



Wyoming Outdoor Council

wyomingoutdoorcouncil.org

444 East 800 North
Logan, UT 84321

t & f: 435.752.2111

e: bruce@wyomingoutdoorcouncil.org

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BY: LB

Mr. Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82003

February 29, 2012

**Re: Protest of the Sale of Certain Parcels Proposed for Sale at the BLM's May 2012
Competitive Oil and Gas Lease Sale**

Dear Mr. Simpson:

In accordance with 43 CFR §§ 4.450-2 and 3120.1-3, the Wyoming Outdoor Council protests the following parcels being offered at the Bureau of Land Management (BLM) May 1, 2012 competitive oil and natural gas lease sale. We protest the sale of lease parcels WY-1205-041, -049, -050, -051, -052, -053, -141, -147, -148, -149, -150, and -151 which are located in the Rawlins and Kemmerer Field Offices.

I. STATEMENT OF INTEREST.

The Wyoming Outdoor Council (WOC) is a non-profit conservation organization with approximately 1,300 members in Wyoming, other states, and abroad. The Wyoming Outdoor Council is dedicated to the protection and enhancement of Wyoming's environment, communities, and quality of life. It has members that live in the Rawlins and Kemmerer Field Offices where the protested parcels are located. Wyoming Outdoor Council members utilize land and water resources within and near these areas for hiking, fishing, camping, recreational, and aesthetic purposes. The Wyoming Outdoor Council is actively involved in BLM oil and gas activities throughout Wyoming and participates in all aspects of BLM oil and gas projects by involving its staff and members in submitting comments and attending public meetings. The Wyoming Outdoor Council's long-standing commitment to environmentally sound oil and gas leasing and development throughout Wyoming stems over forty-five years. The Wyoming Outdoor Council submitted comments on the environmental assessment (EA) prepared for the May 2012 competitive oil and gas lease sale. Consequently, the Wyoming Outdoor Council and its members would be adversely affected by the sale of the lease parcels at issue here, and it has an interest in this lease sale.

II. AT RISK: WILDLIFE, OPEN SPACES, AND CLEAN AIR AND WATER.

Oil and gas activities on the public lands have escalated in the past several years. BLM is approving record numbers of large oil and gas development projects in Wyoming. Many of these lands provide critical habitat for a number of species of wildlife, ranging from mule deer to imperiled species, such as Greater sage-grouse. They serve as quiet, serene places of natural beauty and solitude, and as such, they provide excellent recreational opportunities for hiking, birding, wildlife viewing, hunting, fishing, backpacking, and enjoyment of open spaces.

Explosive oil and gas development on many of these lands threatens all of the above resources, which BLM has a mandatory duty to protect for "multiple use." Oil and gas development has already caused, and will continue to cause, fragmented habitat and surface disturbances through well pad construction, oil and gas well rigs, increased vehicular traffic, miles of roads, pipelines and power lines, and noise from generators and compressor stations. All of these associated activities serve to disrupt habitat, destroy nesting and brooding grounds, and disturb wildlife. These activities can significantly impact elk, mule deer, pronghorn antelope, and sage-grouse, as well as many other resident species, and impair natural characteristics, such as opportunities for solitude, and opportunities for primitive or unconfined recreation. Many of these lands serve as crucial winter range and parturition areas for elk, pronghorn antelope, and mule deer. Rare species find some of their last secure refuges on these lands.

While the sale of a lease does not necessarily create immediate disturbances, as the BLM understands, if a lease is not subject to a "No Surface Occupancy" stipulation, the lessee receives contractually-enforceable rights and the agency makes an irreversible and irretrievable commitment of resources. 43 C.F.R. § 3101.1-2; *Pennaco Energy, Inc. v. Department of the Interior*, 377 F.3d 1147 (10th Cir. 2004). In other words, once a lease is sold, the ability to mitigate impacts is reduced, putting sensitive resources at risk of significant and potentially unacceptable harm. Because it represents an irreversible and irretrievable commitment of resources, the leasing stage is extremely critical. Given this level of importance, the Wyoming Outdoor Council is filing this protest and requests that the BLM remove the challenged parcels from the upcoming sale.

