</p> <p>The sole remaining issue to be resolved in the case is which party, if any, is entitled to attorneys fees. The parties submitted a series of briefs on this issue in February, 2004.</p>

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Northern Plains Resource Council v. United States Bureau of Land Management, Gale Norton, Kathleen Clarke, and Martin Ott, (Defendants) and Marathon Oil Company, Pennaco Energy, Inc., Fidelity Exploration & Production Company, Bill Barrett Corporation, Anadarko Petroleum Corporation, and Devon Energy Corporation (Intervenors)	Complaint Filed May 1, 2003	CV-03-069-BLG-RWA This suit was consolidated with CV-03-71-BLG-RWA	United States District Court for the District of Montana, Billings Division Magistrate Judge Richard W. Anderson	<p><i>Count 1:</i> The BLM violated NEPA by not preparing a supplemental EIS.</p> <p><i>Count 2:</i> The BLM violated NEPA by failing to consider a reasonable range of alternatives.</p> <p><i>Count 3:</i> The BLM violated NEPA by failing to prepare a single EIS.</p> <p><i>Count 4:</i> The BLM violated NEPA by failing to take a hard look at the direct, indirect, and cumulative impacts of methane development.</p> <p><i>Count 5:</i> The BLM violated FLPMA by adopting an amendment to a RMP that fails to provide for compliance with applicable pollution control laws.</p>	<ol style="list-style-type: none"> 1. Declare that BLM violated NEPA, FLPMA, and the APA for the reasons alleged in the complaint; 2. Remand the matter for BLM to prepare a new draft final EIS and RMP Amendment in compliance with all applicable laws and regulations; 3. Enjoin the BLM from issuing Application for Permit to Drill (APDs) methane wells or authorizing surface-disturbing activities associated with methane development until such time as the BLM complies with NEPA, FLPMA, and APA; 4. Retain jurisdiction of this matter to ensure compliance with this Court's decree; 5. Award plaintiff their reasonable fees, costs, and expenses associated with this litigation as authorized by the Equal Access to Justice Act (EAJA); and 6. Grant additional and further relief as the Court may deem just and proper. 	<p>This suit has been consolidated with the Northern Cheyenne lawsuit, CV-03-78-BLG-RWA.</p> <p>The Plaintiff's motion for summary judgment was due January 26, 2004.</p> <p>The Defendant's cross motions for summary judgment are due April 5, 2004.</p>

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<p>Western Organization of Resource Councils, Jeanie Alderson, Wally McRae, Wyoming Outdoor Council, Natural Resources Defense Council, and Powder River Basin Resource Council v. Kathleen Clarke, Bureau of Land Management, Gale Norton, and Department of Interior (Defendants) and Western Gas Resources, Inc., Lance Oil & Gas Company, Inc., Williams Production RMT Company, Marathon Oil Company, Pennaco Energy, Inc., Fidelity Exploration & Production Company, The State of Wyoming, Bill Barrett Corporation, Anadarko Petroleum Corp., and Devon Energy Corp. (Intervenors)</p>	<p>Complaint filed May 1, 2003</p>	<p>CV-03-70-BLG-RWA This suite was consolidated with CV-03-71-BLG-RWA</p>	<p>United States District Court for the District of Montana, Billings Division Magistrate Judge Richard W. Anderson</p>	<p><i>Count 1:</i> Failure to prepare single EIS in violation of NEPA. <i>Count 2:</i> Failure to supplement the MT and WY Draft EISs in violation of NEPA. <i>Count 3:</i> Failure to analyze the full range in both MT and WY EISs in violation of NEPA. <i>Count 4:</i> Failure to analyze fully the likely direct, indirect, and cumulative impacts of CBM development in MT and WY EISs in violation of NEPA. <i>Count 5:</i> Failure to avoid conflicts of interest in preparing the WY EIS violating NEPA.</p>	<ol style="list-style-type: none"> 1. Declare that the BLM's actions are in violation of the NEPA and its implementing regulations, as set forth in the complaint; 2. Declare unlawful and set aside BLM's decision approving the amendment of the Resource Management Plans in MT and WY until such time as the Defendants have complied with the NEPA; 3. Order BLM to comply with the NEPA by preparing a new single draft EIS for the entire CBM project in the Powder River Basin that properly gives a "hard look" at the direct, indirect, and cumulative impacts of CBM development in MT and WY; 4. Award preliminary and permanent injunctive relief preventing amendment of the Resource Management Plans in MT and WY and preventing any further CBM development in the Powder River Basin until such time as the Secretary and the BLM have complied with the NEPA; 5. Declare unlawful and set aside BLM's decision to approve any further CBM development until such time as it has fully complied with the NEPA and has properly amended its Resource Management Plans; 6. Retain jurisdiction of this action to ensure compliance with its decree; 7. Award Plaintiffs the costs incurred in pursuing this action, including attorney's fees, as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable provisions; and 8. Granting such other and further relief as is proper. 	<p>This suit was consolidated with the American Lands lawsuit CV-03-71-BLG-RWA.</p> <p>On January 13, 2004, the District Court entered an Order transferring venue of all issues pertaining to Wyoming to the Wyoming District Court. The only exception is that questions regarding whether a single EIS, rather than two EISs, should have been completed will remain with the Montana District Court.</p>

