UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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OCT 17 2014

Ref: 8EPR-N

Glenn P. Casamassa, Forest Supervisor
Arapaho and Roosevelt National Forests and
Pawnee National Grassland
2150 Centre Avenue, Building E
Fort Collins, CO 80526

Re: Pawnee National Grassland Oil and Gas Leasing Analysis
Draft Environmental Impact Statement, CEQ #20140242

Dear Mr. Casamassa:

The U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the U.S. Department of Agriculture Forest Service (USFS) August 2014 Draft Environmental Impact Statement (EIS) for the Pawnee National Grassland (PNG) Oil and Gas Leasing Analysis. Our comments are provided for your consideration pursuant to our responsibilities and authority under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA).

Background

The PNG spans approximately 192,000 acres in Weld County, Colorado, approximately 35 miles east of Ft. Collins and 25 miles northeast of Greeley. The last PNG leasing analysis was completed in 1997 and relied upon a 1995 Reasonably Foreseeable Development Scenario (RFD). Since that time, interest in oil and gas resources on the PNG has increased and extraction technology has changed. A recently updated RFD projects up to 265 new wells on the PNG over the next 20 years. Thus, there is a need to update the PNG leasing analysis and an opportunity to determine the best leasing decision to meet Forest Plan direction, USFS minerals policy, and the public interest. This decision, which will impact the PNG unleased federal mineral estate (approximately 100,000 acres), will identify lands that will be available on the PNG for oil and gas leasing and stipulations that will be included on any future leases. Since this is a programmatic analysis, site specific projects are not being considered or approved at this time.

Alternatives identified in the Draft EIS include: Alternative 1 (No Leasing), Alternative 2 (No Action), and Alternative 3 (No Surface Occupancy). Alternative 3 is the USFS's Preferred Alternative and would designate all unleased lands on the PNG as administratively available for lease with a no surface occupancy (NSO) stipulation, i.e., no surface disturbance could occur on the PNG but oil and gas development activity could be located on lands adjacent to the PNG with access to federal minerals occurring horizontally.

We have greatly appreciated the USFS's efforts to reach out to the EPA, other Federal agencies and the State of Colorado as it developed this Draft EIS. Because of this effort, many of our initial interests have been addressed. Our remaining recommendations are intended to further inform the decision to be made and the public's understanding of potential impacts to public health and the environment. Based on our review of the Draft EIS, the EPA's remaining comments and recommendations focus on (1) air resources; (2) greenhouse gas emissions and climate change; (3) water resources; and (4) environmental justice. These issues serve as the basis for the EC-2 rating discussed at the end of this letter.

(1) Air Resources

Commitment to Future Near-Field Air Quality Analyses

The Draft EIS states that under Alternative 2 and 3 any future drilling of Federal minerals within the PNG boundary, including the drilling of federal minerals from private surface, will require approval from the BLM with further NEPA analysis. The Draft EIS appropriately specifies that these future analyses will include near-field analysis to estimate nearby impacts to certain National Ambient Air Quality Standards (NAAQS) and hazardous air pollutants (HAPs). We believe this commitment to future near-field analyses at the project level is extremely important to ensuring protection of air quality as PNG leases are developed over the next 20 years, particularly given the potential for people to live near development due to the checkerboard effect of interspersed private lands in the planning area. Because of this importance, we recommend that this commitment be included in the Record of Decision (ROD) along with a description of how the USFS will (a) ensure that these future near-field analyses are completed by the Bureau of Land Management (BLM) if the USFS Preferred Alternative is selected since the NSO stipulation negates the need for USFS approval of a Surface Use Plan of Operations or (b) carry out its commitment if the Preferred Alternative is not selected.

It appears to the EPA that incorporation of a Lease Notice for Air Resources would be an appropriate and necessary method of ensuring these future analyses are completed. Specifically, we recommend that the Final EIS and ROD include a commitment to provide notice to lessees regarding the air quality assessments that will be required at the project level, including near-field analysis, and that the lease notice be provided in an appendix to the ROD. For a good example of a lease notice that addresses future air quality analysis requirements (including continued participation of an air quality technical workgroup – discussed in more detail below), please see Enclosure 1, Example Lease Notice for Air Resources, from the 2013 Fishlake National Forest Oil and Gas Leasing Analysis Final EIS and ROD. For additional information, please see the Fishlake National Forest Oil and Gas Leasing Analysis at http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/24321_FSPLT3_1452301.pdf.

Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions through NEPA

As you know, the EPA, U.S. Department of Agriculture and U.S. Department of Interior entered into a "Memorandum of Understanding (MOU) Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions through the National Environmental Policy Act Process" on June 11, 2011. Since January 2013, the USFS has done a commendable job of implementing this MOU and coordinating the

associated Air Quality Technical Workgroup (AQTW) for the PNG Oil and Gas Leasing Analysis. We believe the collaboration among the federal and state agencies participating in the AQTW helped ensure that effective and efficient NEPA air quality evaluations have occurred to date and will continue to do so moving forward to protect air quality.

