

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

FRIENDS OF CEDAR MESA,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR;
BUREAU OF LAND MANAGEMENT; and
KENT HOFFMAN,

Defendants,

and

STATE OF UTAH,

Intervenor-Defendant.

Case No. 1:21-cv-00971-RC
The Honorable Rudolph Contreras

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Friends of Cedar Mesa and Federal Defendants U.S. Department of the Interior (DOI), Bureau of Land Management (BLM), and Kent Hoffman, in his official capacity as Utah Deputy State Director, Minerals and Lands, of the Bureau of Land Management, who, by and through their undersigned counsel (collectively “the Parties”), state as follows:

WHEREAS, pursuant to the Mineral Leasing Act of 1920, in March 2018 and September 2018, BLM held competitive lease sales offering oil and gas lease parcels for sale on public lands managed by BLM Utah and administered by the Monticello Field Office;

WHEREAS, on May 17, 2018, and February 8, 2019, BLM signed the applicable decision records and subsequently issued 32 leases pursuant to these two lease sales (collectively, “Leasing Decisions”);

WHEREAS, on April 8, 2021, Plaintiff filed this lawsuit challenging these Leasing Decisions based on asserted violations of the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA), *see* ECF No. 1;

WHEREAS, all 32 leases issued pursuant to the Leasing Decisions are currently suspended;

WHEREAS, the Parties, through their authorized representatives, and without any final adjudication of the issues of fact or law with respect to Plaintiff’s legal claims, have negotiated a settlement that they consider to be in the public interest and a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiff’s Complaint;

NOW THEREFORE, the Parties hereby stipulate and agree as follows:

1. NEPA, NHPA, and ESA Analysis and Consultation:

a. **NEPA:** BLM will complete additional NEPA analysis of the Leasing Decisions. As part of that NEPA analysis, BLM will consider a “no leasing” alternative, which will evaluate cancelling the leases. BLM will post its draft NEPA analysis to ePlanning and allow a 30-day public comment period on that draft.

b. **NHPA:** BLM will complete a new NHPA Section 106 review process, including making a finding of effect under 36 C.F.R. § 800.4(d)(1), 36 C.F.R. § 800.5(b), or 36 C.F.R. § 800.5(d), and as necessary, resolving any potential adverse effects under 36 C.F.R. §§ 800.6. BLM will invite to consult any Indian tribe that attaches religious and cultural significance to

historic properties that may be affected by an undertaking, in accordance with 36 C.F.R.

800.2(c)(2)(ii). All parties who were previously granted consulting party status for these lease sales under 36 C.F.R. 800.2(c)(5) shall remain consulting parties for this new Section 106 process if they so request.

c. **ESA:** BLM will prepare a final effects determination or Biological Assessment to the extent required under Section 7 of the ESA, examining the effects of BLM's Leasing Decisions on the Mexican spotted owl, Southwestern willow flycatcher, Yellow-bill cuckoo, Colorado pikeminnow, humpback chub, bonytail, and razorback sucker. To the extent required by law under Section 7(a)(2) of the ESA, BLM will initiate consultation pursuant to 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.13, 402.14.

d. Upon completion of the agreed-upon NEPA, NHPA, and ESA analyses, described above, BLM will issue a new decision, either affirming, cancelling, or modifying the Leases, on or before April 10, 2024.

e. BLM will provide Plaintiff notice of any public meetings, comment periods, and consultation opportunities. BLM will also provide Plaintiff a copy of the NEPA analysis described in paragraph 1.a, the NHPA finding and associated Cultural Resources Report (redacted to the extent required by law to protect sensitive information) described in paragraph 1.b, the final ESA documents described in paragraph 1.c, and the decisions described in paragraph 1.d within 7 days of the issuance of each of these decisions. Notice shall be provided by email or mail to the following individuals:

- i. Joe Neuhof, Executive Director, Friends of Cedar Mesa d/b/a Bears Ears Partnership, P.O. Box 338, Bluff UT 84512,
joe@bearssearspartnership.org;