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<p>American Lands Alliance, Biodiversity Conservation Alliance, and George Wuerthner v. United States Bureau of Land Management, and Gale Norton, (Defendants) and Western Gas Resources, Inc., Lance Oil & Gas Company, Williams Production RMT Company, Marathon Oil Company, Pennaco Energy, Inc., Fidelity Exploration & Production Company, The State of Wyoming, Anadarko Petroleum Corp., Devon Energy Corp. and Bill Barrett Corporation (Intervenors)</p>	<p>Complaint filed May 1, 2003</p>	<p>CV-03-71-BLG-RWA This suit was consolidated with CV-03-70-BLG-RWA</p>	<p>United States District Court for the District of Montana, Billings Division Magistrate Judge Richard W. Anderson</p>	<p><u>First Claim for Relief: Violations of NEPA and the APA</u> <i>Count 1:</i> BLM failed to assess cumulative and similar actions in a single EIS. <i>Count 2:</i> The MT and WY EISs are inadequate and violate NEPA. <u>Second Claim for Relief: Violations of FLPMA and the APA</u> <i>Count 1:</i> BLM has failed to prevent unnecessary and undue degradation to sage grouse, prairie dogs, and their habitat. <i>Count 2:</i> The MT and WY CBM proposals will cause further declines in sage grouse and prairie dig populations and contribute to their listings under the ESA. <i>Count 3:</i> The MT and WY CBM proposals fail to manage BLM lands in a manner that will provide sufficient food and habitat for sage grouse and prairie dogs. <i>Count 4:</i> The BLM has failed to prepare and maintain an inventory of sage grouse, prairie dogs, and their habitat within the analysis areas.</p>	<p>A. Declare that the BLM's MT and WY EISs for CBM development in the Powder River Basin violate NEPA; B. Enjoin any implementation of the MT and WY EISs, pending the completion of a single EIS that sufficiently assesses the overall, cumulative impacts of the proposed CBM development on the entire Powder River Basin; C. Declare that the BLM's proposals for CBM development in the Powder River Basin violate FLPMA and the Sikes Act; D. Enjoin any implementation of the BLM's CBM proposals pending compliance with FLPMA and the Sikes Act; E. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under applicable law; and F. Grant Plaintiffs such further relief as may seem to this Court to be just, proper, and equitable.</p>	<p>This suit was consolidated with the Western Organization lawsuit CV-03-70-BLG-RWA. See updated status from CV-03-70-BLG-RWA.</p>