With this in mind, the EPA recommends that the USFS consider broadening its commitment to future project level near-field air quality analyses to include continued AQTW collaboration for future drilling of Federal minerals within the PNG boundary. We base this recommendation on Section V.B. of the Air Quality MOU which states "[w]hen preparing an Environmental Assessment for a Federal oil and gas decision where air quality or AQRVs are issues warranting NEPA analysis, the Lead Agency will consider following the procedures established in this MOU and the Appendix." Since the Draft EIS notes that near-field modeling of certain pollutants will be determined on a case-by-case basis, we believe that continued collaboration among federal and state agencies on project level development of these leases is the best approach to ensuring future air quality protection. This is particularly true given that a portion of the southern section of the PNG is within the Metro-Denver/North Front Range 2008 8-hour Ozone NAAQS Nonattainment Area boundary. We look forward to continued participation in the AQTW as future project level NEPA analyses are prepared by the USFS and the BLM, a Cooperating Agency on this EIS.

Model Methodology

The Draft EIS references a BLM May 2014 draft document to obtain more details on how the air quality modeling and analyses were completed for the Colorado Air Resource Management Modeling Study (CARMMS). While some details on the modeling methodology are addressed in the PNG Draft EIS, it would be helpful for the USFS's NEPA document to have an independent and comprehensive description of the modeling and analysis methodology to ensure that any changes to the BLM draft document do not impact or misrepresent the process used for the Pawnee air quality analysis. Alternatively, the PNG Final EIS could incorporate as an appendix the most representative version of the CARMMS document relevant to the PNG analysis in order to memorialize the analysis as of that date and to avoid confusion due to the availability of more recent, updated draft CARMMS documents.

Missing Analyses

Certain analyses that are generally included in NEPA air quality assessments to document potential impacts to air quality are missing from the Draft EIS. Specifically, assessments of the following impacts are missing: National Ambient Air Quality Standards (NAAQS) for 1-hour and annual NO_2, 1-hour SO_2, and 1-hour and 8-hour CO; Prevention of Significant Deterioration (PSD) increments for 1-hour NO_2 and 1-hour SO_2; and cumulative impacts to 1-hour and annual NO_2.We note that the Draft EIS indicates that 1-hour NO_2 and 1-hour SO_2 impacts were not included due to the results being unavailable from the CARMMS platform at this time.

Cumulative impact analyses were not included for NO_2 or CO. Given that an analysis for annual NO_2 was included for PSD increment comparison and the Draft EIS states that annual NO_2 concentrations may be over-estimated because of the model configuration, it seems that a cumulative analysis for

annual NO_2 would have been processed and available.

To ensure full disclosure and further support project level decisions, we recommend that these missing analyses be included in the Final EIS. If the CARMMS results will not be available for the PNG Final EIS, we recommend querying the AQTW on the option of a qualitative analysis for these pollutants.

Metro-Denver/North Front Range 8-Hour Ozone Nonattainment Area and General Conformity

As we have discussed, a portion of the southern section of the PNG is within the Metro-Denver/North Front Range 2008 8-hour Ozone NAAQS Nonattainment Area boundary. Section 176(c)(4) of the CAA established the General Conformity provisions which play an important role in helping States and Tribes improve air quality in those areas that do not meet the NAAQS. In response to section 176(c)(4) of the CAA, the EPA promulgated General Conformity requirements in 40 CFR part 93, Subpart B - "Determining Conformity of General Federal Actions to State or Federal Implementation Plans," which includes sections 40 CFR 93.150 through 93.165. Under the General Conformity requirements, Federal agencies must work with State, Tribal and local governments in a nonattainment or maintenance area to ensure that federal actions conform to the air quality attainment or maintenance plans that have been approved by the EPA into the applicable State or Tribal implementation plan. We also note that with the EPA's final rule to approve the revisions to Colorado's Regulation No. 10, Criteria for Analysis of Transportation Conformity (79 FR 12079, March 4, 2014), the State no longer incorporates by reference the EPA's General Conformity Rule in Regulation No. 10. Therefore, by default, the federal rule at 40 CFR 93, Subpart B governs general conformity requirements in Colorado.

Through our review of the PNG Oil and Gas Leasing Analysis Draft EIS, we note p. 157 of the Draft EIS includes the following statement:

> "As the southern portion of the Pawnee NG lies within the Denver metropolitan ozone nonattainment area, any oil and gas development resulting from a federal action (such as a leasing decision) that occurs within the nonattainment area will be required to meet the provisions of the general conformity rule."

