IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00085-JLK

COLORADO ENVIRONMENTAL COALITION,
WESTERN COLORADO CONGRESS,
WILDERNESS WORKSHOP,
BIODIVERSITY CONSERVATION ALLIANCE,
SOUTHERN UTAH WILDERNESS ALLIANCE,
RED ROCK FORESTS,
WESTERN RESOURCE ADVOCATES,
NATIONAL WILDLIFE FEDERATION,
CENTER FOR BIOLOGICAL DIVERSITY,
THE WILDERNESS SOCIETY,
NATURAL RESOURCES DEFENSE COUNCIL,
DEFENDERS OF WILDLIFE, and
SIERRA CLUB,

Plaintiffs,

v.

KEN SALAZAR, Secretary of the Interior,
in his official capacity;
WILMA LEWIS, Assistant Secretary, Land and Minerals
Management, in her official capacity;
BOB ABBEY, Director, Bureau of Land Management, in his official capacity; and
THE UNITED STATES DEPARTMENT OF THE INTERIOR and
THE BUREAU OF LAND MANAGEMENT, federal agencies.

Defendants, and

SHELL FRONTIER OIL & GAS INC.,

Intervenor Defendant.

DEFENDANTS' AND PLAINTIFFS' JOINT MOTION
TO ADMINISTRATIVELY CLOSE THE CASE

Defendants Ken Salazar, in his official capacity as Secretary of the Department of the Interior; Wilma Lewis, in her official capacity as Assistant Secretary for Land and Minerals of the U.S. Department of the Interior; the U.S. Department of the Interior; Bob Abbey, in his official capacity as Director of the Bureau of Land Management; and the U.S. Bureau of Land Management (collectively "Defendants") and Plaintiffs Colorado Environmental Coalition, Western Colorado Congress, Wilderness Workshop, Biodiversity Conservation Alliance, Southern Utah Wilderness Alliance, Red Rock Forests, Western Resource Advocates, National Wildlife Federation, Center for Biological Diversity, The Wilderness Society, Natural Resources Defense Council, Defenders of Wildlife, and Sierra Club (collectively "Plaintiffs"), by and through their undersigned counsel, hereby jointly move to administratively close this case pursuant to D.C. Colo. L. Civ. R. 41.2.[1]

The grounds for this motion are as follows: Defendants and Plaintiffs have reached a settlement on all issues raised in this action, as set forth in the Settlement Agreement submitted herewith. As stated in the Settlement Agreement, Defendants and Plaintiffs have agreed that this case should be administratively closed, pursuant to D.C. Colo. L. Civ. R. 41.2, while Defendants undertake certain actions which they propose to complete by December 31, 2012. See Settlement Agreement ¶¶ 5, 11. The Settlement Agreement provides that Defendants and Plaintiffs shall, upon Defendants' completion of the land use planning process required by the Settlement Agreement, promptly file a motion to voluntarily dismiss Plaintiffs' claims pursuant

[1] Intervenor Shell Frontier Oil & Gas Inc. ("Intervenor") has stated that it intends to oppose this motion. Counsel for Defendants conferred with counsel for Intervenor in an unsuccessful effort to resolve Intervenor's objections to the settlement. Those efforts included one in-person meeting amongst counsel for Defendants and Intervenor, including client representatives, to discuss Intervenor's objections to the proposed settlement as well as several subsequent telephone conversations and other communications to discuss the objections and various means of resolving those objections.

to Fed. R. Civ. P. 41. Id. The Settlement Agreement also provides that Plaintiffs or Defendants may move to reopen this case should Plaintiffs or Defendants fail to comply with certain settlement terms as described in the Settlement Agreement. Id. ¶¶ 12-13.