III. BASIS OF PROTEST.

A. Kemmerer Area Parcels.

The basis of our protest of the parcels located in the Kemmerer Field Office parcels 141, -147, -148, -149, -150, and -151, is that they are located in an area where pursuant to the terms of the Kemmerer Resource Management Plan (RMP) activities in this area must maintain large, contiguous blocks of sagebrush habitat, but such protections are lacking as to the protested parcels. Consequently, the terms of the Kemmerer RMP would not be met if these parcels are sold, which is a violation of Federal law. *See* 43 U.S.C. § 1732(a) (providing that management of the public lands must be "in accordance with the land use plans" developed by the Secretary of the Interior); 43 C.F.R. § 1610.5-3(a) (providing that resource management authorizations and actions "shall conform to the approved plan.").

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The Kemmerer RMP provides that BLM will, "Manage large, contiguous blocks of federal land by maintaining or enhancing sagebrush, aspen, and mountain shrub communities." Record of Decision and Approved Kemmerer Resource Management Plan ("Kemmerer ROD") at 2-34 (Decision # 4015). Some or all of parcels -141, -147, -148, -149, -150, and -151 are located in the area mapped as "contiguous vegetation blocks" that are bound by Decision # 4015. Kemmerer ROD at Map 8. In addition to providing that BLM will maintain or enhance the large, contiguous blocks of sagebrush communities found in the area where the protested parcels are located, Decision # 4015 also provides that BLM will, "Maintain connections between these community types by managing projects to minimize construction disturbance to the smallest possible acreage with considerations for engineering and feasibility." Kemmerer ROD at 2-34.

These decisions are objectives of the Kemmerer RMP. They are tied to objective BR: 1.1. Kemmerer ROD at 2-30, 2-34. Objective BR:1.1 provides that BLM will, "Manage or restore habitat on BLM-administered lands within the planning area to facilitate the conservation, recovery and maintenance of populations of [various plant species] consistent with appropriate local, state, and federal management plans." Pursuant to the terms of the Kemmerer RMP, an objective, as opposed to a goal, is "A description of a desired condition for a resource. Objectives can be quantified and measured and, where possible, have established timeframes for achievement."¹ Proposed Resource Management Plan and Final Environmental Impact Statement for the Kemmerer Field Office Planning Area at Glossary-10. Accordingly, as objectives of the Kemmerer RMP, the referenced provisions are binding obligations; they are a quantified statement (as shown by the areas mapped in Map 8) of the desired condition for a resource, in this case sagebrush habitats.

And that desired condition is to ensure that "large, contiguous blocks" of sagebrush habitat, as mapped (quantified) in Map 8, are maintained or enhanced. BLM cannot allow for potential degradation of sagebrush habitat in the mapped areas, it must *maintain or enhance* the sagebrush habitats in these areas. Moreover, BLM has the additional obligation of ensuring that it "maintain[s] connections between these community types by managing projects to minimize construction disturbance to the smallest possible acreage," considering engineering requirements and feasibility.

The protested parcels, as stipulated, do not meet these requirements. There is no assurance that the "large, contiguous blocks" of sagebrush habitat that occur on and in the vicinity of these lease parcels, as shown on Map 8, will be maintained or enhanced. There is also no assurance that construction disturbance will be confined to the "smallest possible acreage" so as to minimize impacts to these valuable habitats and maintain their connectivity. No stipulation currently attached to these parcels so provides. Generally speaking, the following stipulations are attached to the protested lease parcels:

¹ In contrast, a goal is "A broad statement of a desired outcome. Goals usually are not quantifiable and may not have established timeframes for achievement." Proposed Resource Management Plan and Final Environmental Impact Statement for the Kemmerer Field Office Planning Area at Glossary-5. Thus it is clear that objectives are more rigorous statements of required management outcomes and prescriptions than goals.