We also note that this paragraph goes on to indicate that a general conformity analysis would be conducted by the BLM at the project level. This appears contrary to the above quoted statement ("such as a leasing decision"). As we have discussed, we agree that the PNG Draft EIS leasing analysis does not, in itself, trigger a general conformity analysis or conformity determination. However, a federal action such as a subsequent lease offering may necessitate a general conformity analysis and as appropriate, a conformity determination. The EPA recommends the USFS/BLM review the Court Order and Stipulation (see Enclosure 2) which was entered by the Court on January 17, 2012, between the Colorado BLM and WildEarth Guardians. Under the terms of the Order, for certain leases the BLM agreed that prior to making a decision on whether to grant reinstatement of those leases, BLM will perform an applicability analysis, and if necessary, a conformity determination. (Order at Paragraph 2.)

We further note on p. 158, the second full paragraph which states:

"The act of leasing or making lands available for lease does not authorize emissions generating activities. Leasing itself is similar in nature to the excepted activities listed in 40 CPR 93.153, "Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer." Furthermore, the locations and amounts of indirect emissions that may result in the future if parcels are leased and developed cannot be determined at this time, and thus there are no reasonably foreseeable projected direct or indirect emissions. For these reasons, this action has been found to conform and does not require additional analysis under 40 CPR 93."

The statement "[t]he act of leasing or making lands available for lease does not authorize emissions generating activities" is open to interpretation. We disagree that "... there are no reasonably foreseeable projected direct or indirect emissions" available at this time. For the NEPA analysis of a lease sale federal action, we recommend the preparation of an emissions inventory for the full RFD associated with the development of the lease(s) and associated potential resources. This information would be similar to the RFD information provided in the PNG Draft EIS and Appendix A.

In addition, we recommend clarifying the discussion related to the minor source permitting exemption. Specifically, the last sentence of the third full paragraph on p. 158 notes that "equipment and operations that undergo state air permitting (minor or major) would already be analyzed for their potential impacts to ozone pollution and a conformity analysis is not required as it would be redundant." To avoid any misunderstanding, we recommend revising this language to note that the permitting exemption only covers stationary sources that are required to obtain a permit under the New Source Review or PSD programs; a source that is not subject to those permitting programs would not be covered by this exemption.

Finally, pp. 158-159 include references to the CARMMS modeling study regarding impacts from potential oil and gas development of federal minerals. Please be advised that dispersion modeling is not an acceptable method for a general conformity determination for ozone since ozone is not a directly emitted criteria pollutant (see 40 CFR 93.258(a)(3)). Only an emissions based conformity analysis for ozone precursor emissions of NO_x and VOCs (both direct and indirect emissions) is acceptable.

The EPA has assisted other federal agencies in understanding the aspects of our General Conformity Rule (40 CFR 93, Subpart B). We are available to discuss our comments, general conformity issues, and options to address the rule's requirements if that would be helpful as the Final EIS is prepared.

(2) Greenhouse Gas (GHG) Emissions and Climate Change

The EPA recommends that the discussion on pp. 163-164 be expanded to describe the potential impact of climate change on oil and gas development. For example, potential impacts of climate change on oil and gas development may include more difficulty in assuring successful reclamation work and associated increased water consumption. We also recommend describing potential measures to reduce GHG emissions associated with PNG oil and gas leasing. For example, potential measures for reducing PNG's contribution to GHG emissions may include practicable mitigation to reduce GHG emissions including co-benefits achieved through implementation of air pollution controls for other air pollutants.

In addition, the Draft EIS provides an explanation for why full lifecycle GHG emissions were not included in the emissions inventory and cites the difficulties at this planning stage in forecasting GHG emissions that would result from processing the extracted oil and gas into final products or from the end use of those products. We note that a representative analysis can be completed at the planning stage and has been done so in previous EISs (e.g., Dixie National Forest Oil and Gas Leasing Analysis EIS).

(3) Water Resources

We support the USFS's Preferred Alternative as very protective of PNG water resources given the inclusion of an NSO stipulation for all unleased acres of the PNG. If the Preferred Alternative will not be selected under the ROD for this action, then we recommend that the Final EIS incorporate our May 14, 2013 scoping recommendations related to water resource protections and monitoring. In particular, we provided numerous recommendations related to leasing stipulations and best management practices to protect groundwater, surface water, public drinking water supply sources, wetlands, riparian areas, and floodplains. We are available to discuss these recommendations further should the need arise.

If the Preferred Alternative is unchanged and selected, then our recommendations for the Final EIS focus on more fully disclosing existing conditions, as discussed below.

