

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Judge John L. Kane

Civil Action No. **08-cv-02167-AP**

**WILDEARTH GUARDIANS,**

Plaintiff,

v.

**UNITED STATES FOREST SERVICE, et al.,**

Defendants, and

**MOUNTAIN COAL COMPANY,**

Intervenor-Defendant.

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**REVISED JOINT CASE MANAGEMENT PLAN**

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Pursuant to this Court's order of August 12, 2009, the Parties hereby submit this revised Joint Case Management Plan. See Order (Dkt. # 38) (Aug. 12, 2009).

**1. APPEARANCES OF COUNSEL AND PRO SE PARTIES**

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For Intervenor-Defendant Mountain Coal Company

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**2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION**

Plaintiff alleges that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), and 5 U.S.C. §§ 701-706 (judicial review provisions of the Administrative Procedure Act).

### **3. DATES OF FILING OF RELEVANT PLEADINGS**

- A. Date Complaint Was Filed:** October 7, 2008
- B. Date Complaint Was Served on U.S. Attorney's Office:** October 9, 2008
- C. Date Answer Was Filed:** December 12, 2008
- D. Date First Amended Complaint Was Filed:** February 20, 2009
- E. Date Answers to First Amended Complaint Were Filed:** March 6, 2009 (Federal Defendants); August 12, 2009 (Intervenor-Defendant Mountain Coal Company)
- F. Date Plaintiff's Motion for Leave to File Second Amended Complaint Will Be Filed:** August 26, 2009
- G. Date Responses to Plaintiff's Motion for Leave to File Second Amended Complaint Will Be Filed:** September 15, 2009.
- H. Date Plaintiff's Reply (If Any) in Support of Motion for Leave to File Second Amended Complaint Will Be Filed:** September 30, 2009.
- I. Date Answers to Second Amended Complaint Will Be Filed (If the Court Grants Plaintiff's Motion for Leave to File):** Twenty (20) calendar days after the Court grants the Motion for Leave to File Second Amended Complaint.

### **4. STATEMENT REGARDING THE ADEQUACY OF THE RECORD**

The Federal Defendants shall file the administrative record for the agency actions challenged in Plaintiff's First Amended Complaint by no later than October 1, 2009.

In its proposed Second Amended Complaint, Plaintiff seeks to add a claim challenging the Secretary of the Interior's January 14, 2009 decision to amend the relevant coal leases to authorize MCC's capture of coal methane gas at the West Elk Mine under certain circumstances. Plaintiff alleges that Federal Defendants failed to undertake an analysis of the action amending the relevant coal leases as required by the National Environmental Policy Act ("NEPA"); Federal Defendants contend that they complied with NEPA when they amended the relevant coal leases. If the Court grants Plaintiff's Motion for Leave to File Second Amended Complaint,

Federal Defendants would file the administrative record for the agency actions challenged in Plaintiff's additional claim 45 days after the Court rules on Plaintiff's motion.

**5. STATEMENT REGARDING ADDITIONAL EVIDENCE**

Parties shall consult regarding any disputes over the administrative record. For the record corresponding to Plaintiff's First Amended Complaint, Plaintiff and Intervenor Defendant shall each provide to Federal Defendants a list of documents proposed to be added or deleted from the administrative record, if any, on or before October 23, 2009. Federal Defendants shall respond to any requests for documents to be added to or deleted from the administrative record on or before November 13, 2009. Federal Defendants shall file a revised administrative record or supplements to the administrative record, if any, on or before November 13, 2009. Plaintiff and Intervenor-Defendant shall file any motion to supplement the administrative record, strike portions of the administrative record, or for leave to take discovery, if necessary, by December 7, 2009.

For the administrative record corresponding to the additional claim Plaintiff seeks to add in its second amended complaint, the Parties will submit a proposed schedule for resolving disputes over that administrative record within 15 days of any decision granting Plaintiff's motion for leave to file a second amended complaint. The Parties believe the administrative record on such claim can be produced promptly, and will work diligently to resolve any disputes about the record so as not to delay the briefing schedule set out in Paragraph 8 below.

**6. STATEMENT REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES**

Parties do not at this point anticipate unusual claims or defenses. Plaintiff WildEarth Guardians contends that Federal Defendants actions in approving the West Elk Mine's E seam

expansion project and methane venting and in amending coal leases violated NEPA. Federal Defendants and Intervenor-Defendants contend that the Federal Defendants complied with NEPA in concurring with the State of Colorado's decision to issue a permit for the challenged mine under certain circumstances, based on the administrative record in the case.

## **7. OTHER MATTERS – POTENTIAL FOR SETTLEMENT AND ONGOING ADMINISTRATIVE PROCEEDINGS**

The Parties believe that there is a potential for settlement of this case. Plaintiff provided an outline of a settlement proposal to Federal Defendants on May 14, 2009. The Parties intend to continue discussing settlement. If any related development would make a revised briefing schedule more efficient, the parties will submit a proposed amended joint case management schedule addressing such development.

## **8. BRIEFING SCHEDULE**

The following briefing schedule is premised on the assumption that no motions will be filed to supplement the administrative record, strike portions of the administrative record, or for leave to take discovery, if necessary, pursuant to Paragraph 5. In the event that a motion or motions are filed regarding the administrative record, the party filing such a motion shall also file a motion with the Court to amend the briefing schedule to provide for resolution of issues regarding the record administrative prior to the filing of an opening brief. Further, if settlement appears likely, the parties may file a motion with the Court to amend the briefing schedule or to stay the case.

**A. Plaintiff's Opening Brief Due:** January 15, 2010

**B. Defendants' Brief Due:** February 15, 2010

**C. Plaintiff's Reply Brief Due:** March 5, 2010

**9. STATEMENTS REGARDING ORAL ARGUMENT**

Parties request oral argument in order to highlight the key elements of their respective briefs and to respond to facts or arguments raised in opposition briefs.

**10. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE**

The Parties do not at this time consent to exercise of jurisdiction by magistrate judge in this matter.

**11. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN**

The Parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.

DATED: August 28, 2009

BY THE COURT:

*s/John L. Kane*  
U.S. DISTRICT COURT JUDGE

APPROVED:

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