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Lease Parcel	Timing Limitation Stipulations Protecting Sage-Grouse	Controlled Surface Use Stipulation Protecting Sage Grouse	Timing Limitation Stipulation Protecting Raptors	Controlled Surface Use Stipulation Protecting Listed or Sensitive Species	Controlled Surface Use Stipulation Protecting Class I or II Visual Resources	Controlled Surface Use Stipulation Protecting Historical Trails	Timing Limitation Stipulation Protecting Big Game Crucial Winter Range	Controlled Surface Use Stipulation Protecting Historical Trail Viewsheds
-141	X	X	X	X				
-147	X		X	X				
-148	X			X	X			
-149	X			X	X	X		X
-150	X	X		X				
-151				X		X	X	

To start with, timing limitation stipulations (TLS) do not, by definition, provide assurance that “large, contiguous blocks” of sagebrush habitat will be maintained or enhanced. Nor do they provide assurance that the impacts of construction will be confined to “the smallest possible acreage.” All they do is limit the time during which activities can occur; they in no way limit the area in which impacts can occur or necessarily the overall magnitude of the impacts. The TLS for sage-grouse provides that activities will not take place between March 15 and July 15 in sage-grouse nesting areas. The TLS for raptors prohibits well construction activities between February 1 and July 31. And the TLS for big game only limits activities in the winter, between November 15 and April 30. Activities are not regulated the remainder of the year, and activities during unconstrained portions of the year could lead to the fragmentation of large, contiguous blocks of sagebrush habitat or impacts to large acreages of this habitat, far in excess of any “smallest possible acreage.” The TLS do not prohibit or even attempt to reduce such impacts to sagebrush habitats, impacts which the Kemmerer RMP does not permit.

The controlled surface use (CSU) stipulations have the potential to protect sagebrush habitats to a greater degree than the TLS, but they too are insufficient to meet the restrictions specified in the Kemmerer RMP. Limiting surface occupancy or use within one-quarter mile of a sage-grouse lek is far from enough to ensure that “large, contiguous blocks” of sagebrush habitat are maintained or enhanced in accordance with the provisions in the Kemmerer RMP. At most this stipulation will ensure a sprinkling of small protected areas, not “large, contiguous blocks,” nor will maintenance of “connections between these community types” be assured if only point locations are protected. The CSU for listed and sensitive species provides no assurance that any particular area, large or otherwise, will be protected. The objective of this stipulation is to prevent listing, not necessarily the protection of large, contiguous habitats or minimization of construction activities if they do not directly cause jeopardy to a listed or sensitive species or destruction or adverse modification of an officially recognized or proposed critical habitat, conditions which are highly unlikely to have any application or relevance to sagebrush. The CSUs protecting Class I or II visual resources or the viewshed of a historical trail may have the greatest potential to protect “large, contiguous habitats” and ensure that construction is minimized, but they do not assure this is the case. These stipulations can essentially be waived or modified if “the operator and surface management agency arrive at an acceptable plan for mitigation of anticipated impacts.” In many if not all cases this stipulation will probably be met by screening construction activities or through other actions that do not necessarily ensure protection of “large, contiguous blocks” of sagebrush habitat or maintenance of connectivity

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within the sagebrush habitat by “managing projects to minimize construction disturbance to the smallest possible acreage.” And just as with the sage-grouse CSU, limiting disturbance within one-quarter mile of a historical trail, as applies to parcels -149 and -151, is far from enough to ensure protection of large, contiguous habitats or minimization of construction activities; this stipulation will lead to narrow linear strips of protected areas on either side of the trail, which is not the protection of “large, contiguous blocks.” And again, even these protections can be waived (disturbance “*may* be restricted or prohibited”) if an acceptable mitigation plan is devised allowing disturbance to go forward within the corridor, a provision which even if it arguably allows for protection of the historic trails provides *no* assurance that large, contiguous blocks of sagebrush habitat will be maintained or enhanced or that construction will only occur on the smallest possible acreage.