Public Drinking Water Supply Sources

We recommend that groundwater and surface water sources of public drinking water supplies, and the associated source water assessments and source water protection zones, be identified in the Final EIS. To assist you with this effort, the EPA and the Colorado Department of Public Health and Environment (CDPHE) have developed a map showing the **generalized** areas of the source water assessments and protection zones near the PNG (see Enclosure 3). This map may be used in public documents; therefore, we recommend including it in the Final EIS. However, more specific maps, available from CDPHE, should be utilized by the USFS and BLM when locating activities on the leased parcels.

Groundwater Resources

We appreciate the Draft EIS groundwater resource characterization and commitment to a site specific assessment of Underground Sources of Drinking Water during project-level NEPA analysis. To provide some sense of the general locations of these resources at the programmatic level of analysis, we recommend the Final EIS include a map of private wells in the area. This information is obtainable from the State Engineer Office (SEO) by contacting Justin Bieri, Colorado Division of Water Resources Lead Well Commissioner for the South Platte Basin, at (970) 352-8712 ext. 1257 or by consulting the SEO website at http://165.127.23.41/website/cdss/viewer.htm.

Monitoring

Page 176 of the Geology Section notes that "monitoring wells may be required in some circumstances to determine water quality" before and after fracking procedures. We recommend including a discussion

regarding the Colorado Oil and Gas Conservation Commission's existing requirements for groundwater monitoring for hydraulically fractured wells (including Rule 609, Statewide Groundwater Baseline Sampling and Monitoring, and Rule 318A, Greater Wattenberg Area Special Well Location, Spacing and Unit Designation) and noting areas of the PNG that would be subject to these requirements.

(4) Environmental Justice

The Economics Section discussion on page 260 notes that "since smaller areas within the PNG study area may have higher concentrations of EJ populations, the impact analysis will continue to consider the potential for management actions to disproportionately negatively affect environmental justice populations within the study area." However, there is no further mention of environmental justice in the Environmental Consequences discussion of this section. Based on conversations between our staffs, we understand that the effects analysis was inadvertently omitted from the Draft EIS. We understand that it is the USFS's intention, and the EPA's recommendation, that the environmental justice impact analysis be included in the Final EIS. We look forward to reviewing it at that stage.

Other Issues

The footnote at the bottom of Draft EIS p. 37 indicates that a draft report of EPA's hydraulic fracturing study is expected in 2013. We recommend revising this date to "early 2015."

The EPA's Rating

Based on our review, the EPA is rating the Draft EIS Preferred Alternative as "Environmental Concerns-Insufficient Information" (EC-2). The "EC" rating means that the EPA has identified potential impacts that should be avoided in order to fully protect the environment. The "2" rating means that the Draft EIS does not contain sufficient information for the EPA to fully assess environmental impacts. Please refer to http://www.epa.gov/compliance/nepa/comments/ratings.html for a description of the EPA's rating system.

We appreciate the opportunity to comment on this document and hope our suggestions will assist you with preparation of the Final EIS. Please contact us if additional explanation of these comments would be helpful. You can reach me at 303-312-6704, or your staff may contact Amy Platt at 303-312-6449.

Sincerely,

Philip S. Strobel
Acting Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation

Enclosures

ENCLOSURE 1

Example Lease Notice for Air Resources

Fishlake National Forest Oil and Gas Leasing Analysis
Final EIS and Record of Decision (2013)

	routes. 9) Limit new access routes created by the project. 10) Unavoidable impacts to the species will be mitigated through site-specific consultation with the US Fish and Wildlife Service. Additional measures to avoid or minimize effects to the species may be developed and implemented in consultation with the U.S. Fish and Wildlife Service between the lease sale stage and lease development stage to ensure continued compliance with the Endangered Species Act.
B,C,D	**Lease Notice for Air Resources** (Clean Air Act of 1963, as amended by P.L. 90-148, P.L. 91-604, and P.L. 101-549; National and State of Utah Ambient Air Quality Standards, National Standards of Performance for New Stationary Sources, National Prevention of Significant Deterioration Standards, National Emissions Standards for Hazardous Air Pollutants, Utah Air Conservation Regulations (R446), and Utah State Implementation Plan) 1. The operator shall comply with the following practices to control impacts to ambient air quality from oil and gas exploration and production activities: a. As appropriate, quantitative analysis of potential air quality impacts will be conducted for project-specific developments by the operator, in concert with direction from the Utah Department of Environmental Quality, Division of Air Quality (UDAQ), the Forest Service and cooperating federal land management agencies including but not limited to the National Park Service. The Forest Service will notify cooperating agencies as project specific proposals are received and additional air impact analyses are performed to ensure input from those agencies. Additional project specific air impact analyses would need to be conducted if the following project criteria are fulfilled: i. If an exploration drilling project is proposed within 5km of an adjacent Class I area, air quality related value (AQRV) impacts would need to be addressed utilizing at a minimum the VISCREEN screening tool. Additional air impact analyses may be necessary based on the review of the initial VISCREEN analysis. ii. If an oil and gas production project is proposed at a distance of over 60km from an adjacent Class I area and has emissions that exceed those utilized in the existing "Fishlake 12-well development scenario", A quantitative air quality impact analysis would need to be conducted for the project that follows the guidance found in the FLAG modeling guidelines. iii. If an oil and gas production project is proposed within 60km of an adjacent Class I area and has emissions that equal or exceed those utilized in the existing "Fishlake 12-well development scenario", a quantitative air quality impact analysis would need to be conducted for the project that follows the guidance found in the FLAG modeling guidelines. iv. If an exploratory drilling or oil and gas development project is proposed to occur within 60km of an adjacent Class I area and has emissions that are greater than those utilized in the existing "exploratory drilling scenario" but less than those utilized in the "Dixie 20-well development scenario", consultation with the Forest Service and cooperating Federal Agencies would be required to determine an appropriate assessment of air quality impacts. The level of additional analysis would be predicated on the size of the proposed project. b. Compliance with Utah Air Conservation (UAC) Regulation R446-1 would be necessary. The best air quality control technology, as per guidance from the UDAQ, will be applied to actions as needed to meet air quality standards. c. The operator will comply with UAC Regulation R446-1-4.5.3, which prohibits the use, maintenance, or construction of roadways without taking appropriate dust abatement measures. Compliance will be obtained through special stipulations as a requirement on new projects and through the use of dust abatement control techniques in problem areas.