Good cause exists to grant this motion. The original adversaries in this case have agreed to resolve Plaintiffs' claims without having to bear the financial and other costs of further litigation. The Court should grant administrative closure of this case based on the "strong public policy favoring dispute resolution rather than continued litigation" and the fact that administrative closure will encourage the settlement of this dispute, while continued litigation would impede settlement. Humphreys v. State Farm Mut. Auto. Ins. Co., 2009 WL 1292617, at *6 (D. Colo. May 8, 2009) and Stanspec Corp. v. Jelco, Inc., 464 F.2d 1184, 1187 (10th Cir. 1972) ("The law actively encourages compromise and settlement of disputes."), citing Tulsa City Lines v. Mains, 107 F.2d 377 (10th Cir. 1939); see e.g. Stewart v. M.D.F., Inc., 83 F.3d 247, 252 (8th Cir. 1996) (noting "judicial policy favoring settlement ... rests on the opportunity to conserve judicial resources"). Administrative closure of this case would permit the Court and the parties to make better use of their limited resources, thus also serving the goals of judicial efficiency. It would clearly work a hardship and inequity on the settling parties if they were obliged to continue active litigation under circumstances where they have already negotiated a comprehensive agreement designed to avoid and minimize the risks of further litigation.

Moreover, administrative closure would enable the Court to avoid the hazard of advisory opinions. Cf. Kittel v. First Union Mortg. Corp., 303 F.3d 1193, 1194 -1195 (10th Cir. 2002) (stay appropriate to avoid issuance of advisory opinion). Defendants' commitments in the settlement agreement make it clear that their future agency actions are likely to supersede the agency actions at issue in this case, and do so within a definite period of time.

The administrative closure is unobjectionable because it will have a definite duration linked to the deadlines set forth in the settlement agreement, extending only until the Plaintiffs either dismiss their claims with prejudice or move to reopen the case in (or before) early 2013. Intervenor Shell is not prejudiced at all by administrative closure of this case while the settlement agreement runs its course. Intervenor has no affirmative claims for relief at issue in this case, and the settlement does not affect any legal claims Intervenor may possess. Nor does the settlement agreement affect any of Intervenor's existing mineral rights or impose any obligations on Intervenor.

It also bears mention that in opposing administrative closure, Intervenor Shell seeks to essentially veto the settlement, or, at the least, delay and obstruct its implementation. As made clear in analogous contexts such as approval of a consent decree or grant of intervention in litigation, intervenors have "no power to veto a settlement by other parties." San Juan County, Utah v. United States, 503 F.3d 1163, 1189 (10th Cir. 2007) (en banc), citing Local No. 93, Int'l. Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland, 478 U.S. 501, 528-29 (1986) ("It has never been supposed that one party-whether an original party, a party that was joined later, or an intervenor-could preclude other parties from settling their own disputes and thereby withdrawing from litigation.").

In addition, the settlement agreement commits Defendants to engage in further analysis and decision-making pursuant to statutes, such as the Administrative Procedure Act ("APA"), the Federal Land Policy and Management Act ("FLPMA"), and the National Environmental Policy Act ("NEPA") that provide adequate means for Intervenor Shell, Plaintiffs, and other interested parties to comment to Defendants about their preferences and concerns as to Defendants' future actions, the substance of which is left to the Defendants' discretion and subject to generally

applicable law. Intervenor Shell may challenge any future agency action taken by Defendants in a separate lawsuit (assuming Intervenor meets all legal requirements to do so). In light of these substantial protections Intervenor Shell has under existing law, it should not be permitted to block a settlement that enables the Department of the Interior to focus its full attention and limited resources on public decision-making that will finally and fully resolve this pending case.

Based on the foregoing, Defendants and Plaintiffs respectfully request that the Court enter the attached proposed order administratively closing the case.

Dated: February 15, 2011

Respectfully Submitted,

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Attorney for Plaintiff Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, copies of DEFENDANTS' AND PLAINTIFFS' JOINT MOTION TO ADMINISTRATIVELY CLOSE THE CASE, SETTLEMENT AGREEMENT, and PROPOSED ORDER were filed electronically via the CM/ECF system for the United States District Court, District of Colorado, which will send electronic notice to the following counsel of record:

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/s/ John H. Martin

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WESTERN RESOURCE ADVOCATES,
NATIONAL WILDLIFE FEDERATION,
CENTER FOR BIOLOGICAL DIVERSITY,
THE WILDERNESS SOCIETY,
NATURAL RESOURCES DEFENSE COUNCIL,
DEFENDERS OF WILDLIFE, and
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THE UNITED STATES DEPARTMENT OF THE INTERIOR and
THE BUREAU OF LAND MANAGEMENT, federal agencies.

