Utah Petroleum Association

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FUELING UTAH'S GROWTH & PROSPERITY

May 26, 2026

Ms. Amanda Brimmer
Air and Radiation Division
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Uploaded to Docket EPA–R08–OAR–2024–0001 at regulations.gov
Also, by email - brimmer.amanda@epa.gov

Subject: Comments from the Utah Petroleum Association on *Utah; Uinta Basin; 2015 8-Hour Ozone National Ambient Air Quality Standard; Reconsideration and Repeal of Finding of Failure To Attain and Reclassification to a Moderate Nonattainment Area; Extension of the Attainment Date and Determination of Attainment by the Marginal Attainment Date*, Docket ID EPA–R08–OAR–2024–0001

Dear Ms. Brimmer:

In 2018, the Environmental Protection Agency ("EPA") designated the Uinta Basin in Utah including portions of Duchesne and Uintah Counties[1] as nonattainment under the 2015 National Ambient Air Quality Standard ("NAAQS") for ozone ("UB") and classified it as Marginal with an attainment date of August 3, 2021, three years after the effective date of the initial designation.[2] In 2022, EPA finalized approval of a one-year extension to the 2021 attainment date, thus setting the attainment date at August 3, 2022.[3] Then, in April, 2024, EPA proposed to approve a second one-year extension to the attainment date ("2024 Proposal"). If finalized as proposed, the proposal would have moved the attainment date to August 3, 2023, and would have also resulted in the UB attaining the 2015 ozone NAAQS by its newly extended attainment date, based on air

[1] The nonattainment area includes all lands in the Counties below a contiguous external perimeter of 6,250 ft. in elevation. All areas within that contiguous external perimeter are included in the nonattainment area including mesas and buttes which may have an elevation greater than 6,250 ft., but which are surrounded on all sides by land lower than 6,250 ft. Source: EPA "Greenbook" website at https://www3.epa.gov/airquality/greenbook/jbp.html#Ozone_8-hr.2015.Uinta_Basin (last accessed on May 18, 2026).
[2] 83 FR 25776, *Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards* final rule, June 4, 2018.
[3] 87 FR 60897, *Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards* Final Rule, October 7, 2022.

quality data for the complete calendar years of 2020, 2021, and 2022.[4] The Utah Petroleum Association ("UPA") submitted comments in support of approving the second extension ("2024 UPA Comments" or "2024 Comments").[5] Nonetheless, in December 2024, EPA published a final rule denying the second one-year extension and maintaining the Marginal attainment date of August 3, 2022 ("UB Reclassification Rule"). As a result, the rulemaking determined that the UB failed to attain the 2015 ozone NAAQS by the attainment date, based on air quality data from 2019 through 2021. Therefore, the rule also reclassified the UB to Moderate nonattainment by operation of law.[6] EPA denied the request for the second extension even though the extension met the statutory and regulatory criteria for an extension, using its discretionary judgment that relied on other factors not communicated in the proposal.

UPA and other parties filed requests for reconsideration with EPA and petitions for review with the 10th Circuit Court of Appeals. EPA granted the reconsiderations and the Court stayed the December 2024 rulemaking. In its Proposed Approval, EPA wrote, "After reconsidering the December 2024 final rule, the EPA now finds that Utah sufficiently met the statutory criteria for a second 1-year attainment date extension and the Agency is no longer exercising its discretion to deny the State's and Tribe's request, which would have imposed additional obstacles that Congress did not specifically require."[7]

UPA thanks EPA for reconsidering its initial final rule regarding the second extension and is pleased to have this opportunity to provide comments to the Proposed Approval.

UPA is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains. Five member companies operate petroleum refineries in the Northern Wasatch Front ozone nonattainment area and several other UPA member companies operate oil and gas production and midstream facilities within the Uintah Basin ozone nonattainment area. Our member companies include major and minor source facilities within the UB as addressed by the proposed rulemaking. Member vendors and suppliers also operate in these areas. Our member companies have an interest in air quality, air emissions controls, air emissions inventories, and related policies and compliance requirements throughout Utah.

In summary, EPA should approve the second one-year extension and the proposed "Determination of Attainment by Attainment Date" ("DAAD"). The extension meets all regulatory

[4] 89 FR 25223, *Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin Marginal Nonattainment Area Under the 2015 Ozone National Ambient Air Quality Standards* Proposed Rule, April 10, 2024.
[5] Letter, Rikki Hrenko-Browning (UPA) to Ms. Amanda Brimmer (EPA Region 8), *Comments by the Utah Petroleum Association on EPA's Proposal to Approve Second Extension to Attainment Date and Determination of Attainment by Attainment Date for the Uinta Basin Ozone Nonattainment Area Under the 2015 Ozone Standard*, May 10, 2024.
[6] 89 FR 101483, *Denial of Request for Attainment Date Extension, Finding of Failure To Attain, and Reclassification of an Area in Utah as Moderate for the 2015 Ozone National Ambient Air Quality Standards*, December 16, 2024.
[7] 91 FR 21753, *Utah; Uinta Basin; 2015 8-Hour Ozone National Ambient Air Quality Standard; Reconsideration and Repeal of Finding of Failure To Attain and Reclassification to a Moderate Nonattainment Area; Extension of the Attainment Date and Determination of Attainment by the Marginal Attainment Date*, April 23, 2026 ("Proposed Approval"). The Proposed Approval includes a summary of the requests for reconsideration and the petitions for review in addition to the quotation (p. 21756).

criteria. With the extension, the UB also meets all criteria for the DAAD. EPA previously completed the UB Reclassification Rule inappropriately from a legal standpoint, based on factors for which the public and regulated community did not have an opportunity to comment. Furthermore, the year 2023 was a statistical anomaly and outlier due to exceptionally high snow, well above normal levels. The air quality in the UB has improved steadily over more than a decade as a result of permanent and enforceable emission reductions. We discuss each of these points in detail below.

We attached and we adopt and endorse the 2024 UPA Comments as additional comments to the Proposed Approval. The 2024 Comments provide detail to which this letter refers, and this letter provides additional updated information where appropriate.

EPA should approve the reconsidered second extension because the UB meets the statutory and regulatory criteria.

The Clean Air Act ("CAA") states, ''Upon application by any State, the Administrator may extend for 1 additional year'' the attainment date, provided that the state has complied with all requirements and commitments pertaining to the area in its applicable implementation plan and the area meets certain air quality criteria. "No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area."[8]

UDAQ and the Ute Indian Tribe both requested the second extension to the attainment date after the UB met the air quality criteria.[9] In its letter requesting the second extension, Utah documented how it meets the implementation plan requirements for a Marginal ozone nonattainment area, including citing EPA's approvals for the applicable plan elements, and thus fully addressed the first criteria.