d. The operator will manage authorized activities to maintain air quality within the thresholds established by the State of Utah Ambient Air Quality Standards and to ensure that those activities continue to keep the area in attainment, meet prevention of significant deterioration (PSD) Class II standards, and protect the Class I air shed of the National Parks (e.g. Zion, Bryce Canyon, and Capitol Reef National Parks).
e. National Ambient Air Quality Standards will be enforced by the UDEQ, with EPA oversight. Special requirements to reduce potential air quality impacts will be considered on a case-by-case basis in processing land-use authorizations.
f. The operator will utilize BMPs and site specific mitigation measures, when appropriate, based on-site specific conditions, to reduce emissions and enhance air quality.
Examples of these types of measures can be found in the Four Corners Air Quality Task
Force Report of Mitigation Options, November 1, 2007; EPA Natural Gas STAR Program
(http://www.epa.gov/gasstar/); and US Forest Service Emission Reduction Techniques for Oil and Gas activities 2011
(http://www.fs.fed.us/air/documents/EmissionReduction- 010711x.pdf).
g. The operator will comply with a Condition of Approval for Applications for Permit to drill, which includes: (1) All new and replacement internal combustion diesel fired drilling engines must meet or exceed Tier II emissions limits as codified in 40 CFR Part 89 - "Control of Emissions From New and In-Use Nonroad Compression-Ignition Engines".
h. Lease holders will need to conduct detailed volatile organic compound (VOC) emissions inventories for any proposed facilities to provide necessary data to the BLM
Utah State Office for their regional photochemical modeling.
i. Lease holders will need to examine the use of additional mitigations for ozone precursors.

2. All new and replacement internal combustion diesel fired well pump engines must meet or exceed Tier II emissions limits for Particulate Matter and Tier III emissions limits for Oxides of Nitrogen and Carbon Monoxide as codified in 40 CFR Part 89 - "Control of Emissions From New and In-Use Nonroad Compression-Ignition Engines".

3. All new and replacement spark ignited natural gas fired internal combustion well-pump engines must meet or exceed emissions limits for Oxides of Nitrogen, Carbon Monoxide and Volatile Organic Compounds from New Source Performance Standard Subpart JJJJ for Stationary Spark Ignition Internal Combustion Engines manufactured since 2008.

4. All new and replacement internal combustion gas field engines of less than or equal to 300 design-rated horsepower must not emit more than 2 grams of NOx per horsepower-hour. This requirement does not apply to gas field engines of less than or equal to 40 designated horsepower.

5. All new and replacement internal combustion gas field engines of greater than 300 design rated horsepower must not emit more than 1.0 grams of NOx per horsepower-hour.

6. All diesel fuel fired internal combustion engines must utilize certified Ultra Low Sulfur Diesel fuel with a maximum sulfur content of 15 parts per million (PPM).

ENCLOSURE 2

January 17, 2012 Court Order
WildEarth Guardians v. U.S. Bureau of Land Management

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action **No. 1:11-cv-00128-JLK**

WILDEARTH GUARDIANS,
Plaintiff,

v.

U.S. BUREAU OF LAND MANAGEMENT,
Defendant,

CHESAPEAKE EXPLORATION, LLC,
Intervenor-Defendant.

ORDER

Kane, J.

This Stipulation and Order is entered into by and between Plaintiff WildEarth Guardians ("Guardians") and Defendant Bureau of Land Management ("BLM").