Since none of the existing stipulations assure protection of large, contiguous blocks of sagebrush habitat or the minimization of construction activities to the smallest possible acreage, the protested parcels cannot be leased as currently configured because to do so would not be in accordance with the Kemmerer RMP, and would therefore violate the requirements of the Federal Land Policy and Management Act and BLM’s supporting planning regulations. In an effort to provide suggestions for BLM to avoid these problems, we direct BLM to the proposed Master Leasing Plan (MLP) for the Beaver Rim Area in the Lander Field Office. Under the terms of that MLP, leasing could not occur in the Beaver Rim area unless no more than 5 percent surface disturbance within a township occurred, co-location of new disturbance will be required, and new disturbances must be at least 1.2 miles from existing disturbance. Draft Resource Management Plan and Environmental Impact Statement for the Lander Field Office Planning Area at 81. If stipulations such as this were attached to the Kemmerer lease parcels, the BLM could ensure it meets its obligation to protect large, contiguous sagebrush habitats and minimizes construction impacts to this vegetation type, and thus meet its legal obligations to not approve activities that are contrary to an approved land use plan. We urge the BLM to take steps to appropriately stipulate the protested parcels before it offers them for sale so as to remain in compliance with Federal law.

B. Adobe Town Area Parcels.

Parcels -045, -049, -050, -051, -052, and -053 are located in the Adobe Town area of the Rawlins Field Office. We protest the sale of these parcels because to offer them, at least as currently stipulated, would be contrary to the policy for oil development in this area evidenced in BLM’s recently released 2012 Oil Shale and Tar Sands Draft Programmatic Environmental Impact Statement (“Oil Shale EIS”). Sale of these parcels would also not be in accordance with the settlement the BLM entered into in the lawsuit challenging BLM’s approval of the 2008 Rawlins RMP.

1. *Sale of the Protested Parcels is not in Accordance with the Policy Stated in the Oil Shale EIS.*

Under the provisions of BLM’s tentative preferred alternative in the Oil Shale EIS, alternative 2(b), the Adobe Town Very Rare or Uncommon Area, as recognized by the State of

Wyoming, would not be available for oil shale leasing. As stated in the Executive Summary, oil shale leasing would be excluded in:

The whole of the Adobe Town “Very Rare or Uncommon” area, as designated by the Wyoming Environment Quality Council on April 10, 2008 (180,910 acres total; 167,517 acres of public land, of which 10,920 acres are already a BLM-Wilderness Study Area [WSA]);

Oil Shale EIS at ES-6. Lands with wilderness characteristics would also be excluded from leasing pursuant to alternative 2(b). *Id.*

As noted in the Oil Shale EIS, the Adobe Town Very Rare or Uncommon area is “located within a much larger area of land that has been identified as having wilderness characteristics.” Oil Shale EIS at 3-34. *See also id.* at 3-37 (discussing the Monument Valley Special Management Area that also occurs in this area). Tables 3.1.1-7 and 3.1.1-8 show that there are thousands of acres of lands with wilderness characteristics in this area, contained in the Adobe Town Wilderness Study Area, and the Kinney Rim North, Kinney Rim South, and Skull Creek Lands with Wilderness Characteristics areas, and many of these lands overlap with oil shale resources. Oil Shale EIS at 3-36, 3-39. These types of lands would not be available for leasing under the terms of the Oil Shale EIS.

Given that the Oil Shale EIS would exclude the entire Adobe Town Very Rare or Uncommon Area from oil shale leasing, as well as lands with wilderness characteristics in that area, we see no justification to then turnaround and allow this area to be leased for conventional oil and gas development, as BLM is proposing for its May 2012 oil and gas lease sale. The environmental impacts and issues of oil shale leasing and conventional oil and gas leasing are not sufficiently different to allow for such differential treatment. Consequently we protest the sale of lease parcels -045, -049, -050, -051, -052, and -053 because to do so would be contrary to the policy evidenced in the Oil Shale EIS. The BLM should ensure consistency in its leasing decision-making, whether for oil shale or conventional oil and gas. The protested parcels are located in the Adobe Town Very Rare or Uncommon Area or in lands with wilderness characteristics, as recognized in the Oil Shale EIS, and thus should not be available for leasing.

2. *Sale of the Protested Parcels is Not in Accordance with the Settlement in the Rawlins RMP Litigation.*

Attached as Exhibit 1 is the settlement that was reached between the BLM and the Wyoming Outdoor Council, as well as the other plaintiffs, in the lawsuit that challenged BLM’s approval of the Rawlins RMP in 2008. The settlement was approved by the court and made final on February 15, 2012. Thus, its provisions are binding.

