

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

Civil Action No. 1:13-cv-01723-AP

HIGH COUNTRY CITIZENS' ALLIANCE,  
WILDEARTH GUARDIANS, and SIERRA CLUB,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, BUREAU  
OF LAND MANAGEMENT, UNITED STATES  
DEPARTMENT OF THE INTERIOR, DANIEL  
JIRÓN, in his official capacity as Regional Forester  
for the U.S. Forest Service's Rocky Mountain  
Region, SCOTT ARMENTROUT, in his official  
capacity as Supervisor of the Grand Mesa,  
Uncompahgre, and Gunnison National Forests, and  
HELEN HANKINS, in her official capacity as the  
Bureau of Land Management's Colorado State Office  
Director

Defendants,

and

ARK LAND COMPANY, INC., and MOUNTAIN  
COAL COMPANY, L.L.C.,

Intervenor-Defendants

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**FIRST AMENDED JOINT CASE MANAGEMENT PLAN**

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## **1. APPEARANCES OF COUNSEL**

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

The Court has jurisdiction based on the presentation of a federal question, 28 U.S.C. § 1331.

Anticipated jurisdictional defenses: Respondents and/or Intervenor-Defendants may assert that Plaintiffs lack standing to assert some or all of the claims in the Second Amended Complaint.

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

- A. Date Petition for Review Was Filed:** July 2, 2013, amended July 5, 2013 and July 24, 2013
- B. Date Petition for Review Was Served on U.S. Attorney's Office:** July 3, 2013
- C. Date Answer or Other Response Was Filed:** For Intervenor-Defendants, July 10, 2013. Federal Defendants' filed their answer to the Second Amended Complaint on September 3, 2013. Intervenor-Defendants filed their answer to the Second Amended Complaint on September 4, 2013.

**4. STATEMENT(S) REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES**

None.

## **5. OTHER MATTERS**

Scheduling – A motion for a Temporary Restraining Order/Preliminary Injunction was filed July 5, 2013 and scheduled to be heard July 11, 2013. Following a ruling by the Interior Board of Land Appeals on July 10, 2013, the Parties negotiated a Stipulation, filed July 24, 2013, that obviated the need for resolution of the Temporary Restraining Order/Preliminary Injunction motion. Pursuant to that Stipulation, the Parties are seeking to submit the case for resolution on the merits on the earliest reasonable schedule.

## **6. BRIEFING SCHEDULE**

### **A. Deadline for Filing Administrative Records:**

There are four challenged decisions: (1) the June 27, 2013 Decision Record for the Sunset Trail Area Coal Exploration Plan;<sup>1</sup> (2) the August 2, 2012 Forest Service Record of Decision approving Lease Modifications COC-1362 and COC-67232 (“FS-ROD”); (3) the December 2012 Bureau of Land Management Record of Decision approving Lease Modifications COC-1362 and COC-67232 (“BLM-ROD”) and (4) promulgation of the “North Fork Exemption” to the Colorado Roadless Rule 36 C.F.R. § 294.43(c)(1)(ix). Each will have its own administrative record (“AR”).

Federal Defendants will serve the revised Administrative Records on or before February 10, 2014, and lodge them with the Court within 14 days of resolution of any objections to completeness of the Administrative Records.

### **B. Deadlines for Parties to Confer on Record Disputes:** February 18, 2014

Federal Defendants have previously provided the Parties with drafts of each of the administrative records. Plaintiffs have responded with questions concerning the completeness of each record. Federal Defendants will respond to those concerns by January 31, 2014.

### **C. Deadline for Filing Motions to Complete and/or Supplement the Administrative Records:** February 21, 2014.

### **D. Deadline for Plaintiffs Filing Amended Complaint:** February 28, 2014

### **E. Deadline for Federal Defendants Lodging Administrative Records with the Court, in the Event Plaintiffs File No Motions to Complete and/or Supplement the Administrative Records:** February 28, 2014.

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<sup>1</sup> There is a potential disagreement among the parties as to whether the Forest Service concurrence to the June 27, 2013 Decision Record constitutes a separate challengeable decision. The Parties agree that documents considered by the Forest Service pursuant to its concurrence should be included in the Administrative Record.

- F. **Petitioners' Opening Brief Due:** March 20, 2014
- G. **Respondents' Response Brief Due:** April 17, 2014
- H. **Intervenors' Response Brief (if any) Due:** April 21, 2014
- I. **Petitioner's Reply Brief Due:** May 2, 2014.

## 7. STATEMENTS REGARDING ORAL ARGUMENT

### **Joint Statement**

The Parties agree that oral argument could be helpful to the Court, given the complexity of the dispute, and request oral argument to the extent it would assist the Court in reaching a determination on the merits.

## 8. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE

**Indicate below the parties' consent choice.**

- A. ( ) **All parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.**
- B. (X) **All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.**

## 9. OTHER MATTERS

The Parties acknowledge the requirements of D.C.COLO.LCivR 5.1G and D.C.COLO.LCivR 6.1E.

**Further, the Plaintiffs wish to notify the Court that they may seek preliminary relief** (either a preliminary injunction or a temporary restraining order) if it appears a determination on the merits is unlikely to occur **by approximately June 1, 2014.**

Plaintiffs challenge four separate decisions related to the leasing and exploration of coal on national forest land. Plaintiffs allege that ground-disturbing activities authorized or otherwise made possible by those decisions will irreparably harm them, their members and the environment. In a stipulation filed with this court last year, Intervenor Ark Land Company *et al.* ("Ark") agreed to withhold such ground-disturbing activities until June 1, 2014.<sup>2</sup>

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<sup>2</sup> The stipulation states that Ark and its co-intervenors agree that

prior to June 1, 2014 neither they nor any entity or person acting on their behalf or on behalf of Arch Coal Inc. will conduct ground-disturbing activities authorized in

Ark represents that while June 1 is the earliest date that ground-disturbing activities are likely to occur, weather (e.g., heavy snowpack or precipitation) could delay such activities until weeks after June 1, although it is impossible to predict at this time.

Because ground-disturbing activities could occur less than one month after the completion of merits briefing (proposed here for May 2), **Plaintiffs may seek a status conference prior to or concurrent with their filing a motion for preliminary relief to determine with this Court's guidance how best to ensure that briefing and a hearing on Plaintiffs' claims and/or requests for preliminary relief (if necessary) are scheduled in a manner most convenient for the judge who will review the merits briefs.**

#### **10. 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. The parties agree that if disputes over the need to supplement, complete, or strike portions of the administrative record(s) cannot be resolved without briefing, any party may propose modifying this Joint Case Management Plan's deadlines for filing an amended complaint and opening, responsive, and reply briefs on the merits.

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the June 27, 2013 Decision Record of the Bureau of Land Management ("BLM") concerning the Sunset Trail Area Coal Exploration Plan challenged in the First Amended Complaint, unless a ruling from the Court denying a Temporary Restraining Order/Preliminary Injunction Motion brought by Plaintiffs is issued prior to June 1, 2014."

Stipulation As To Case Scheduling And Preliminary Relief, Doc. #27 (July 24, 2013).

DATED this 22<sup>nd</sup> day of January, 2014.

BY THE COURT

*s/John L. Kane*

Senior U.S. District Judge

APPROVED:

ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment & Natural Resources Division

*s/John S. Most, with permission 1/21/14*

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*s/Michael R. Drysdale, with permission 1/21/14*

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