WHEREAS, Guardians' complaint in this case alleges, among other things, that BLM had failed to perform a conformity analysis as required under section 176 of the Clean Air Act ("CAA"), 42 U.S.C. § 7506, and the Environmental Protection Agency's (EPA) regulations at 40 C.F.R. pt. 93, sbpt B, implementing section 176 of the CAA, when BLM issued 12 oil and gas leases in Weld County, Colorado and Morgan County, Colorado;

WHEREAS, Guardians further alleges that BLM failed to undertake required analysis under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370h, when it issued the 12 leases at issue;

WHEREAS, the 12 leases are designated as COC73444, COC73443, COC73442, COC73424, COC73422, COC73423, COC73426, COC73427, COC73428, COC73439, COC73440, and COC73441;

WHEREAS, leases COC73444, COC73443, COC73442, and COC73424 are within the Denver Metro/North Front Range 8-hour Ozone Nonattainment Area under the CAA;

WHEREAS, leases COC73422, COC73423, COC73426, COC73427, COC73428, COC73439, COC73440, and COC73441 are not within the Denver Metro/North Front Range 8-Hour Ozone Nonattainment Area under the CAA;

WHEREAS, leases COC73423, COC73424, COC73440, COC73441, COC73442, COC73443, and COC73444, have terminated by operation of law for failure to make timely rental payments, but the lessee has petitioned for reinstatement of these leases pursuant to 43 C.F.R. § 3108.2-3, and that petition is pending before BLM;

WHEREAS, leases COC73422 and COC73439 have terminated by operation of law for failure to make timely rental payments, and there is no pending request for reinstatement pending before BLM such that Guardians' current challenge to those leases is moot;

WHEREAS, BLM denies Guardians' allegations and maintains that with respect to the above-referenced leases, it has the discretion to perform whatever conformity analysis and whatever NEPA analysis are required by law and consistent with BLM policy, at either the leasing stage, or when BLM considers project-level applications subsequent to leasing; and

WHEREAS, Guardians maintains that with respect to the above-referenced leases, BLM must perform whatever conformity analysis and whatever NEPA analysis are required by law

and consistent with BLM policy at the leasing stage prior to authorizing the sale and issuance of the leases.

NOW THEREFORE, Guardians and BLM have agreed without admission of any issue of fact or law and in order to avoid protracted and costly litigation and to preserve judicial resources, as follows:

1. BLM agrees to prepare an emissions inventory for oil and gas operations for the Royal Gorge Field Office Planning Area, which includes Weld and Morgan Counties and the Denver Metro/North Front Range 8-Hour Ozone Nonattainment Area. The inventory will include current and reasonably foreseeable emissions of specified pollutants, including ozone precursors, for a 20 year timeframe. BLM may, in its discretion, update the emissions inventory in the future to reflect available information and science.

2. BLM agrees that prior to making a decision whether to grant reinstatement of leases COC73423, COC73424, COC73440, COC73441, COC73442, COC73443, and COC73444, it will conduct, as part of an Environmental Assessment pursuant to NEPA, a qualitative and/or quantitative air quality analysis or analyses that will include, at a minimum, an air quality analysis for ozone or ozone precursors, and will utilize the emissions inventory prepared pursuant to paragraph 1 above, or any updated inventory or analysis. BLM agrees to allow a 30-day public comment period for the Environmental Assessment. Prior to making a decision whether to grant reinstatement of the four leases within the nonattainment area (COC73444, COC73443, COC73442, and COC73424), BLM will also perform an applicability analysis, and if necessary, a conformity determination, under CAA section 176, 42 U.S.C. §

7506, and the EPA's conformity regulations.

3. BLM agrees that when considering any application for permit to drill ("APD"), or group of APDs, received for leases COC73426, COC73427, and COC73428, BLM will either:

(a) conduct, as part of preparing an Environmental Assessment or Environmental Impact Statement pursuant to NEPA, a qualitative and/or quantitative analysis or analyses that will include, at a minimum, an air quality analysis for ozone or ozone precursors, and will utilize the emissions inventory prepared pursuant to paragraph 1 above or any updated inventory or analysis; or

(b) tier to an appropriate NEPA document prepared after the date of this Agreement that utilizes the emissions inventory prepared pursuant to paragraph 1 or any updated inventory or analysis.

(c) paragraphs 3(a) and 3(b) do not apply where the BLM's obligation to respond to the drainage of federal minerals, in accordance with 30 U.S.C. § 226(j) and 43 C.F.R. Subparts 3100 and 3162, requires that it process the application prior to completion of the emissions inventory.