Additionally, to be granted the second extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be no greater than the level of that NAAQS.[10] The following **Table 1**, reproduced from the 2024 UPA Comments, shows the relevant data and how the 2020 through 2022 certified air quality data for the UB meets this:

Year		**4th highest daily maximum 8-hour value, ppb**
Original attainment year	2020	66
First extension year	2021	72
2-Year Average		69
Level of 2015 Ozone NAAQS		70

Table 1. UB Qualification for Second One-Year Extension

Table 2 of the Proposed Approval, *Ozone Monitoring Values for Duchesne and Uintah Counties, Utah*, provides a data table illustrating the same conclusion, that the UB meets criteria for the

[8] CAA §181(a)(5)(B).
[9] Letter; Bryce C. Bird, Director, Utah Division of Air Quality, to Kathleen Becker, Regional Administrator, EPA Region 8; March 30, 2022. Also, letter; Shawn Chapose, Business Committee Chairman, to KC Becker, Regional Administrator, EPA Region 8; December 20, 2022.
[10] 40 CFR 51.1307(a)(2).

second one-year extension, a conclusion that EPA also reached in the 2024 Proposal and in the UB Reclassification Rule.[11]

Based on these criteria, the complete and approved Marginal implementation plan elements, and the irrefutable data showing that the UB meets the numerical criteria, EPA should approve the second one-year extension.

With the second extension approval, the UB meets the criteria for the DAAD.

The only criteria for EPA to grant the DAAD is that the area met the NAAQS for the three-year calendar period prior to the attainment date. Upon approving the second one-year extension, EPA does not have discretion to deny the DAAD. The CAA indicates that EPA "shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by" the attainment date.[12] The CAA provides no other criteria for determining whether the area attained other than air quality as of the attainment date, and provides no discretion.

EPA's final approval of the second one-year extension will move the attainment date to August 3, 2023, with attainment based on the three full calendar years of air quality monitoring data from 2020 through 2022. The 2020 through 2022 certified air quality data for the UB meets the criteria for the DAAD. The following **Table 2**, reproduced from the 2024 UPA Comments, shows the data and the design value of 67 ppb, well below the 70 ppb ozone NAAQS:

4th High:	**Ozone, ppb**
2020	65
2021	72
2022	66
3-Year Average	67
Level of 2015 Ozone NAAQS	70

Table 2. Determination of Design Value for Attainment

Again, Table 2 of the Proposed Approval and accompanying text reach the same conclusion.

Therefore, upon approving the requests for the second one-year extension, EPA should finalize the DAAD.

EPA's Denial of the Second Extension Requests Violated the Clean Air Act and the Administrative Procedure Act.

As UPA explained in its Petition for Reconsideration[13] and in briefing before the Tenth Circuit,[14] the UB Reclassification Rule violated both the CAA and the Administrative Procedure Act ("APA"). EPA should finalize the Proposed Approval, because it resolves these outstanding legal issues.

[11] Proposed Approval, p. 21755, table and accompanying explanation (second and third columns).
[12] CAA §179(c)(1).
[13] Petition for Reconsideration and Stay, Utah Petroleum Association 9–21 (February 14, 2025), Docket No. EPA-R08-OAR-2024-0001.
[14] Mot. to Stay, 12–22, Utah Petroleum Ass. v. EPA, Case No. 25-9507 (10th Cir.).

The UB Reclassification Rule exceeded EPA's authority under the CAA because EPA denied Utah's request for a second extension for reasons not authorized by the CAA. Despite the Uinta Basin meeting the statutory and regulatory standards for the Second Extension based on air quality data from 2020 through 2022, EPA decided not to grant the extension due to "high ozone levels recorded in 2023."[15]

First, EPA's consideration of data from 2023 violated the CAA. While the CAA affords EPA discretion to make extension decisions, EPA must still exercise that discretion within "the boundaries of [the] delegated authority" established by Congress.[16] In CAA Section 7511(a)(5)(B), Congress used precise language to limit EPA's consideration to exceedances "preceding the Extension Year,"—in this case, 2022. This statutory requirement spoke directly to the "boundaries" on EPA's discretion to consider exceedance data. By claiming discretion to consider exceedances in 2023, "EPA impermissibly read the [key phrase] out of the statute."[17] As a result, EPA considered a factor "outside the bounds of permissible statutory choice"[18] and exceeded its authority under the CAA.

Second, EPA acted arbitrarily and capriciously in violation of the APA by changing the standard by which it decided the second extension request between the proposed and final versions of the UB Reclassification Rule.[19] At proposal, EPA correctly tethered the requirements for satisfying Section 7511(a)(5) to the statutory text.[20] But in the final version, EPA decided to deny the extension after applying a new, heightened standard that EPA must have "data or other technical information" to conclude with certainty that current emission reduction efforts "will be enough to end ozone exceedances," including during potential anomalous meteorological conditions in the future.[21] This heightened standard is not required by the CAA and was never communicated to the public. EPA's moving of the goalposts was arbitrary and capricious.[22]

Third, EPA failed to justify a rational connection between the facts and its decision to deny the second extension.[23] EPA provided no explanation for departing from its past interpretation of CAA Section 7511(a)(5) as necessary to "provide flexibility where an area is close to achieving attainment."[24] EPA had even previously rejected public comments suggesting that EPA should deny an extension request based on the higher standard that it later applied to Utah's second extension request.[25] In the final version of the UB Reclassification Rule, EPA failed to

[15] 89 Fed. Reg. 101483, 101485 (Dec. 16, 2024).
[16] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024).
[17] *Sinclair Wyo. Ref. Co. v. United States EPA*, 874 F.3d 1159, 1170 (10th Cir. 2017).
[18] *Id.* at 1172; *Loper Bright*, 603 U.S. at 395–96, 404.
[19] Mot to Stay 16–17.
[20] 89 Fed. Reg. 25223, 25225 (April 10, 2024).
[21] EPA Response to Comment at 13, 16–17, EPA-R8-OAR-2024-0001 (Dec. 16, 2024).
[22] *See Qwest Corp. v. FCC*, 689 F.3d 1214, 1228 (10th Cir. 2012) ("an agency's shifting of the policy goalpost (e.g., the evidentiary requirements for satisfying a particular statutory or regulatory standard) may lead us to conclude that the agency has acted arbitrarily or capriciously"); Envtl. Integrity Project v. EPA, 425 F.3d 992, 996 (D.C. Cir. 2005) (agencies cannot "use the rulemaking process to pull a surprise switcheroo on regulated entities.").
[23] [23] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 2866 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made.").
[24] 89 Fed. Reg. at 25,225; *see* 87 Fed. Reg. at 60898, 60902–03 (Oct. 7, 2022) (relying on this policy to grant Utah's first extension request for the Uinta Basin ozone nonattainment area).
[25] In granting Utah's first extension request, EPA rejected a comment suggesting EPA should deny the request because "the Uinta Basin area attaining the 2015 ozone NAAQS by a second extended attainment date … would not demonstrate that ozone concentrations in the area will remain low based on

acknowledge this prior interpretation or how the denial contradicted its previous extension decisions.[26]

Additionally, EPA overemphasized the anomalous meteorological conditions in the Uinta Basin as the primary basis for denying the Second Extension request, while downplaying the facts before the agency that ozone concentrations in the area were steadily decreasing year over year.[27] EPA's reasoning was arbitrary and capricious because it "runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[28]

Finalization of the Proposed Approval will resolve these legal issues by repealing the UB Reclassification Rule, granting the Second Extension request, and determining that the Uinta Basin attained the ozone standard by the extended attainment date.

