

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-2787

WESTERN SLOPE CONSERVATION CENTER,

THE WILDERNESS SOCIETY, and

WILDERNESS WORKSHOP,

Petitioners,

vs.

UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the U.S. Department
of the Interior,

DEBRA HAALAND, in her official capacity as Secretary of the Interior, and

DOUG VILSACK, in his official capacity as the Colorado State Director of the U.S. Bureau of
Land Management,

Respondents.

SETTLEMENT AGREEMENT

Petitioners Western Slope Conservation Center, The Wilderness Society, and Wilderness Workshop (“Petitioners”) and Respondents U.S. Bureau of Land Management (“BLM”), Debra Haaland, in her official capacity as the Secretary of the Interior, and Doug Vilsack, in his official capacity as the Colorado State Director of the U.S. Bureau of Land Management (“Respondents”) (together with Petitioners “the Parties”) have reached an agreement to resolve this case, with the Parties agreeing to undertake and perform the measures set forth in this stipulated Settlement Agreement (“Agreement”).

WHEREAS, on September 15, 2020, Petitioners filed a Petition for Review (ECF No. 1) challenging BLM’s Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) that approved the Uncompahgre Resource Management Plan (“RMP”) for nearly a million acres of public lands and mineral estate in western Colorado. Petitioners alleged violations of the Federal Land Policy and Management Act (“FLPMA”), the National Environmental Policy Act (“NEPA”), and the Administrative Procedure Act (“APA”);

WHEREAS, on December 21, 2020, Petitioners filed an Amended Petition for Review (ECF No. 9) that added a claim challenging the RMP and ROD under the Federal Vacancies Reform Act;

WHEREAS, BLM committed in a settlement agreement in *Colorado v. U.S. Bureau of Land Management*, No. 1:21-cv-129-MSK (D. Colo.), to complete a range-wide resource management plan amendment (“RMPA”) addressing the management of Gunnison sage-grouse habitat on BLM-administered lands in Colorado and Utah, and to complete a statewide RMPA addressing, at a minimum, the management of oil and gas and associated infrastructure in big-game migration corridors and other important big game habitat areas on BLM-administered lands in Colorado, within two years of publishing notices of intent to prepare the RMPAs;

WHEREAS, BLM published a notice of intent to prepare the Gunnison sage-grouse RMPA on July 6, 2022, and published a notice of intent to prepare the statewide big game RMPA on July 19, 2022;

WHEREAS, the Parties believe it is in the best interest of the public, the Parties, and judicial economy to resolve Petitioners' claims and have reached an agreement to do so as embodied in this Agreement;

THEREFORE, the Parties agree and stipulate as follows:

1. BLM will complete an amendment process pursuant to 43 C.F.R. Subpart 1610 for the Uncompahgre RMP. As part of that RMP amendment process, BLM will reconsider the eligibility of lands open to oil and gas leasing, the designation and management of Areas of Critical Environmental Concern ("ACEC"), and management of lands with wilderness characteristics.
2. BLM will prepare a new Environmental Impact Statement ("EIS") to inform the RMP amendment process. The new EIS must analyze the following elements, either together in at least one alternative or in separate alternatives:
 - a. Reduction of the acreage of lands open to oil and gas leasing by closing to new oil and gas leasing all areas with federal mineral estate that were analyzed as either closed to leasing or open to leasing subject to No Surface Occupancy ("NSO") stipulations in Alternative B/B.1 of the FEIS for the RMP, and applying NSO stipulations to at least 350,000 acres that were analyzed for protection with Controlled Surface Use ("CSU") stipulations in Alternative B/B.1 of the FEIS for the RMP; and

- b. Protections for lands with wilderness characteristics and ACECs that are the same as those analyzed in Alternative B/B.1 of the FEIS for the RMP.
3. BLM will issue a notice of intent (“NOI”) to prepare the Uncompahgre RMP amendment and EIS no later than sixty days after BLM’s publication of either the draft range-wide Gunnison sage-grouse RMPA and draft EIS or the draft statewide big game RMPA and draft EIS, whichever occurs later. BLM will complete the Uncompahgre RMP amendment and EIS and issue a new Record of Decision within two years thereafter.
4. BLM will provide opportunities for public involvement consistent with 43 C.F.R. subpart 1610 and will comply with Secretarial Order 3399 or appropriate superseding guidance in effect during the Uncompahgre RMP amendment process.
5. BLM will consider all appropriate impacts associated with the alternatives, including effects on water, soil, air resources, climate, and wildlife. BLM will consider existing information as well as new information and circumstances, as appropriate, consistent with applicable regulations.
6. Until BLM issues a decision approving the RMP amendment:
 - a. BLM will not issue new oil and gas leases for lands in the Uncompahgre planning area, regardless of surface ownership or management, subject to the following exceptions:
 - i. leasing in documented instances of drainage of federal minerals by operations on adjacent leases, and
 - ii. leasing as may be authorized to recover coal mine methane from existing or abandoned coal mines.
 - b. The current RMP will remain in effect.