(d) BLM further agrees to allow a 30-day public notice and comment period, consistent with 43 C.F.R. §46.305, 43 C.F.R. §3162.3-1(g), Onshore Oil and Gas Order No. 1, 72 Fed. Reg. 10328 (March 7, 2007), and BLM policy, for APDs or Notices of Staking for these leases.

4. Upon completion of analysis of each APD, or group of APDs, pursuant to paragraph 3 above, the BLM will make a decision, in accordance with 30 U.S.C. §§ 226(g) and (p) and Onshore Oil and Gas Order No. 1, whether to issue or deny each permit to drill. Approved permits to drill may incorporate conditions of approval that reflect necessary

mitigation measures identified by BLM through the NEPA analysis, in accordance with Onshore Oil and Gas Order No. 1, 43 C.F.R. § 3101.1-2, and BLM policy.

5. BLM agrees not to issue reinstatement decisions under paragraph 2, or approve APDs under paragraph 3 other than in the circumstance identified in paragraph 3(c), until after completion of the emissions inventory discussed in paragraph 1. The Parties agree that this paragraph 5 is enforceable by the Court. In the event of a disagreement between the Parties as to compliance with BLM's commitments in this paragraph, the Parties shall first make a good faith effort to confer and resolve the dispute. If the Parties are unable to resolve the dispute, then either party may move the court to resolve the dispute. Guardians agrees that contempt of court is not an available remedy for any violation of this Stipulation and Order and agrees not to seek an order of contempt for any alleged violation of this Stipulation and Order.

6. Upon entry of this Stipulation and Order by the Court, this case shall be administratively closed under Rule 41.2 of the Local Rules for the United States District Court for the District of Colorado. Upon BLM's notification in writing to the Court and the Plaintiff of BLM's completion of the air emissions inventory mentioned in paragraph 1, the Court shall dismiss this case with prejudice.

7. The Parties agree that this Stipulation and Order does not extend the Court's jurisdiction to hear any dispute over the adequacy or content of any NEPA or other analysis prepared under paragraphs 1-4 in this action. The Parties agree that any challenge to the reinstatement decisions discussed in paragraph 2, or the APD decisions discussed in paragraphs 3-4, must be brought through a new judicial action or administrative appeal. In entering this

Agreement, neither party waives any argument it may have challenging or defending any such decision. The Parties agree that the emissions inventory discussed in paragraph 1 is not itself a reviewable final agency action.

8. This Stipulation and Order may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the Parties filed with and approved by the Court, or upon written motion filed by one of the Parties and granted by the Court.

9. BLM agrees to pay to Guardians the sum of $7,928.96 in full satisfaction of any and all claims for attorneys' fees, costs, and other expenses related to this action.

10. BLM's payment, as identified in paragraph 9 above, shall be accomplished by electronic fund transfer to the WildEarth Guardians' Legal Savings Account. Guardians' attorneys shall provide to the undersigned counsel for BLM the appropriate account number and other information needed to facilitate payment.

11. The Parties agree that Guardians reserves the right to seek additional fees and costs incurred subsequent to the Court's entry of this Stipulation and Order arising from a need to enforce or defend against efforts to modify BLM's commitments outlined in paragraphs 1-3. BLM expressly reserves the right to contest fees claimed by Guardians, including entitlement, time expended, and the hourly rate, in any future litigation or continuation of the present action. Further, this Agreement as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

12. Except as set forth in this Stipulation and Order, the Parties retain all rights, claims, defenses, and discretion they may otherwise have. Except as expressly provided in this Stipulation and Order, nothing herein shall be construed to limit or modify any discretion accorded BLM by statute, regulation or by general principles of administrative law.

13. No provisions of this Agreement shall be interpreted as or constitute a commitment or requirement that BLM obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.

14. This Stipulation and Order does not represent an admission by any party to any fact, claim, or defense in any issue in this lawsuit. This Agreement has no precedential value and shall not be cited in any other litigation or administrative proceeding except as necessary to enforce the terms of the Stipulation and Order.

15. Nothing in the terms of this Stipulation and Order shall be construed to limit or deny the power of a federal official to promulgate or amend regulations.

16. The undersigned representative of each Party certifies that he or she is fully authorized by the Party he or she represents to bind that Party to the terms of this Stipulation.

17. Any written notices or other written communications between BLM and Guardians contemplated under this Stipulation shall be sent to the undersigned counsel at the addresses listed in the signature blocks below unless written notice of a change in counsel and/or address is provided.

Date: January 13, 2012

Respectfully submitted,

/s/ Barclay T. Samford
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/s/ Samantha Ruscavage-Barz
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Counsel for Plaintiff

IT IS SO ORDERED.