The year 2023 had a rare and unusually high amount of snow.

The UB incurs wintertime ozone, which only occurs with a combination of prolonged snowpack, sunshine, and wintertime temperature inversions. Without snow, no wintertime ozone occurs because the photochemical reactions that form ozone need the reflective properties of the snow for the precursor and intermediate molecules to absorb enough solar radiation to drive the reactions. The year 2023 had a rare and anomalously high amount of snow, resulting in anomalously high ozone air quality measurements and an anomalously high number of exceedance days in the winter.

EPA reported in their Response to Comment for the 2024 Proposal that 2023 snowfall was one of the two highest in the prior fifty year period.[29]

The annual snow water equivalent provides another way to look at the high snowfall in 2023. The following **Figure 1** repeats Figure 2 from the 2024 UPA Comments. **Figure 1** illustrates that the

concrete emission reductions or air quality trends that showed consistent progress toward attainment." 87 Fed. Reg. 60897, 60903 (Oct. 7, 2022). EPA rejected requiring "documented reductions in emissions of ozone precursors and demonstrations that enforceable controls achieved attainment" because "the CAA mandates that the EPA determine whether an area attained the NAAQS solely on the basis of the area's [monitoring data] as of the attainment date" and it "does not permit the EPA to consider in making that determination how the area attained or whether the area will continue to attain in making that determination." Id.; see 81 Fed. Reg. 26,697, 26,703 (May 4, 2016) (EPA explaining that, where statutory criteria were met, "the possibility that the area may not attain by … the attainment date" was not "reason enough to deny [Wisconsin's] request").

[26] *See* "[T]he agency must at least display awareness that it is changing position and show that there are good reasons for the new policy." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 211 (2016).

[27] 89 Fed. Reg. at 101,485.

[28] *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. 29 at 43.

[29] *Response to Comments on Proposed Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin Marginal Nonattainment Area under the 2015 Ozone National Ambient Air Quality Standards (EPA-R08-OAR-2024-0001)*, December 2024 (located in the docket for the rulemaking at regulations.gov), p. 11. The other high snowfall year in the 50-year period was 2019.

2023 snow water equivalent[30] in Duchesne, for example, exceeded the 70th percentile for the entire season and at times exceeded the 90th percentile for the period of record, 1979 to 2023:[31]

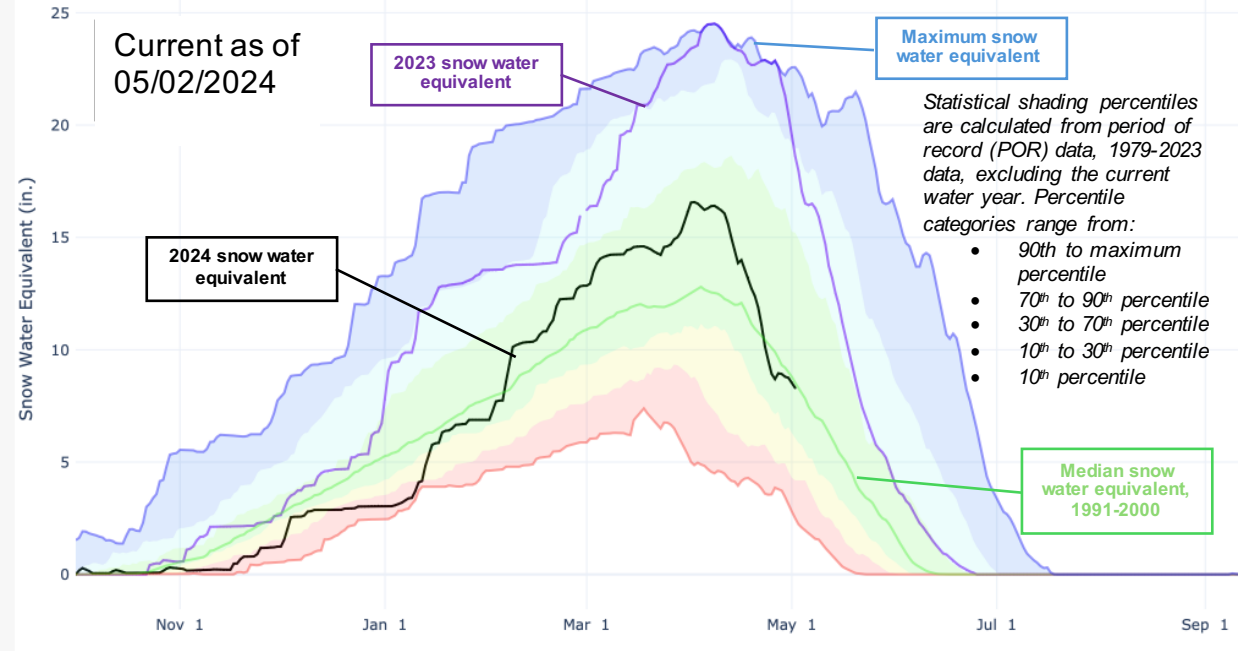


Figure 1. 2023 and 2024 Snow Water Equivalents in Duchesne Compared to Period of Record

We therefore conclude that the UB had anomalously high snow in 2023, which caused anomalously high ozone formation during that winter.

Air Quality in the UB continues to show steady improvements.

The air quality measurements relevant to the Proposed Approval include the 4th highest daily maximum 8-hour values for 2020 and 2021, which are used to determine whether the UB meets the numerical criterion for the second one-year extension, plus the 4th highest daily maximum 8-hour value for 2022, which when averaged with 2020 and 2021, provides the 2020 to 2022 design value. This design value then determines whether the UB qualifies for the DAAD.

Nonetheless, although not relevant to the decisions at hand in the Proposed Approval, we examined the air quality data for the succeeding years and note continued and lasting improvements. **Figure 2** provides the trends of annual design value and the number of exceedance days per year in the UB:

[30] The National Weather Service defines "snow water equivalent" as "the depth of water that would cover the ground if the snow cover was in a liquid state."
[31] Graph obtained from UDSA Natural Resources Conservation Division at https://nwcc-apps.sc.egov.usda.gov/awdb/basin-plots/POR/WTEQ/assocHUCut_8/duchesne.html.