Defendants, and

SHELL FRONTIER OIL & GAS INC.,

Intervenor Defendant.

SETTLEMENT AGREEMENT

WHEREAS, on November 17, 2008, the U.S. Bureau of Land Management issued an Approved Resource Management Plan Amendments / Record of Decision for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement ("2008 OSTS ROD");

WHEREAS, the 2008 OSTS ROD amended the decisions specific to oil shale and tar sands resources in twelve land use plans: Glenwood Springs Resource Management Plan ("RMP"), Grand Junction RMP, and White River RMP in Colorado; Book Cliffs RMP, Diamond Mountain RMP, San Rafael Resource Area RMP, Price River Resource Area Management Framework Plan ("MFP"), Henry Mountain MFP, and San Juan Resource Area RMP in Utah; and Great Divide RMP, Green River RMP, and Kemmerer RMP in Wyoming;

WHEREAS, on January 16, 2009, Plaintiffs Colorado Environmental Coalition, Western Colorado Congress, Wilderness Workshop, Biodiversity Conservation Alliance, Southern Utah Wilderness Alliance, Red Rock Forests, Western Resource Advocates, National Wildlife Federation, Center for Biological Diversity, The Wilderness Society, Natural Resources Defense Council, Defenders of Wildlife, and Sierra Club (collectively "Plaintiffs") filed a Complaint for declaratory and injunctive relief against Ken Salazar, in his official capacity as Secretary of the Department of the Interior, Wilma Lewis, in her official capacity as Assistant Secretary for Land and Minerals of the U.S. Department of the Interior, the U.S. Department of the Interior, Bob Abbey, in his official capacity as Director of the U.S. Bureau of Land Management,[1] and the U.S. Bureau of Land Management ("BLM") (collectively "Defendants"), and filed a First Amended Complaint on June 15, 2009;

WHEREAS, Plaintiffs allege that the issuance of the 2008 OSTS ROD violated BLM regulations, the Administrative Procedure Act ("APA"), the Federal Land Policy and Management Act ("FLPMA"), the National Environmental Policy Act ("NEPA"), and the Endangered Species Act ("ESA");

WHEREAS, on May 11, 2009, Shell Frontier Oil & Gas Inc. was granted status as Intervenor in this action; and

[1] Pursuant to Fed. R. Civ. P. 25(d), current agency officials have been substituted for their predecessors in office.

WHEREAS, Defendants and Plaintiffs (the "Settling Parties"), through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have reached a settlement in this action;

NOW, THEREFORE, THE SETTLING PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. No later than 120 days after this Settlement Agreement becomes effective, Defendants will publish a notice of intent ("NOI") to consider amending each of the land use planning decisions made by the 2008 OSTS ROD. Such notice shall initiate scoping under NEPA in coordination with the RMP amendment process pursuant to 43 C.F.R. § 1610.2(c), which may be carried out on a programmatic or individual planning area basis. The NOI will propose to analyze the environmental effects of an alternative or alternatives in a NEPA analysis that would exclude from commercial oil shale or tar sands leasing:

   a. All areas that Defendants have identified, or may identify as a result of inventories conducted during this planning process, as lands containing wilderness characteristics;

   b. The whole of the Adobe Town "Very Rare or Uncommon" area, as designated by the Wyoming Environmental Quality Council on April 10, 2008;

   c. Core or priority sage grouse habitat, as defined by such guidance as Defendants may issue;

   d. All areas of critical environmental concern ("ACEC") located within the areas analyzed in the September 2008 Oil Shale and Tar Sands Resources Leasing Final Programmatic Environmental Impact Statement ("OSTS PEIS"); and

   e. All areas identified as excluded from commercial oil shale and tar sands leasing in Alternative C of the September 2008 OSTS PEIS.

2. As part of the NEPA analysis initiated by the publication of the NOI, Defendants will analyze the environmental effects of at least the following three alternatives:

   a. An alternative or alternatives removing all of the lands described above in Paragraph 1 from applications for oil shale or tar sands leasing;

b. At least one alternative that removes some, but not all, of the lands described above in Paragraph 1 from applications for oil shale or tar sands leasing; and

c. The "no action" alternative.