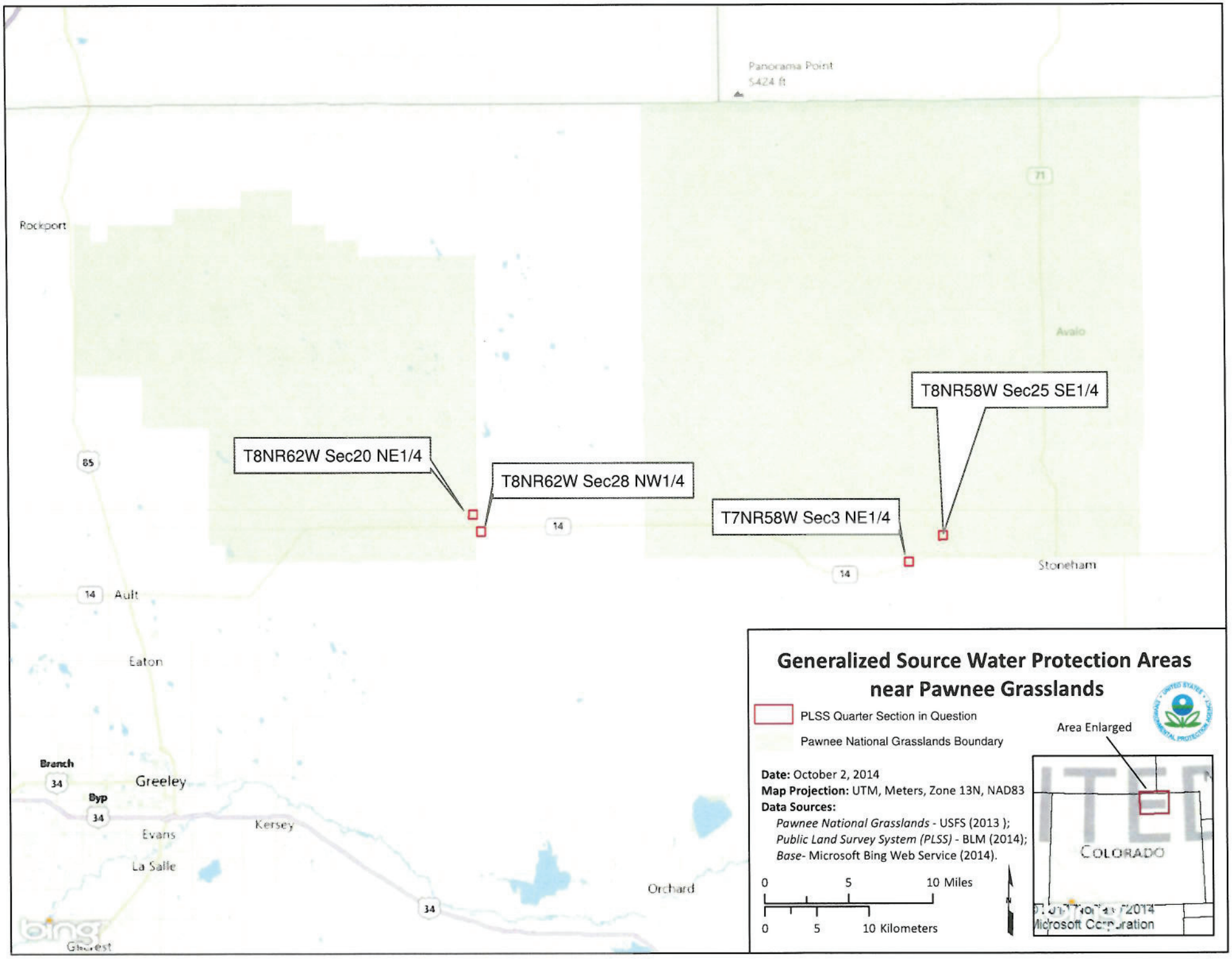
Dated: January 17, 2012

BY THE COURT:

/s/ John L. Kane
Senior U.S. District Court Judge

ENCLOSURE 3

Generalized Source Water Protection Areas
Near Pawnee National Grasslands


Panorama Point
5,424 ft
Rockport
71
Avalo
T8NR58W Sec25 SE1/4
T8NR62W Sec20 NE1/4
T8NR62W Sec28 NW1/4
T7NR58W Sec3 NE1/4
85
14
14
14
Stoneham
14
Ault
Eaton
Branch
34
Greeley
Byp
34
Evans
Kersey
La Salle
Orchard
34
bing
Gilcrest
Generalized Source Water Protection Areas
near Pawnee Grasslands
PLSS Quarter Section in Question
Pawnee National Grasslands Boundary
Date: October 2, 2014
Map Projection: UTM, Meters, Zone 13N, NAD83
Data Sources:
Pawnee National Grasslands - USFS (2013);
Public Land Survey System (PLSS) - BLM (2014);
Base- Microsoft Bing Web Service (2014).
0
5
10 Miles
0
5
10 Kilometers
Area Enlarged
COLORADO