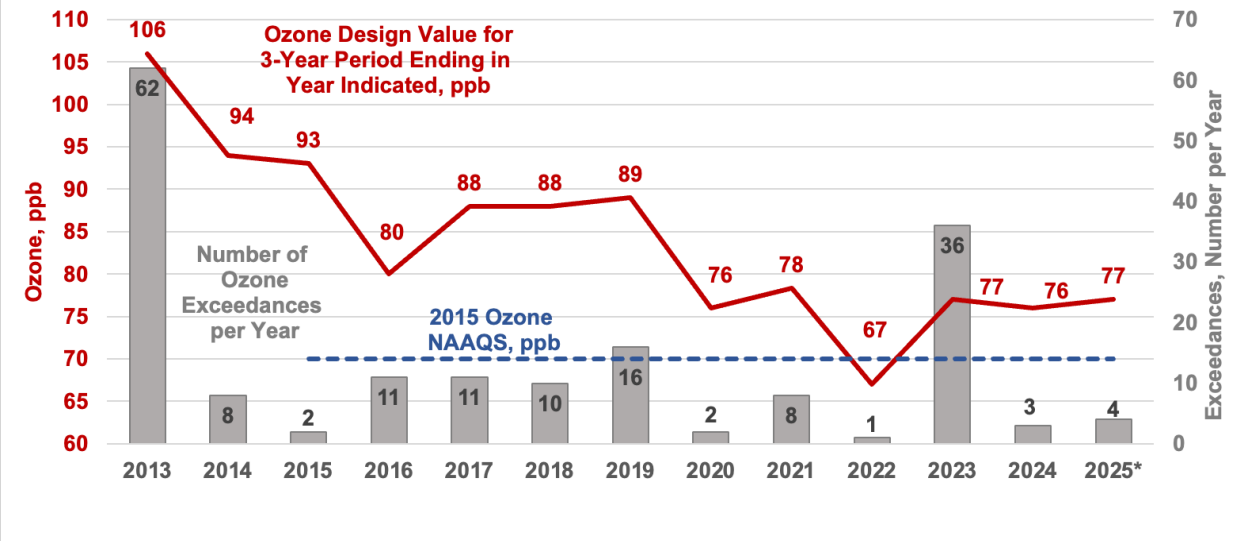


Figure 2. UB Air Quality Trends, 2013 through 2025

**2013 through 2024 data obtained from EPA design value spreadsheets at https://www.epa.gov/air-trends/air-quality-design-values. 2025 data obtained from EPA air data website at https://www.epa.gov/outdoor-air-quality-data and design value calculated from data available.*

UB design values became available starting in 2013. Based on the design value numbers shown on the graph, the design value reduced by 27% from 2013 through 2025 (106 ppb to 77 ppb). Air quality in five of the last six years, the exception being the anomalous year 2023, had the fewest numbers of exceedances of the 2015 ozone NAAQS and the lowest design values of all the years 2013 through 2025. Of the (uncertified) data available for year-to-date 2026 (as of this writing), the regulatory monitors show no exceedances in 2026 and the highest fourth high of 55 ppm.[32]

Additionally, even though the 2024 snow water equivalent exceeded the historic median in late February when UB winter ozone often forms, the highest 8-hour ozone reading in the UB for the winter of 2024 was only 63 ppb at the Dinosaur monitor. No other monitor had a winter 2024 reading exceeding 60 ppb. The highest (policy relevant) 4th high 8-hour ozone reading in the UB for the winter of 2024 was 60 ppb at the Dinosaur monitor, far below the level of the standard. This indicates that emission reduction measures in the UB have had a positive effect on air quality.

Declining oil and gas emissions in the UB drove the improved air quality.

Ozone is formed by a complex photochemical reaction in the atmosphere from precursor emission of VOC and NOx. For the 2023 emissions inventory for the UB, 57% of the NOx and 90% of the VOC come from oil and gas sources. Emissions in the UB declined over the time period of the air quality graph. Two recent pieces of work illustrate this.

First, Dr. Seth Lyman, Director and Research Professor at the Bingham Research Center of Utah State University, examined emissions in the UB compared to oil and gas production rates.

[32] The Tribe apparently has not reported any 2025 air monitoring data to the EPA system, as of this writing.

Although methane does not contribute strongly to ozone formation, typically oil and gas streams with methane will also contain VOC, so methane trends can be an indicator for VOC trends.

He found that emissions of methane per unit of energy production ("emissions intensity") decreased steadily during 2013 through 2024, as shown in the following **Figure 3** adapted from Dr. Lyman's work:

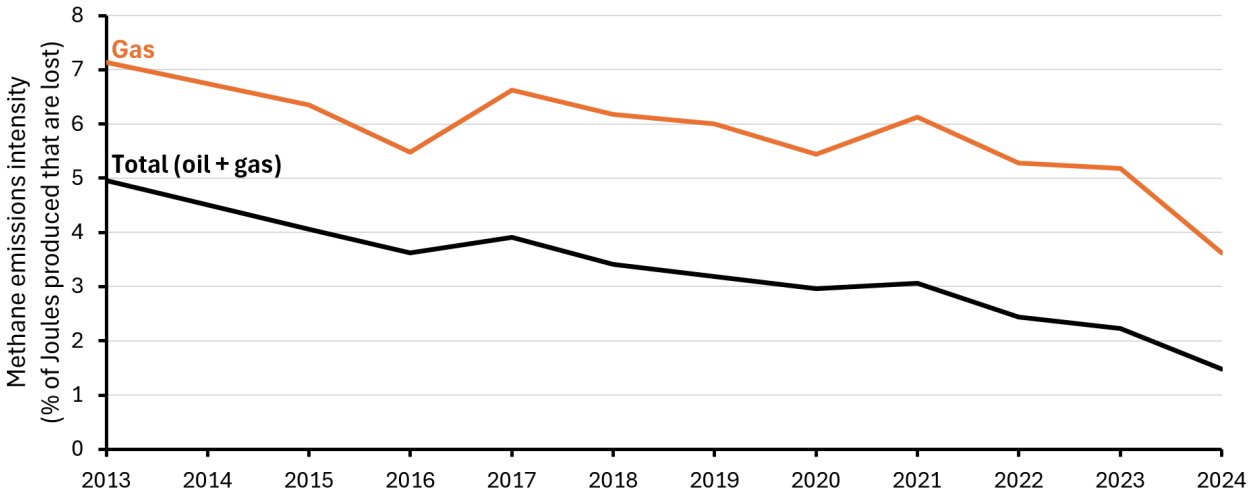


Figure 3. Emissions per energy production (emissions intensity)

Dr. Lyman also reports preliminarily the following emissions efficiency trends:[33]

- 71.6% reduction in methane, 2012 through 2024
- 54.4% reduction in volatile organic compounds ("VOC"), 2013 through 2024
- 57.0% reduction in nitrogen oxides ("NOx"), 2013 through 2024

The second recent piece of work showing emission reductions in the Utah-jurisdictional portion of the UB is a presentation of emission inventories comparing 2017 to 2023, presented by Sheila Vance of the Utah Division of Air Quality. Ms. Vance's work shows that, when calculated using the same methodology, the amount of NOx emissions from the oil and gas industry in the Utah air emissions jurisdictional portion of UB increased by a small amount from 2017 to 2023, 1.45 tons per day ("tpd") while VOC emissions decreased substantially, 23.55 tpd of total emissions. In the presentation discussed above and in other research, Dr. Lyman reported that VOC has a more significant impact on ozone formation than NOx for winter ozone in the UB. Thus, we conclude that the substantial reduction in VOC contributes to improved air quality despite the small increase in NOx.

