

SETTLEMENT AGREEMENT

Plaintiffs-Appellants San Juan Citizens Alliance, Dine Care, Oil and Gas Accountability Project, Natural Resources Defense Council, Treciafaye Blancett, Don Schrieber, and the Counselor Chapter of the Navajo Nation (collectively, "Appellants") and Defendant-Appellee Bureau of Land Management, United States Department of the Interior ("BLM"), by and through their undersigned counsel of record, hereby agree to the following Stipulated Settlement Agreement ("Settlement Agreement") in order to resolve this action informally and avoid further litigation of the appeal, *San Juan Citizens Alliance et. al v. Salazar, et. al*, 10th Cir. No. 08-2286.

WHEREAS, Appellants (and other plaintiffs who have not appealed) filed an action challenging the BLM's record of decision adopting a revised Resource Management Plan for the New Mexico portion of the San Juan Basin (hereafter "San Juan Basin"). Appellants claimed that the BLM's approval of the December 2003 Farmington Resource Management Plan ("RMP") violated: the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), and Federal Land Policy and Management Act ("FLPMA"). In September 2008, the district court entered its decision ruling against Appellants on all counts, 2008, *San Juan Citizens Alliance, et al. v. Norton, et al.*, 586 F. Supp.2d 1270 (D. N.M. 2008). The Appellants filed an appeal in the United States Court of Appeals for the Tenth Circuit, *San Juan Citizens Alliance et al. v. Salazar, et. al*, 10th Cir. No. 08-2286. Other parties have intervened on behalf of the Defendants-Appellees: Southern Ute Indian Tribe, Williams Production Company, LLC, BP America Production Company, ConocoPhillips Company, and Patrick H. Lyons, Commissioner of Public Lands for the State of New Mexico.

WHEREAS, the Appellants and BLM agree that:

- (1) comprehensive planning of development is an important management tool;
- (2) BLM's Geographic Area NEPA and Comprehensive Strategy Instruction Memoranda – Director, BLM, Instruction Memorandum ("IM") No. 2003-152, Application for Permit to Drill (APD) - Process Improvement #1 - Comprehensive Strategies (April 14, 2003); Director, BLM, IM No. 2005-247, National Environmental Policy Act (NEPA) Compliance for Oil, Gas, and Geothermal Development (Sept. 30, 2005); Attachment 3 to IM No.



2005-247, Use of Multiple Well Environmental Assessments (EAs) or Environmental Impact Statements (EISs) for Oil, Gas, and Geothermal Development (Sept. 30, 2005) – provide helpful guidance for multiple well projects;

(3) minimizing new roads and infrastructure, and collaborative efforts to address existing infrastructure, are important management strategies for reducing the environmental impacts of future development;

(4) Collaborative approaches that bring stakeholders together to plan and design new drilling proposals to minimize new environmental impacts and address existing stresses have the potential to minimize the impacts of future development.

(5) BLM is committed to working with concerned public and private stakeholders to reduce emissions from fluid minerals operations under its authority, with the goal of improving regional air quality.

WHEREAS, the Appellants believe that:

(1) the legacy of past development has resulted in a road system that does not meet BLM Gold Book standards;

(2) the road system is so vast and un-catalogued that the accuracy of BLM's inventory in the December 2003 Farmington Resource Management Plan ("RMP") is uncertain;

(3) based on currently available data, BLM's road inventory may have significantly underestimated the actual extent of the road system;

(4) some important data are lacking on the location, status and condition of roads;

(5) there is a need for improvement with regard to the road system, including maintenance and upgrades;

(6) BLM's efforts with certain stakeholders to secure funding and recommendations to improve the road system have fallen short of bringing the road system into conformity with applicable standards and objectives, and durable improvements have proven challenging to achieve; and

(7) air quality is a significant public health and visibility concern in the Four Corners region, and fluid minerals development on federal leases in the Farmington Field contributes to air quality emissions.

WHEREAS, the Appellants and BLM agree that it is appropriate and in the interest of the public, to resolve Appellants' claims in the above-referenced appeal on the terms set forth below, and that this Settlement



Agreement was negotiated in good faith and constitutes a settlement of all Appellants' claims in the above-referenced case.

NOW, THEREFORE, without admission of any question of fact or law, the Appellants and BLM (the "Settling Parties") mutually agree as follows:

1. To the extent consistent with available appropriations and governing law, BLM will:

(A) Hold meetings annually, in northern New Mexico, with interested parties to discuss proposed oil and gas development and related BLM planning efforts in the San Juan Basin;

(B) Hold meetings twice yearly with representatives from the Counselor Chapter (and with representatives from the other "District 19" Chapters – Nageezi, Huerfano, and Ojo Encino – who choose to attend) to discuss any known oil and gas development and related BLM-planning efforts, as well as proposals involving land treatments, grazing, and other activities of community concern;