Under the terms of the settlement the BLM agrees to take several actions relative to recognizing, if not protecting, wilderness qualities in the Adobe Town area. Exhibit 1 ¶¶ 5-7. The BLM will consider designating the Adobe Town Dispersed Recreation Area as a visual resource management (VRM) class II area. *Id.* ¶ 5. VRM Class II designations are highly protective of the visual qualities in an area. BLM will also consider designating VRM Class I

areas, the mostly highly protective classification, beyond the boundaries of the Adobe Town Wilderness Study Area (WSA) into other areas in the Adobe Town Area. *Id.* ¶ 6. Furthermore, the BLM will abide by its Instruction Memorandum 2011-154, which governs inventory of wilderness characteristics. *Id.* ¶ 7. Among other things, this will require BLM to maintain an inventory of wilderness values, consider wilderness characteristics when making land use planning and project level decisions, and analyze the potential impact of projects on wilderness characteristics in the Adobe Town area (as well as other areas in the Rawlins Field Office). *Id.*

The implications of these provisions are that BLM has committed to more fully consider and evaluate, and possibly protect, wilderness values in the Adobe Town area. It is possible that a new management framework will be put in place and that protection of the wilderness qualities of the Adobe Town area (besides just those in the Adobe Town WSA) will become the applicable management direction for this area. The protested parcels as currently stipulated make no provision for ensuring the wilderness qualities of these parcels are protected, which is contrary to the settlement the BLM has agreed to with respect to the Rawlins RMP litigation. The vast majority of the current stipulations seek to protect wildlife not wilderness qualities, and the settlement agreement is not limited to just the Adobe Town Dispersed Recreation Use Area, which receives some recognition in the stipulations. Accordingly, the protested parcels should not be sold at the May 2012 lease sale as currently configured, and they are protested for that reason.

IV. CONCLUSION.

We appreciate your consideration of the issues raised in this protest and trust that upon further consideration parcels WY-1205-041, -049, -050, -051, -052, -053, -141, -147, -148, -149, -150, and -151 will be removed from the May 1, 2012 competitive oil and gas lease sale.

Sincerely,



Bruce Pendery

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Natural Resources Defense Council,)
The Wilderness Society,)
Biodiversity Conservation Alliance,)
Wyoming Outdoor Council, and)
Wyoming Wilderness Association,)

Plaintiffs,)

v.)

United States Bureau of Land Management,)
and Ken Salazar, in his official capacity as)
Secretary of the Interior,)

Defendants,)

State of Wyoming, BP American)
Production Co., Burlington Resources)
Oil & Gas Co. LP, Devon Energy Corp.,)
Anadarko Petroleum Corp., and Samson)
Resources Co.,)

Intervenor-Defendants)

Case No. 1:10-cv-00734 (BAH)

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

SETTLEMENT AGREEMENT

WHEREAS, on December 24, 2008, the U.S. Bureau of Land Management (“BLM”) approved the Rawlins Resource Management Plan (“Rawlins RMP”), which provides direction for management of all resources on BLM-administered land in the Rawlins RMP Planning Area;

WHEREAS, on May 6, 2010, Plaintiffs Natural Resources Defense Council, The Wilderness Society, Biodiversity Conservation Alliance, Wyoming Outdoor Council, and Wyoming Wilderness Association (collectively “Plaintiffs”) filed a Complaint for declaratory and injunctive relief against Ken Salazar, in his official capacity as Secretary of the Department of the Interior, and the U.S. Bureau of Land Management (collectively “Defendants”);

- Exhibit 1 -

WHEREAS, Plaintiffs allege that the approval of the Rawlins RMP and actions taken to implement that plan violated the National Environmental Policy Act (“NEPA”), and the Federal Land Policy and Management Act (“FLPMA”);

WHEREAS, on October 5, 2010, the State of Wyoming, Burlington Resources Oil & Gas Company LP, Devon Energy Corporation, Anadarko Petroleum Corporation, BP American Production Company, and Samson Resources Company were granted status as Intervenors in this action; and