Last but not least, in addition to the above two very recent pieces of work, the 2021 peer-reviewed journal article *Winter Ozone Pollution in Utah's Uinta Basin is Attenuating* identifies a statistically

[33] Information from Dr. Lyman's work adapted with permission from *Trends in Uinta Basin-wide methane, VOC, and NOx emissions*, Powerpoint presentation to the Uinta Basin Ozone Working Group, April 15, 2026, available at https://www.usu.edu/basinozonegroup/meetings (last accessed May 20, 2026). Lyman reports the emission rates as mg/hr per million barrels equivalent/year. Although Dr. Lyman granted permission to present the information, neither he nor University of Utah endorses opinions stated by UPA.

significant decline in ozone concentrations from 2010 to 2020 attributed in part to more stringent pollution regulations and controls.[34]

These examples show that the UB has had substantial emission reductions of oil and gas emissions which have driven substantial air quality improvements, and support a final decision to grant the second extension and the DAAD.

Emissions (and ozone) declined in the UB due to permanent and enforceable emission reductions.

Over the past several years, various new controls for reducing oil and gas emissions of VOC and NOx in the UB have gone into effect, each providing a stepwise reduction in oil and gas emissions in the UB and contributing to air quality improvements:

- Utah established its 500-series rules requiring various emission controls for storage vessels, tank truck loading, flares, controllers, leak detection and repair, and other types of equipment operations. Operators with facilities in the Utah jurisdiction portions of the UB for air emissions have complied with these rules for several years, as many of the rules date back originally to 2018 and some to 2014.

- EPA recently finalized a Federal Implementation Plan ("FIP") for operations in the UB, for which operators have now installed extensive required controls on existing operations in the Tribal portion of the UB. These controls were not in place for the winter ozone season of 2023 because the final rule was published in the Federal Register at the very end of 2022, just weeks prior to the start of the 2023 winter ozone season and not enough time for operators to install the capital investments needed for the FIP requirements prior to that ozone season.[35] We understand that about 75% of the UB oil and gas production in the UB occurs on Tribal lands where this rule applies.

- EPA recently finalized its regulations for controls on new, modified, and existing sources.[36] Oil and gas sources that commenced construction, modification, or reconstruction after December 6, 2022, need to comply with the new set of stringent requirements set out in New Source Performance Standards ("NSPS") OOOOb.[37] Ultimately, after Utah adopts its regulations to address the Emissions Guidelines of OOOOc, existing sources on State lands will need to comply with these requirements as well. Either EPA or the Tribe will establish regulations for OOOOc implementation on the Tribal lands in Utah. Although EPA announced and is working on reconsidering this rulemaking, the reconsideration could leave much of the core emission reduction requirements in place with changes more to various details or to provisions that will not alter emissions reductions substantially, but may enhance practicability.

[34] *Winter Ozone Pollution in Utah's Uinta Basin is Attenuating*, Marc L. Mansfield and Seth N. Lyman, Atmosphere 2021, 12, 4, https://dx.doi.org/10.3390/atmos12010004.
[35] 87 FR 75334, *Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah*, December 8, 2022.
[36] 89 FR 16820, *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, March 8, 2024 ("OOOOb/c Final Rule").
[37] OOOOb/c Final Rule, p. 16826.

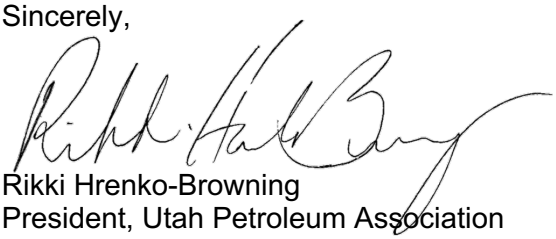
Collectively and individually, these emission reduction requirements established substantial permanent and enforceable emission reductions, which resulted in improvements to air quality. Thus, they support a final decision to grant the second extension and the DAAD.

Concluding Comments.

EPA should finalize the Proposed Approval without significant change by withdrawing the reclassification of the UB to Moderate, approving the second extension to the Marginal attainment date, and approving the DAAD, for the UB. The UB shows a long history of air quality improvements, a history that can be attributed in large part to permanent and enforceable emission reductions. In addition to these required reductions, operators also have pursued various voluntary reductions such as flyover programs to find and promptly repair any leaks not otherwise detected, and more stringent Leak Detection and Repair programs than required by regulation, to name just two, which also support improved UB air quality. The 2023 high ozone levels and high number of exceedance days were a statistical anomaly due to a particularly high snowfall year in the UB, and should not be factored into any decision of whether to approve and grant the second extension. Moreover, as explained in more detail above, EPA cannot use air quality data from a later time period based on the best reading of the Clean Air Act.

Once again, UPA thanks EPA for undertaking this important reconsideration which supports the President's Executive Order on Unleashing American Energy.

Sincerely,



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Attachment:
Letter, Rikki Hrenko-Browning (UPA) to Ms. Amanda Brimmer (EPA Region 8), *Comments by the Utah Petroleum Association on EPA's Proposal to Approve Second Extension to Attainment Date and Determination of Attainment by Attainment Date for the Uinta Basin Ozone Nonattainment Area Under the 2015 Ozone Standard*, May 10, 2024.

Utah Petroleum Association

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FUELING UTAH'S GROWTH & PROSPERITY

May 10, 2024

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Submitted electronically to docket: EPA-R08-OAR-2024-0001

Subject: Comments by the Utah Petroleum Association on EPA's Proposal to Approve Second Extension to Attainment Date and Determination of Attainment by Attainment Date for the Uinta Basin Ozone Nonattainment Area Under the 2015 Ozone Standard

Dear Ms. Brimmer:

On April 10, 2024, the Environmental Protection Agency ("EPA") published its proposed approval of the second one year extension to the attainment date and its determination of attainment by attainment date ("DAAD") for the Uinta Basin ozone nonattainment area ("UB") under the 2015 National Ambient Air Quality Standard ("NAAQS") for ozone.[1] The Utah Petroleum Association ("UPA") is pleased to have the opportunity to provide these comments on the proposal.

UPA is a statewide oil and gas trade association established in 1958, representing companies involved in all aspects of Utah's oil and gas industry, with many operating in the UB. UPA members range from independent producers to midstream and service providers, and to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains.