(C) During the NEPA analysis of new lease sales in the FFO Project Area, BLM will take into consideration the impacts to cultural, historical, wildlife and other resources and BLM will require a plan of development as a lease stipulation on new leases for avoiding, minimizing, and mitigating the impacts to such resources (*e.g.*, in such circumstances where there are wildlife migratory corridors, endangered species habitat, topographic concerns, and/or cultural or historic properties);

(D) At the request of interested persons, and in a manner determined by BLM to be reasonable and practical, BLM will ensure their opportunity to participate in scheduled on-site visits to proposed projects in the FFO Project Area to discuss site specific impacts and mitigation to cultural resources – BLM is committed to allowing participation of the public in on-site visits; and

(E) Fund a BLM Navajo Coordinator position to be filled at the Farmington Field Office, subject to available funding. The job qualifications will

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provide that the Coordinator be bilingual in English and Navajo and have some knowledge of the lands and resource issues present in the Field Office. BLM will contact the Navajo Nation and Eastern Navajo Chapters to notify them in writing of the on-line posting of the notice for hiring of the Coordinator position. The Coordinator shall report to the Farmington Field Office.

2. Appellants agree to provide BLM with relevant information and data that they have regarding religious or other traditional sites – at the meetings referenced in Section 1(B) and at other appropriate times – to better assist BLM’s avoidance policy and site-specific decisionmaking.

3. To the extent consistent with available appropriations and governing law, BLM will:

(A) Develop an on-line, publicly accessible system for the Farmington Field Office Project Area that will include a form of BLM’s Geographic Information System (“GIS”) resource data (*e.g.*, known land ownership, roads, rights-of-way, pipelines, grazing allotment boundaries, Special Management Area boundaries, Chapter boundaries, Areas of Critical Environmental Concern (“ACECs”), existing wells and lease locations) to assist the public in identifying proposed oil and gas projects, and, in addition, provide, consistent with the Freedom of Information Act (FOIA), either a hard or electronic copy of geographic-specific and/or interest-specific information that has been filed in a given Chapter, ACEC or other BLM land designation area (*e.g.*, APDs that have been filed) to a person, in response to a specific request;

(B) Electronically link the Farmington Field Office’s on-line NEPA log and Notices of Staking (“NOSs”) filed with the Farmington Field Office to the on-line GIS map which will help in showing the location of proposed projects;

(C) Post on-line the place and time of BLM’s on-site visits to proposed drill sites in the FFO Project Area;

(D) (1). To the greatest extent practicable, for projects proposed for the Farmington Field Office Project Area, analyze the components of a multiple-

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well project in a single environmental document in lieu of separate documents for each application for permit to drill when:

- a. An applicant or applicants file applications for permits to drill multiple wells – on the same lease or adjacent leases or into the same target geology – pursuant to their annual drilling plans submitted to BLM;
- b. BLM has stipulated within the lease that a Plan of Development be performed prior to approval of any APD; or
- c. A Plan of Development is filed for an oil and gas unitized area (i.e., an area for which there is a unit agreement) that has environmentally sensitive resources – in that case, BLM will evaluate all oil and gas surface disturbing activities proposed in the Plan of Development.

(2). As a general matter, multiple-well environmental analysis will not be practicable to perform when:

- a. BLM does not have multiple-well applications in a geographic area, *i.e.* during the course of a year multiple-well applications are not received in a geographic area or the information is not reflected in a drilling plan submitted by the relevant oil and gas operators;
- b. There is insufficient exploratory well information in the area to provide the necessary geological information to warrant further development during the calendar year or additional development is not reflected in annual drilling plans;
- c. An APD involves twinning or directional or horizontal drilling from existing well pad locations; or
- d. There are otherwise not a sufficient number of wells located within the same geographic area or target geology to perform a multiple-well NEPA analysis.

(E) Issue a notification to lessees and/or operators in the Farmington Field Office Project Area requiring them to submit a yearly drilling plan to BLM if they propose to drill more than ten wells per year, to facilitate BLM's analysis of similar applications for permits to drill together as a group.

(F) Consistent with the framework of the RMP, BLM will consider the applicability of the following measures to reduce environmental impacts in the Farmington Field Office Project Area:

- Directional drilling and twinning to minimize the number of separate roads and pads;



- Centralized water storage and delivery systems;
- Centralized fracturing operations;
- Off-site centralizing of production and use of liquids gathering systems; and
- Telemetry and well automation.

4. To the extent consistent with available appropriations and governing law, BLM will, for the Farmington Field Office Project Area:

(A) Explore the feasibility of including internet-searchable penalty information (*i.e.*, instances of non-compliance (“INCs”)) in the GIS resource data that BLM proposes to publish on-line; and

(B) In response to a request from Appellants, provide BLM’s annual Inspection Strategy plan for the coming year.