- c. Through its routine public notice procedures, BLM will provide Petitioners notice of proposed actions affecting proposed or designated ACECs identified in Table O-1 of the FEIS for the Uncompahgre RMP or management of lands with wilderness characteristics identified in Table F-1 of the FEIS for the Uncompahgre RMP.
 - d. For any proposed leasing pursuant to the exceptions described in Paragraph 6.a, BLM will provide public notice consistent with its NEPA procedures. If BLM determines that an instance of drainage warrants competitive leasing, it also will provide public notice consistent with its competitive leasing procedures.
7. Within 14 business days of execution of this Agreement, the Parties agree that they will submit to the Court a stipulation of dismissal and proposed order dismissing the case with prejudice pursuant to Fed. R. Civ. P. 41, subject to the provisions contained in Paragraph 9, *infra*. The Parties will request that the Court retain jurisdiction solely for the purpose of enforcing the commitments in Paragraphs 3 and 6. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).
8. In the event that a dispute arises out of or relating to this Agreement, or in the event that a party believes another party has failed to comply with any term or condition of this Agreement, the party raising the dispute or seeking enforcement will provide the other parties with written notice of the claim. The Parties agree that they will meet and confer (either telephonically or in person) in a good faith effort to resolve any requests, disputes, or claims before seeking further relief. If the Parties are unable to resolve the request, dispute, or claim themselves within 60 days of the receipt of the written notice of a request, dispute, or claim (or such longer time to which they agree), then the Parties may

seek relief from this Court, subject to the limitations in Paragraphs 7 and 9. The Parties agree that they will not seek contempt of court as an available remedy for any alleged violation of this Agreement, and the Parties therefore knowingly waive any right they might have to seek an order of contempt for any such alleged violation; provided, however, that if the Court issues an order resolving a dispute among the Parties regarding compliance with Paragraphs 3 and 6 of the Agreement, the Parties may seek contempt of court as a remedy for any violation of any such order.

9. Any challenge to the adequacy of the new EIS, RMP amendment, and new Record of Decision required by this Agreement must take the form of a new civil action, and may not be asserted as a claim for violation of this Agreement or in a motion to enforce the terms of this Agreement. Nothing in this Agreement precludes Petitioners from bringing challenges to specific actions by BLM implementing the RMP and ROD. Any such future challenge to an implementation-level decision may also challenge the analysis in the FEIS for the Uncompahgre RMP, to the extent the implementation-level decision relied on that analysis. Nothing in this Agreement precludes or limits Petitioner from raising any claims against the new EIS, RMP amendment, and new Record of Decision in a new civil action.
10. The undersigned representatives of the Petitioners and Respondents certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Agreement and to legally bind such Parties to it.
11. Petitioners agree to accept payment of \$65,000 in full satisfaction of any and all claims that Petitioners may have for attorneys' fees and costs associated with this case.
Petitioners agree that receipt of this payment from Respondents shall operate as a waiver

and release of any and all of Petitioners' claims for attorneys' fees, costs, and expenses that Petitioners may have against Respondents under any authority with respect to this case up to and through entry of this Settlement Agreement.

12. The United States may offset the payment amount to account for any delinquent debts owed by the Payee(s) to the United States pursuant to 31 U.S.C. §§ 3711, 3716.
13. Within fourteen (14) days after the effective date of this Agreement, Petitioners' counsel will provide to Respondents' counsel the following information necessary for Respondents to process the disbursement: the payee's address, the payee's bank account number, the account type, the name of the payee's bank, the bank routing transit number, and the payee's tax identification number.
14. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Respondents 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.
15. This Agreement represents the entirety of the undersigned Parties' commitments with regard to settlement.

Dated: October 17, 2022.


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