UPA supports EPA finalizing its approval of the second extension to the attainment date for the UB. UPA also supports EPA the finalizing the DAAD. The UB meets all statutory criteria for EPA to approve the extension and EPA identified no reasons to exercise its discretionary authority to deny the extension. Additionally, with the extension to the attainment date, air quality in the UB met the 2015 ozone NAAQS. Therefore, the UB met the requirements for EPA to finalize the DAAD, and, contrary to approving the second extension, EPA does not have discretion to withhold the DAAD. Upon completing this action, we request that EPA work closely with Utah and the Ute Indian Tribe to develop and approve a maintenance plan for the UB.

[1] *Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin Marginal Nonattainment Area Under the 2015 Ozone National Ambient Air Quality Standards*, 89 FR 25223 ("Proposal").

1. History and Regulatory Requirements

The Clean Air Act ("CAA") states, ''Upon application by any State, the Administrator may extend for 1 additional year'' the attainment date, provided that the state has complied with all requirements and commitments pertaining to the area in its applicable implementation plan and the area meets certain air quality criteria. "No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area."[2] The Utah Division of Air Quality ("UDAQ") and the Ute Indian Tribe ("Tribe") both requested the first extension to the attainment date upon the UB meeting the air quality criteria.[3] To be granted the first extension, the area's 4th highest daily maximum 8-hour average in the attainment year must be no greater than the level of that NAAQS.[4] EPA published a final approval of the first extension on October 7, 2022.[5]

UDAQ and the Ute Indian Tribe both requested the second extension to the attainment date after the UB met the air quality criteria.[6] To be granted the second extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be no greater than the level of that NAAQS.[7]

2. EPA should approve the extension because the UB meets all statutory and discretionary criteria.

For the UB, the 4th highest daily maximum 8-hour value, averaged over the original attainment year and the first extension year, are no greater than the level of that NAAQS. As shown in **Table 1** below, the average over the two year period is 69 parts per billion ("ppb"), less than the level of the NAAQS, 70 ppb:

Year		**4th highest daily maximum 8-hour value, ppb**
Original attainment year	2020	66
First extension year	2021	72
2-Year Average		69
Level of 2015 Ozone NAAQS		70

Table 1. UB Qualification for Second One-Year Extension

[2] CAA §181(a)(5)(B).
[3] Letter; Bryce C. Bird, Director, Utah Division of Air Quality, to Debra Thomas, Acting Regional Administrator, EPA Region 8; March 29, 2021. Also, letter; Shawn Chapose, Business Committee Chairman, to Debra Thomas, Acting Regional Administrator, EPA Region 8; May 25, 2021.
[4] 40 CFR 51.1307(a)(1).
[5] *Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards*, 87 FR 60897.
[6] Letter; Bryce C. Bird, Director, Utah Division of Air Quality, to Kathleen Becker, Regional Administrator, EPA Region 8; March 30, 2022. Also, letter; Shawn Chapose, Business Committee Chairman, to KC Becker, Regional Administrator, EPA Region 8; December 20, 2022.
[7] 40 CFR 51.1307(a)(2).

Although EPA has discretion to deny approval of this extension, EPA asserted, "we have found no compelling countervailing facts or circumstances that would cause the agency to exercise its discretion to deny the request notwithstanding the state's demonstration."[8] We agree with EPA's assertion of "no compelling countervailing facts or circumstances" because air quality in the UB meets the requirement for the extension and has steadily improved.

As part of its analysis, EPA conducted an Environmental Justice review for the counties in the UB, using the EJ Screen tool. EPA stated, "The results of our screening analysis did not indicate disproportionate exposure or burdens with respect to the non-ozone environmental indicators assessed in EJSCREEN for the 2-county (Duchesne and Uintah) area, or relative to the U.S. as a whole."[9] The attainment date extension should be granted because no adverse environmental justice concerns have been identified, and granting the extension will enhance environmental justice by allowing communities to produce safe, affordable, and sustainable energy. However, the criteria EPA used in its proposal are not appropriate for evaluating requests to extend ozone attainment dates.

We don't agree with EPA's proposal to use non-ozone environmental indicators to evaluate actions related only to ozone. EJSCREEN uses thirteen environmental indicators including the prevalence of lead paint, proximity to traffic, underground storage tanks, and wastewater discharges. Non-ozone indicators should not be a factor to approve or deny the extension request because the potential ozone mitigation measures that might be adopted after denying the request have little if any relevance to these other environmental indicators. EJSCREEN has an indicator that is specific to ozone, and EPA should focus on this indicator when evaluating the environmental justice aspects of a request to extend the ozone attainment date.

Environmental justice evaluations should be tailored to the pollutant at issue. Ozone is a regional pollutant. Neither the adverse impacts of ozone nor the benefits of emissions reductions are localized. Because ozone and its precursors travel across state lines and around the globe, ozone mitigation measures and potential State Implementation Plan (SIP) requirements generally have little impact on environmental justice at the census block group level utilized in EJSCREEN. The ozone benefits resulting from emission reduction measures generally occur in different census block groups than those where the emission reductions occur. EJSCREEN therefore has less relevance for evaluating secondary pollutants like ozone than for primary pollutants such as carbon monoxide. We recommend that EPA continue to develop policies for how it applies environmental justice factors to different types of environmental decisions.

We expect air quality in the UB to continue to improve based on new emission reductions already implemented but not prior to the proposed attainment year of 2022 and additional reductions on the horizon resulting from new final regulatory requirements.

Figure 1. UB Air Quality, 2013 through Winter 2024 below, shows a steady improvement in air quality from 2013 through 2024.[10] Although the 2024 data is based on a partial year and therefore is not a valid design value based on three full calendar years of data, for this non-attainment area with wintertime ozone, it illustrates what will almost certainly be better air quality in 2024 compared to 2023. Typically, the UB incurs no or only one or two ozone exceedances

[8] Proposal, p. 25226, middle column.
[9] Proposal, p. 25228, first column.
[10] EPA has not yet published certified data or official design values for 2023 or published certified data for 2024 as of this writing. Data for 2023 and 2024 came from daily data for each monitor on EPA's Air Data website as of May 1, 2024. See https://www.epa.gov/outdoor-air-quality-data/download-daily-data.

during the summertime, often caused by wildfires in Utah or other states. Thus, little likelihood exists for substantially worse air quality in the UB as the year 2024 progresses.