5. In regard to the Farmington Field Office Project Area, BLM will, to the extent consistent with available appropriations and governing law:

(A) Continue to participate actively in the Four Corners Air Quality Group (formerly known as the Four Corners Air Quality Task Force);

(B) Adopt as conditions of approval in APDs any emission and air quality mitigation measures recommended by the Four Corners Air Quality Task Force or the Four Corners Air Quality Group and adopted by the New Mexico Environment Department (“NMED”);

(C) Conduct emission inspections, including: (1) utilizing infra-red sensors to detect leaks; (2) validating the 2 gram/horsepower hour engine certification labels on the new wellhead compression engines that should bear them; (3) inspecting venting/pneumatic devices; and (4) checking for equipment failures;

(D) Work cooperatively with the Four Corners Air Quality Group to consider implementing the following as best management practices:

- Fugitive dust control and reduction;

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- Cleaner diesel power Tier 4 engines or natural gas power, or address this elsewhere as part of a best available control technology (“BACT”);
- Green completions, including capture of product that would otherwise be vented or flared consistent with the EPA Natural Gas Star program;
- Solar powered production facilities and telemetry;
- Volatile Organic Compound (“VOC”) capture and vapor recovery units;
- Optimal glycol circulation and flash tank separators;
- Nitrogen Oxide (“NOx”), Sulphur Oxide (“SOx”), Carbon Monoxide (“CO”), and Carbon Dioxide (“CO₂”) controls for compressor engines;
- Selective catalytic reduction;
- Replacement of wet seals with dry seals in centrifugal compressors;
- Reduce emissions from compressor rod packing systems;
- Pneumatic devices for emissions control;
- Installing plunger lift systems and automated systems to reduce methane emissions;
- Directed inspection and maintenance (DI&M) program to reduce fugitive gas leaks using leak detection and measurement; and
- Air quality monitoring technology improvements to ensure collection of accurate emissions data.

(E) Organize a green technology symposium – as a one-time event – with industry, state agencies, and the public to examine available emissions-limiting technology;

(F) Explore in conjunction with NMED and the Four Corners Air Quality Group the feasibility of requiring the best available control technology for new and replacement wellhead compression engines; any retrofitting of existing engines would have to be evaluated by NMED; and

(G) Provide, at the request of Appellants, BLM’s existing inventory of plugged and abandoned wells on land managed by the BLM in the planning area of the FFO.

6. Appellants agree to move for dismissal of this appeal on or before April 26, 2010. The Settling Parties agree that dismissal by the Tenth Circuit shall



be with prejudice as to all claims in the suit and that each party shall bear its own costs and fees.

7. The provisions in Sections 1 through 5 of this Settlement Agreement shall take effect upon dismissal by the Tenth Circuit of this appeal. The Appellants and BLM agree that, to the extent such provisions are consistent with governing law, the provisions in Sections 1 through 5 shall remain in effect until the RMP is amended or revised in relevant part.

8. The Settling Parties agree that they will first attempt to resolve any disputes related to compliance with this Settlement Agreement among themselves before invoking the jurisdiction of a court to resolve compliance disputes. The Settling Parties agree to provide a minimum of 30 days written notice of any such disagreement to opposing counsel prior to seeking relief from a court, and both parties must make a good faith effort to resolve the dispute informally within 30 days thereafter. The Settling Parties agree that review of any action taken by BLM related to this Settlement Agreement would occur in a new civil action and would be governed by the Administrative Procedure Act, 5 U.S.C. 551 et seq. The Settling Parties agree not to invoke the contempt powers of the court in aid of enforcement of this Settlement Agreement.

9. No provision of this Settlement Agreement shall be interpreted as a commitment or requirement that BLM take actions in contravention of FLPMA, NEPA, NHPA, or any other law or regulation, substantive or procedural. This Settlement Agreement shall be subject to changes in governing law, and nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a commitment or requirement that BLM obligate or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other applicable law regarding the expenditure of funds.

10. Nothing in this Settlement Agreement, and no actions taken by any Party hereto with regard to this Settlement Agreement, shall be construed as an admission by any Party of liability as to any fact, claim, or defense in this lawsuit. Nothing in this Settlement Agreement shall be utilized for the purpose of precedent or argument in any other case. No action taken by any Party in effectuating this Settlement Agreement may be used as an

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admission of liability in any respect in any future or pending demand, administrative proceeding, litigation, or similar action involving any of the Parties.

11. The undersigned representatives of the Settling Parties certify that they are fully-authorized by the respective Settling Parties whom they represent to enter into the terms and conditions of this stipulation and to legally bind such Parties to it.

12. No supplement, modification, or amendment of this Settlement Agreement shall be binding unless executed in writing by all of the Settling Parties.

13. This Settlement Agreement represents the entirety of the Settling Parties' commitments with regard to settlement.

14. For purposes of expediting execution of this Settlement Agreement, it may be signed in separate counterparts, which, when both have so signed, shall be deemed a single agreement.

IT IS SO STIPULATED.

FOR APPELLANTS

Dated this 22nd day of April, 2010.



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FOR FEDERAL APPELLEES

Dated this 22nd day of April, 2010.



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