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<p>Northern Cheyenne Tribe and Native Action v. Gale Norton, Kathleen Clarke, and Martin Ott (Defendants) and Fidelity Exploration & Production Company, Marathon Oil Company, Pennaco Energy Inc., Anadarko Petroleum Corporation, and Devon Energy Corporation (Intervenors)</p>	<p>Compliant Filed May 8, 2003</p>	<p>CV-03-78-BLG-RWA This suit was consolidated with CV-03-069-BLG-RWA</p>	<p>United States District Court for the District of Montana, Billings Division Magistrate Judge Richard W. Anderson</p>	<p><i>Count 1:</i> Violations of NEPA <i>Count 2:</i> Violations of the NHPA <i>Count 3:</i> Violations of Clean Air Act <i>Count 4:</i> Violations of the Clean Water Act <i>Count 5:</i> Violations of FLPMA <i>Count 6:</i> Breach of Fiduciary Obligations</p>	<p>1. A declaratory judgment that: <i>A)</i> Defendants have a fiduciary obligation to consider and protect Reservation resources, trust assets (including but not limited to the Tribal Water Right), and Tribal interests when planning federal actions which may affect those Tribal resources, trust assets and Tribal interests; <i>B)</i> Defendants violated NEPA, their fiduciary duties to the Northern Cheyenne Tribe, and the APA by issued oil and gas leases irretrievable committing for development substantial amounts of federal CBM resources in the MT portion of the Powder River RMP area without an adequate analysis of the environmental consequences of full-scale CBM development in this area to the Reservation and the Tribe; <i>C)</i> Defendants violated NEPA, their fiduciary duties to the Tribe, and the APA by preparing an FEIS for an RMP area which failed to rigorously evaluate reasonable and practicable alternatives to full-field development of federal CBM resources in the MT portion of the Powder River RMP area which would result in less impacts on the Tribe and Reservation; <i>D)</i> Defendants violated NEPA, their fiduciary duties to the Tribe, and the APA by preparing an FEIS for an RMP area which failed to adequately evaluate the direct, indirect and cumulative impacts of such development on the Tribe and Reservation; <i>E)</i> Defendants violated the NHPA, their fiduciary duties to the Tribe, and the APA by issuing oil and gas leases and subsequently issuing the RMP Amendment without first engaging in the formal consultation required under Section 106 of the NHPA; <i>F)</i> Defendants violated FLPMA, the Clean Air Act, the Clean Water Act, their fiduciary duties to the Tribe, and the APA by developing an RMP amendment allowing for full-field development of federal CBM resources in the Powder River RMP area which does not provide for compliance with the PSD Class I increments for the Reservation, or the water quality standards of the Tribe and the State of MT; 2. A preliminary and permanent injunction: <i>A)</i> suspending all federal oil and gas leases in the Powder</p>	<p>This suit was consolidated with the NPRC lawsuit, CV-03-069-BLG-RWA. See updated status from CV-03-069-BLG-RWA.</p>

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					<p>Defendants' April 30, 2003, ROD, pending Defendants' full compliance with their obligations under federal law;</p> <p>C) prohibiting Defendants from issuing any permits, rights-of-way or other approvals authorizing or facilitating further CBM development in the Powder River RMP area, pending Defendants' full compliance with their obligations under federal law;</p> <p>D) ordering that Defendants consider and protect Reservation resources, trust assets and Tribal interests as a precondition to issuance of any further permits, rights-of-way or other approvals authorizing or facilitating further CBM development in the Powder River RMP, consistent with their fiduciary and statutory obligations under federal law;</p> <p>3. An award of attorney's fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A), the Clean Air Act, 42 U.S.C. § 7604(d), and the Clean Water Act, 33 U.S.C. § 1365(d); and</p> <p>4. Other further relief as the Court may deem just and proper.</p>	

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<p>Northern Plains Resource Council, Inc., Montana Environmental Information Center, Inc., Tongue and Yellowstone Irrigation District v. Montana Department of Environmental Quality, Montana Board of Oil and Gas Conservation, and Montana Department of Natural Resources and Conservation</p>	<p><i>Complaint</i> filed October 6, 2003 <i>Amended Complaint</i> filed October 17, 2003</p>	<p>ADV-2003-579</p>	<p>Montana First Judicial District Court Honorable Jeffrey M. Sherlock</p>	<p><i>Count 1:</i> Violation of the Public Trust Doctrine <i>Count 2:</i> Violation of the Fundamental Right to a Clean and Healthful Environment <i>Count 3:</i> Violation of Obligation to Reclaim all Disturbed Lands</p>	<ol style="list-style-type: none"> 1. Declare that the ROD and Preferred Alternative E violate the Constitution as alleged in Counts I, II, III and IV; 2. Declare that the Defendants' approval of the Badger Hills Project Plan of Development (Fidelity's Plan of Development) and related permits violate Plaintiffs' constitutional rights and public trust duty as alleged in Counts I, II, III and IV; 3. Issue a permanent injunction enjoining the Defendants from approving CBM wells, impoundments, permits and PODs until such time as Defendants establish that such development will be in accordance with the law; 4. Declare any authorizations for CBM development issued prior to and during this lawsuit void, and require Defendants to ensure that such activities are halted until such time as the Defendants authorize them in compliance with the law; and 5. Award Plaintiffs their costs, reasonable attorney fees, and all other appropriate and necessary relief as the Court deems just and proper. 	<p>On December 19, 2003, the Court dismissed DNRC without prejudice.</p> <p>On December 22, 2003, Fidelity filed a Motion for Intervention and to Dismiss, which the Court has not ruled on.</p> <p>On December 23, 2003, the Court stayed the defendants' motions to dismiss until the Plaintiffs file their amended complaint.</p>