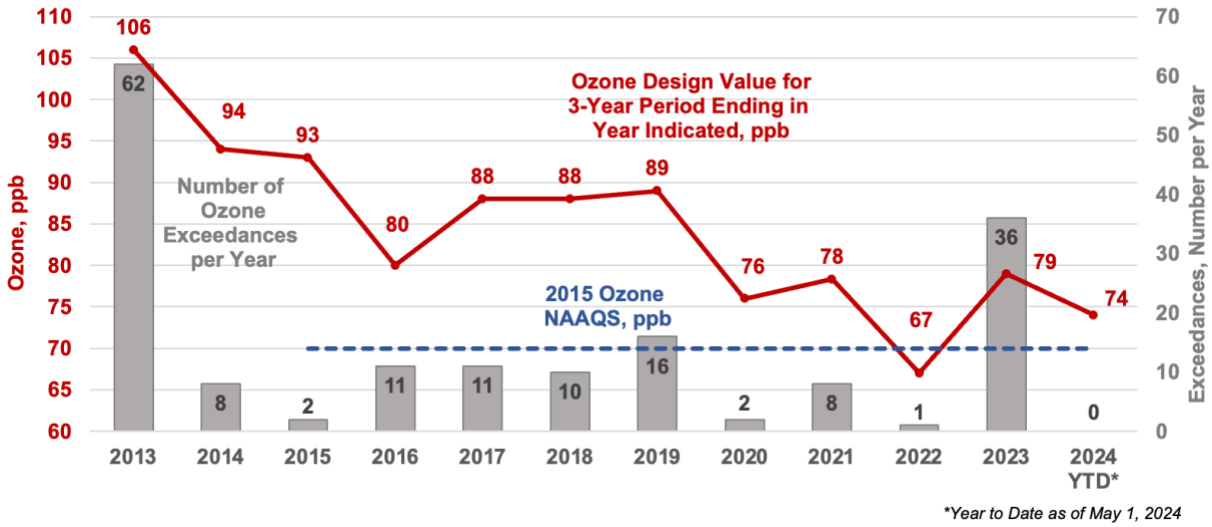

Figure 1. UB Air Quality, 2013 through Winter 2024

Moreover, the UB experienced a 25% reduction in ozone design value over the period 2013 to 2023 despite also experiencing a 90% increase in oil production over the same period. This air quality improvement illustrates the positive effect of required and voluntary emission reduction practices in the UB as described below.

The major factor in 2023 high winter ozone was the extraordinarily high amount of snow cover in the UB relative to other years. The UB experiences unusual elevated wintertime ozone. All but one 2023 exceedance of the 2015 ozone NAAQS in the UB occurred in winter, plus one exceedance day in late April. Winter exceedances occur only during periods of snow cover and inversions. Without snow cover to reflect the sunlight and increase its capacity to contribute to ozone formation, little ozone forms. **Figure 2. 2023 and 2024 Snow Water Equivalents in Duchesne Compared to Period of Record**, illustrates that the 2023 snow water equivalent[11] in Duchesne, for example, exceeded the 70th percentile for the entire season and at times exceeded the 90th percentile for the period of record, 1979 to 2023:[12]

[11] The National Weather Service defines "snow water equivalent" as "the depth of water that would cover the ground if the snow cover was in a liquid state."
[12] Graph obtained from UDSA Natural Resources Conservation Division at https://nwcc-apps.sc.egov.usda.gov/awdb/basin-plots/POR/WTEQ/assocHUCut_8/duchesne.html.

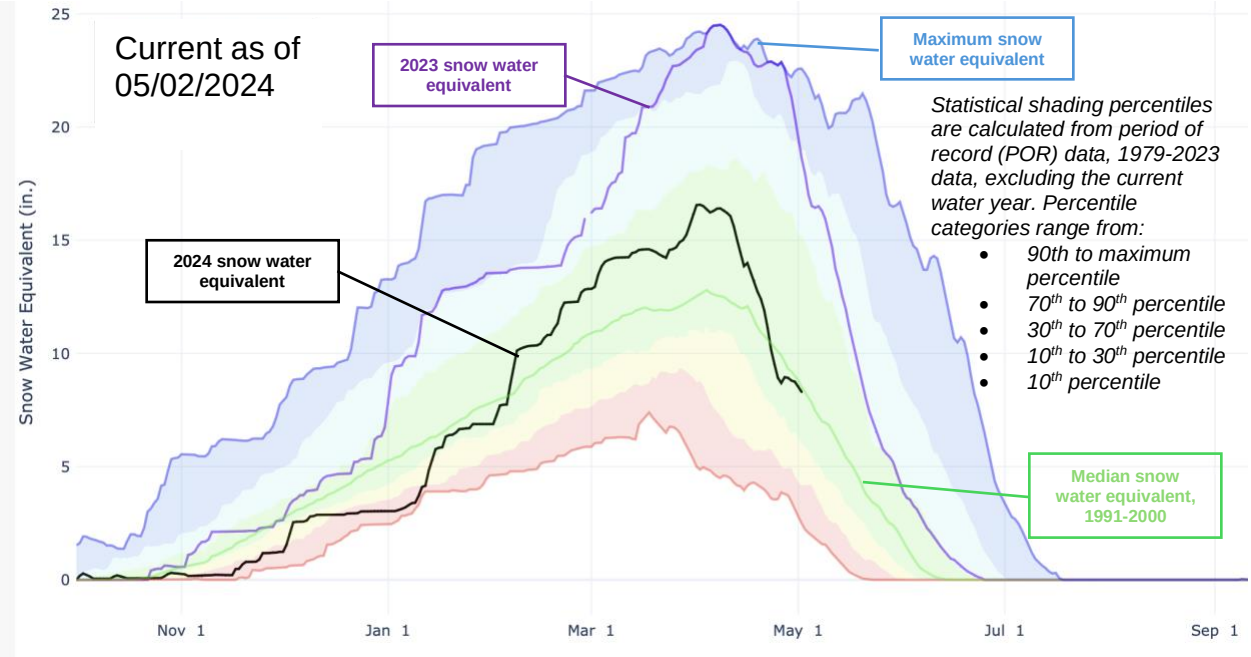

Figure 2. 2023 and 2024 Snow Water Equivalents in Duchesne Compared to Period of Record

We therefore conclude that the UB had an unusually high amount of snow in 2023, resulting in unusually high ozone formation during that winter.

Additionally, even though the 2024 snow water equivalent exceeded the historic median in late February when UB winter ozone often forms, the highest 8-hour ozone reading in the UB for the winter of 2024 was only 63 ppb at the Dinosaur monitor. No other monitor had a winter 2024 reading exceeding 60 ppb. The highest (policy relevant) 4th high 8-hour ozone reading in the UB for the winter of 2024 was 60 ppb at the Dinosaur monitor, far below the level of the standard. This indicates that emission reduction measures in the UB have a positive effect on air quality.