- ii. Kenny Wintch, Preservation Archaeologist, Friends of Cedar Mesa d/b/a Bears Ears Partnership, P.O. Box 338, Bluff UT 84512, kenny@bearssearspartnership.org; and
- iii. Sarah Stellberg, Staff Attorney, Advocates for the West, P.O. Box 1612, Boise ID 83701, ssellberg@advocateswest.org.

f. BLM will not lift the lease suspension, or approve any Applications for Permit to Drill, on any lease parcel sold pursuant to the Leasing Decisions unless and until it completes the additional NEPA, NHPA, and ESA processes outlined above. BLM will provide notice to Plaintiff within 7 days of the receipt of any Application for Permit to Drill on the suspended leases.

2. Attorneys' Fees and Costs. Plaintiff agrees to accept payment of \$80,000 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiff is entitled in this matter through and including the date of this Agreement. Federal Defendants' payment shall be accomplished by an electronic transfer to a bank account, and Plaintiff agrees within five (5) days of executing this Agreement to designate a payee and provide sufficient information to Federal Defendants to facilitate this transfer. Plaintiff acknowledges that under 31 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31 C.F.R. §§ 285.5, 901.3; and other authorities, the United States will offset against the attorney fee award the delinquent debts of Plaintiff to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010). Plaintiff acknowledges that the above-referenced payee shall receive payment on behalf of Plaintiff, and agree that the payee's receipt of this payment from Federal Defendants shall operate as a release of Plaintiff's claims for attorneys' fees and costs in this matter up to and including the date of this Agreement.

3. Dismissal. Within three days of execution of this Settlement Agreement, the Parties shall file a joint motion requesting dismissal of this action without prejudice.

4. In the event that either party seeks to modify the terms of this Agreement or in the event of a dispute arising out of or relating to this Agreement, the party seeking modification or raising the dispute must provide the other party with notice of the claim or modification. The Parties agree that they will meet and confer at the earliest possible time in a good-faith effort to resolve the issue before seeking judicial intervention.

5. Any future challenge to the adequacy of the NEPA, NHPA, or ESA analysis for the leasing decisions challenged in this litigation, following the completion of BLM's additional analyses required by Paragraph 1 of this Agreement, must take the form of an appeal to the Interior Board of Land Appeals or a new civil action under the judicial review provisions of the Administrative Procedure Act (whichever is appropriate) 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 or limits Plaintiff from raising any claims against future decisions relating to the leases challenged in this litigation, including those based on the additional NEPA, NHPA, or ESA analyses. Federal Defendants reserve the right to raise any applicable claims or defenses to any such challenge.

6. This Agreement is the result of compromise and settlement, and it is based on and limited solely to the facts involved in this case. This Agreement does not represent an admission by any party to any fact, claim, or defense concerning any issue in this case. Further, this Agreement has no precedential value and will not be used as evidence by any party in any other litigation except as necessary to enforce the terms of this Agreement.

7. No provision of this Agreement will be interpreted as, or constitute, a commitment or requirement that Federal Defendants take action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.

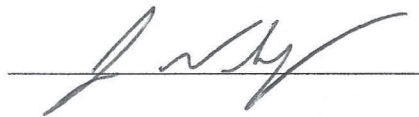
8. The undersigned representatives of the Plaintiff and Federal Defendants certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Agreement and to legally bind such Parties to it.

9. This Agreement contains all of the terms of agreement between the Parties concerning the Plaintiff's Complaint, and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

10. The Agreement is binding on Plaintiff and Federal Defendants once signed by both parties.

Dated: 1/24, 2023.

FOR PLAINTIFF
FRIENDS OF CEDAR MESA

A handwritten signature in black ink, appearing to be "J. N. Kim", is written over a horizontal line.

FOR FEDERAL DEFENDANTS

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division

SHANNON
BOYLAN

Digitally signed by
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