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<p>Northern Plains Resource Council, Inc. v. U.S. BLM; and Martin Ott, in his official capacity as the Montana Director of the BLM</p>	<p>Complaint filed December 5, 2003</p>	<p>CV-03-185-BLG-RWA</p>	<p>United States District Court for the District of Montana, Billings Division Magistrate Judge Richard W. Anderson</p>	<p>Count 1: BLM violated NEPA by not completing an EIS for Badger Hills Project. Count 2: BLM violated NEPA by failing to provide any opportunity for public participation and comment on the EA prior to making a FONSI and prior to approving the Badger Hills Project POD. Count 3: BLM violated NEPA by failing to take a hard look at the direct, indirect, and cumulative impacts of the Badger Hills Project, by failing to consider a reasonable range of alternatives, and by failing to take a hard look at mitigation measures. Count 4: BLM violated FLPMA and MLA by not requiring a reclamation plan and bond to ensure the restoration of lands and surface waters impacted by Fidelity's operations. Count 5: BLM violated FLPMA by approving the Badger Hills Project POD without complying with the requirements of its own ROD and RMP.</p>	<ol style="list-style-type: none"> 1. Declare that BLM violated NEPA, FLPMA, MLA, and the APA for the reasons alleged herein. 2. Remand the matter for the BLM to prepare an EIS for the Badger Hills Project in compliance with all applicable laws and regulations. 3. Enjoin the BLM from issuing permits to drill methane wells, approving methane PODs, or otherwise authorizing surface-disturbing activities associated with methane development on Fidelity's federal leases until such time as the BLM complies with NEPA, FLPMA, MLA, and APA. 4. Retain jurisdiction of this matter to ensure compliance with this Court's decree. 5. Award plaintiff their reasonable fees, costs, and expenses associated with this litigation as authorized by the Equal Access to Justice Act (EAJA). 6. Grant additional and further relief as the Court may deem just and proper. 	<p>On February 3, 2004, the Court granted Fidelity's motion to intervene.</p>

Case	Date Complaint Was Filed	Cause Number	Court & Judge	Complaint Allegations	Relief Requested	Status
<p>Northern Cheyenne Tribe v. United States Bureau of Land Management; Martin C. Ott, in his official capacity as Montana State Director, Bureau of Land Management; and David M. McIlroy, in his official capacity as Field Manager, Miles City Office, Bureau of Land Management</p>	<p>Complaint filed February 18, 2004</p>	<p>CV-04-17-BLG-RWA</p>	<p>United States District Court of Montana, Billings Division</p>	<p>Count 1: Violations of the National Historic Preservation Act. Count 2: Violations of the National Environmental Policy Act. Count 3: Breach of Federal Trust Responsibility.</p>	<p>1. A declaratory judgment that (1) Defendants breached their obligation under the NHPA and the federal trust responsibility to consult with the Tribe when evaluating the effects of the Badger Hill Project and other impending CBM development projects in the Tongue River watershed on historic properties; and (2) Defendants breached their obligation to the Tribe under NEPA and the federal trust responsibility by failing to afford the Tribe an opportunity to review and comment on the EA and FONSI prior to approval of the Badger Hills Project. 2. An order setting aside Defendants' approval of the APDs and POD for the Badger Hill Project and the accompanying EA and FONSI. 3. A preliminary and permanent injunction: (1) ordering Defendants to issue a stay barring any further ground-disturbing activities relating to CBM exploration or production of federal surface or mineral estate at the Badger Hills Project site and at all other impending CBM exploration and development projects in the Tongue River watershed, pending BLM's full compliance with their obligations to the Tribe under the NHPA, NEPA and the federal trust responsibility; and (2) ordering Defendants to restore or mitigate to the greatest extent possible any damage to historic properties resulting from their prior violations of NHPA, NEPA and the federal trust responsibility. 4. An award of attorneys' fees and expenses under 16 U.S.C. § 470w-4 and the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).</p>	<p>Fidelity was granted intervention on February 26, 2004.</p>