Although the UB experienced high ozone in the 2023 winter ozone season, a year not determinative for the second extension approval or the DAAD,[13] several other factors indicate the area has a solid path established to maintain attainment over the long term:

[13] See Proposal, p. 25226: "As part of this rulemaking, EPA acknowledges that preliminary ozone monitoring data indicate that in early 2023, the region experienced excessively high ozone values. While **this data was not determinative in proposing to grant the 2nd extended attainment date**, it does show that there continue to be periods of high ozone levels in the Basin. Addressing the continuing ozone problem will require continued efforts and steady commitments from state, local, federal, tribal, and industry partners to reduce precursor emissions in the region. The following sections (see i through iv below) provide additional information on reductions EPA expects will significantly mitigate exceedances in the area." [emphasis added]

- The peer-reviewed journal article "Winter Ozone Pollution in Utah's Uinta Basin is Attenuating" identifies a statistically significant decline in ozone concentrations attributed in part to more stringent pollution regulations and controls.[14]

- EPA recently finalized a Federal Implementation Plan ("FIP") for operations in the UB, for which most operators have now installed extensive required controls on existing operations in the Tribal portion of the UB. These controls were not in place for the winter ozone season of 2023 because the final rule was published in the Federal Register at the very end of 2022, just weeks prior to the start of the 2023 winter ozone season and not enough time for operators to install the capital investments needed for the FIP requirements prior to that ozone season.[15]

- EPA recently finalized its OOOOb/c regulations for controls on modified and existing sources.[16] Oil and gas sources that commenced construction, modification, or reconstruction after December 6, 2022, need to comply with the new set of stringent requirements set out in New Source Performance Standards ("NSPS") OOOOb.[17] Ultimately, after Utah adopts its regulations to address the Emissions Guidelines of OOOOc, existing sources on State lands will need to comply with these requirements as well. Either EPA or the Tribe will establish regulations for OOOOc implementation on the Tribal lands in Utah.

- The Bureau of Land Management recently finalized their Waste Prevention rule. Although BLM stated that they did not design this rule for air quality reasons, it will nonetheless result in reductions of emissions of volatile organic compounds.[18]

- Operators within the UB have used and continue to use several voluntary measures for reducing emissions within the nonattainment area including but not limited to employing new technology such as aerial surveys to detect emissions, increasing frequency of Leak Detection and Repair ("LDAR") surveys, reducing repair times for leaks detected as part of LDAR, replacing pneumatic powered pumps with solar powered pumps, and routing vapors to control devices even where not required. EPA acknowledged a letter from the Ute Indian Tribe outlining some of the voluntary measures employed by UB operators.[19]

Thus, the 2023 anomaly in air quality data should not compel EPA to disapprove the extension.

EPA has taken ample time to thoroughly consider this second extension and, in this case, has taken significant additional time for careful deliberation. Typically, EPA has proposed and finalized approvals to extension requests in a year or less from the attainment date.[20] We urge

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[14] *Winter Ozone Pollution in Utah's Uinta Basin is Attenuating*, Marc L. Mansfield and Seth N. Lyman, Atmosphere 2021, 12, 4, https://dx.doi.org/10.3390/atmos12010004.
[15] *Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah*, 87 FR 75334.
[16] *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, 89 FR 16820, "OOOOb/c Final Rule."
[17] OOOOb/c Final Rule, p. 16826.
[18] *Waste Prevention, Production Subject to Royalties, and Resource Conservation*, 89 FR 25378.
[19] Proposal p. 25227 and Letter; May 30, 2023; Ute Indian Tribe Business Committee Chairman, Julius T. Murray, III to U.S. EPA Region 8 Enforcement and Compliance Director, Suzanne Bohan.
[20] For the 2008 ozone standard, EPA proposed approval of initial extensions for eight Marginal nonattainment areas just one month after the attainment date (80 FR 51992) and finalized the

EPA to finalize this approval as soon as possible. Otherwise, operators in the UB and state regulators remain in a state of uncertainty. Considering that the attainment date schedule never changes as measured by years from initial designation,[21] should EPA delay its final decision and reverse the extension approval, air quality planners will lose valuable planning time to develop required SIP elements such as an attainment demonstration, even though operators will continue to implement all the emission reduction measures cited above and air quality will inevitably continue its improvement trend.

3. ***With the extension approval, the EPA should finalize the determination of attainment by attainment date because the UB meets the criteria.***

The only criteria for EPA to grant the DAAD is that the area met the NAAQS for the three-year calendar period prior to the attainment date. EPA's final approval of the second one-year extension will move the attainment date to August 3, 2023, with attainment based on the three full calendar years from 2020 through 2022. The air quality data shown below in **Table 2** illustrates that that the area met the 2015 ozone NAAQS, with a design value of 67 ppb, well below the 70 ppb ozone NAAQS:

4th High:	**Ozone, ppb**
2020	65
2021	72
2022	66
3-Year Average	67
Level of 2015 Ozone NAAQS	70

Table 2. Determination of Design Value for Attainment

EPA indicated in the proposal that the UB met the NAAQS.[22]

Upon approving the second one-year extension, EPA does not have discretion to deny the DAAD. The CAA indicates that EPA "shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by" the attainment date.[23] The CAA provides no other criteria for determining whether the area attained other than air quality as of the attainment date, and provides no discretion.

extension approvals just under 8.5 months later (81 FR 26697). Again, under the 2008 standard, EPA proposed approval of extensions for two Moderate nonattainment areas four months after the attainment date (83 FR 56784) and finalized approvals for two areas eight months later (84 FR 44238). (In between the proposed and the final rulemaking, the governor of Colorado withdrew the request for the extension for the Denver area, and EPA split the Sheboygan, Wisconsin area into two nonattainment areas based on the state's request.)

[21] See Table 1 in 40 CFR 51.1303.

[22] See Proposal, Table 1, p. 25224.

[23] CAA §179(c)(1).

4. Finalizing the DAAD does not re-designate the area to attainment.

Finalizing the DAAD does not re-designate the area to attainment. To be re-designated to attainment, the UB must meet several additional requirements, including (but not limited to), the following:[24]

- EPA must determine that the improvement in air quality is due to permanent and enforceable emission reductions.

- EPA must fully approve a maintenance plan including contingency measures to be triggered if the area falls back out of attainment.

- The initial maintenance plan must demonstrate that the area will continue to attain the standard for 10 years after EPA re-designates the area to attainment.[25]

Although this action does not constitute a redesignation, we encourage EPA to work closely with UDAQ and the Tribe to develop and approve a maintenance plan for the UB. This will serve to eliminate any future uncertainty for operators and the agencies.

5. Conclusion

As indicated in above-cited letters provided by both the state of Utah and the Ute Indian Tribe, both entities with jurisdictions within the UB support this proposal. And, as shown above, the UB meets all requirements for EPA to approve the second one-year extension and to finalize the DAAD. Significant new emission controls will continue to be implemented within the UB and should continue to drive emissions down and continue to drive improvements in air quality. Finally, finalizing these proposals does not constitute redesignation to attainment, which requires several additional measures.

Sincerely,

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[24] See Calcagni Memo, *Procedures for Processing Requests for Redesignating Areas to Attainment*, Joseph Calcagni to EPA Directors, September 4, 1992.
[25] Additionally, the maintenance plan must be updated near the end of the first 10-year period to demonstrate attainment for a second 10-year period.