WHEREAS, Defendants and Plaintiffs (the “Settling Parties”), through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs’ claims, have reached a settlement in this action;

NOW, THEREFORE, THE SETTLING PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Defendants commit to complete the ongoing Continental Divide – Creston Natural Gas Project photochemical grid modeling as funding allows, where the 12- and 36-kilometer domains encompass the entire Rawlins Field Office planning area in the model’s analysis and prediction of cumulative air quality impacts from oil and gas development, within two years of the execution of this agreement.
2. For two years from the date of executing this agreement, Defendants commit to maintaining BLM-sponsored air quality monitoring stations as funding allows. BLM commits to seeking additional funding for installation of additional stations, as determined necessary and appropriate by the BLM and the 3-State monitoring group, within two years of the execution of this agreement. The 3-State monitoring group is comprised of the states of Utah, Wyoming, and Colorado, and

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the BLM is engaged in ongoing consultation with EPA Region 8 concerning the work of the monitoring group.

3. For two years from the date of executing this agreement, Defendants will require all BLM-approved energy development projects in the Rawlins RMP planning area to comply with all air quality regulations, standards, and additional requirements, as determined applicable by the Wyoming Department of Environmental Quality (“WDEQ”).
4. In the course of the programmatic sage-grouse RMP amendment being conducted in Wyoming (*see* 75 FR 30054-30055, May 28, 2010), the BLM commits to consider, at a minimum, the following proposed management actions in the range of reasonable alternatives:
 - a. Within Cores, prohibition of surface disturbing activity or surface occupancy within 2 miles of leks.
 - b. Within Cores, application of timing stipulations within 3 miles of active leks.
 - c. Within Cores, no authorization for new transmission corridors within 2 miles of active leks.
 - d. Within Cores, no exceptions for drilling/production/exploration units or project area boundaries when applying Core Area protections.
 - e. Outside Cores, no surface occupancy within 0.6 mile of active leks.
5. Defendants commit to consider designation of the Adobe Town Dispersed Recreation Area as Visual Resource Management (“VRM”) Class II during the new plan review and Environmental Impact Statement (EIS) to establish VRM class designations for the Rawlins Field Office (“VRM Plan Review and EIS”).
6. Defendants commit to consider expansion of VRM Class I area beyond boundaries of Adobe Town Wilderness Study Area (“WSA”) in the VRM Plan Review and EIS.

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7. In its planning and project decision-making within the Rawlins RMP planning area, Defendants commit to follow the guidance provided in BLM Instruction Memorandum 2011-154 (“Requirement to Conduct and Maintain Inventory Information for Wilderness Characteristics and to Consider Lands with Wilderness Characteristics in Land Use Plans,” July 25, 2011) as long as this IM is not superseded and remains in effect, including these requirements:

- a. Maintain on a continuing basis an inventory of all public lands and their resources and other values. This inventory requirement includes maintaining information regarding wilderness characteristics.
- b. Consider the wilderness characteristics on public lands as part of its multiple-use mandate in developing and revising land use plans and when making subsequent project level decisions.
- c. Analyze the potential effects of proposed actions and alternatives for land use plan decisions on lands with wilderness characteristics when they are present.

8. Nothing in this Settlement Agreement modifies or amends the Rawlins RMP. The Rawlins RMP remains in full force and effect unless and until lawfully amended, maintained, or revised, and nothing in this Settlement Agreement creates additional obligations or requirements for currently pending or future site-specific or field-wide projects, permits, or analyses. Except as necessary to enforce the terms of this Settlement Agreement against the parties hereto, this Settlement Agreement is not admissible nor shall it be considered for any purpose in any proceeding before any court or administrative agency.

9. No provision of this Settlement Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the APA, FLPMA, or NEPA, or any other law or regulation, either substantive or procedural. Nothing in this

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SALT LAKE CITY, UT 84143

Settlement Agreement shall be construed to limit or modify the discretion accorded to Defendants by the APA, BLM regulations, FLPMA, or NEPA, or general principles of administrative law with respect to the substance of any final determination, or, subject only to the specific commitments in paragraphs 1 through 7 of this Settlement Agreement, the procedures to be followed in making any determination required herein.

10. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

11. This Settlement Agreement was negotiated to avoid further litigation only. This Settlement Agreement has no precedential value and does not represent an admission or waiver by any Settling Party to any fact, claim, liability or defense relating to any issue in this lawsuit and may not be used as evidence of such fact, claim, liability or defense in any litigation.

12. Plaintiffs agree to dismiss the action without prejudice and each Settling Party shall bear its own attorneys' fees and costs.

13. Within five (5) days of the full execution of this Agreement, and pursuant to Federal Rule of Civil Procedure 41(a), the parties shall file with the United States District Court for the District of Columbia the Agreed Order attached to this Agreement as Exhibit A. Should the Court, for any reason, modify, alter, or refuse to enter the Agreed Order that is attached hereto, this Agreement will be void.

14. In the event that Plaintiffs believe BLM has failed to comply with any term or condition of this Agreement, the Settling Parties shall use their best efforts to settle and resolve the controversy. To that end, Plaintiffs shall commence an informal dispute resolution period, to be

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no shorter than thirty (30) days, by giving written notice to Defendants stating the nature of the matter to be resolved. The Settling Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests in the ongoing integrity of this Agreement, attempt to reach a just and equitable solution satisfactory to all parties. If, after implementation of the informal dispute resolution process in this Paragraph, Plaintiffs maintain that Defendants have not performed the obligations established in Paragraphs 1 through 7 of this Agreement, Plaintiffs may move for a judicial determination of that fact and for a rescission of the Agreement which, if granted, would entitle Plaintiffs to reopen the litigation settled by this Agreement. Reopening the litigation in this manner shall be the sole judicial remedy for a breach of this Agreement.

15. Any notices required or provided for by this Agreement shall be in writing, effective upon receipt, and sent to the following:

a. For Plaintiffs:

Rebecca J. Riley
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606

Sharon Buccino
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005

John Persell
Biodiversity Conservation Alliance
412 South 2nd Street
Laramie, WY 82070
or
P.O. Box 1512
Laramie, WY 82073

b. For Defendants:

Joanna K. Brinkman

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United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
601 D Street NW
Washington, DC 20004

Philip C. Lowe
United States Department of Interior
Rocky Mountain Regional Solicitor's Office
755 Parfet Street, Suite 151
Lakewood, CO 80215

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16. The Settling Parties agree that Plaintiffs' sole recourse for any challenge to the legal sufficiency of any agency action taken pursuant to paragraphs 1 through 7 of this Agreement is to challenge BLM's issuance of a final decision document through initiation of a new administrative proceeding under procedures provided by the Department of Interior or in a lawsuit under the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Plaintiffs retain the right to assert all claims in, and Defendants retain the right to assert all defenses to, any such administrative proceeding or lawsuit.

17. Nothing in this Agreement shall be read to preclude any Plaintiff from challenging leases, permits, or other decisions not explicitly cited in Plaintiffs' complaint in the above-captioned case.

18. The undersigned representatives of each Settling Party certify that they are fully authorized by the Settling Party or Parties they represent to agree to the terms herein.

19. This Settlement Agreement may only be supplemented, modified, or amended by written agreement of the Settling Parties.

20. This Settlement Agreement represents the entirety of the Settling Parties' commitment with regard to settlement.

IT IS HEREBY AGREED.

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IGNACIA S. MORENO
Assistant Attorney General

Dated: February 7, 2012

/s/ Joanna K. Brinkman
JOANNA K. BRINKMAN
Natural Resources Section
Environment & Natural Resources Div.
United States Department of Justice
P. O. Box 663
Washington, D. C. 20044-0663
Telephone: (202) 305-0476
Fax: (202) 305-0267
joanna.brinkman@usdoj.gov

Attorneys for Federal Defendants

Dated: February 7, 2012

/s/ Rebecca J. Riley
REBECCA J. RILEY
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, Illinois 60606
Telephone (312) 651-7913
Fax (312) 234-9633
E-mail: rriley@nrdc.org

Attorney for Plaintiffs