The purpose and need statement in the NEPA analysis supporting the RMP amendment process or processes shall be defined in such a manner that it can be met by any and all of the alternatives described in Paragraph 2(a) and 2(b) above. Nothing in this section shall limit Defendants from analyzing additional alternatives or from selecting an alternative that best meets Defendants' objectives.

3. In conjunction with the RMP amendment process or processes and supporting NEPA analysis, Defendants will provide a public protest period, pursuant to 43 C.F.R. §§ 1610.2 and 1610.5-2, and provide for state consistency review, pursuant to 43 U.S.C. § 1712(c)(9) and 43 C.F.R. § 1610.3-2(e).

4. During the RMP amendment process or processes and supporting NEPA process, BLM will consider information timely provided by Plaintiffs and other interested parties during scoping and other public comment opportunities.

5. Subject to available appropriations and staffing and subject to compliance with applicable laws and regulations, Defendants will use best efforts to issue a final decision or decisions regarding amendments for each of the planning decisions made by the 2008 OSTS ROD no later than December 31, 2012. Pursuant to 43 C.F.R. § 1610.5-1 and 43 C.F.R. § 1610.5-2, such final decision or decisions may not be issued until after the resolution of any protests. When Defendants issue such final decision or decisions, Plaintiffs may challenge such decision or decisions in a new action brought under applicable federal law. Defendants do not waive any defenses they might have against such a challenge.

6. Defendants acknowledge that under the terms of the 2008 OSTS ROD, prior to the approval of an application to convert an oil shale Research, Development & Demonstration ("RD&D") lease to a commercial lease, Defendants must conduct an analysis of the proposed conversion under NEPA in addition to the final OSTS PEIS supporting the 2008 OSTS ROD. If Defendants approve such an application, Plaintiffs may challenge the approval only in a new action brought under applicable federal law. Defendants do not waive any defenses they might have against such a challenge.

7. Prior to the publication of a new decision or decisions regarding amendments for each of the planning decisions made by the 2008 OSTS ROD, or January 15, 2013, whichever occurs first, Defendants will not issue a call for expression of leasing interest for commercial oil shale leases pursuant to 43 C.F.R. § 3921.30. In the event that Defendants conduct the new planning processes agreed to in this Settlement Agreement by addressing individual plans rather than by using a programmatic approach, Defendants will only issue a call for expression of leasing interest for commercial oil shale leases in planning areas subject to a new decision regarding plan amendments, as described in Paragraph 5. Nothing in this Settlement Agreement prohibits Defendants from soliciting the nomination of parcels to be leased for RD&D of oil shale recovery technologies in the States of Colorado, Utah, and Wyoming. If Defendants approve the issuance of an RD&D lease prior to the publication of a new decision regarding amendments for the applicable planning decision made by the 2008 OSTS ROD as set forth in Paragraph 5, Plaintiffs may challenge such a decision in a new action brought under applicable federal law. If Plaintiffs bring such a challenge to an RD&D lease issued prior to the publication of a new decision regarding amendments for the applicable planning decision made by the 2008 OSTS ROD as set forth in Paragraph 5, they may not bring any claims that were raised or could have been raised in the above-captioned civil action with respect to the 2008 OSTS ROD. Defendants do not waive any defenses they might have against such a challenge.

8. Prior to the publication of a new decision or decisions regarding amendments for each of the planning decisions made by the 2008 OSTS ROD, or January 15, 2013, whichever occurs first, Defendants will not, on their own initiative, offer lands for competitive tar sands leasing, or accept expressions of interest in tracts for competitive tar sands leasing pursuant to 43 C.F.R. § 3141.6-1 through 43 C.F.R. § 3141.7. The commitment in the preceding sentence, however, does not apply to the Defendants' ongoing consideration of the expression of commercial leasing interest for tar sands in the Asphalt Ridge Special Tar Sands Area near Vernal, Utah, submitted by Jones Leasing Service on behalf of Ocean Enterprise Group on November 16, 2009, or to the possible sale or issuance of a lease for some or all of the parcels identified in that expression of leasing interest. Plaintiffs may protest or challenge such potential actions as provided by law, but shall not raise any claim that was or could have been raised in the above-captioned civil action. In the event that Defendants conduct the new planning processes agreed to in this Settlement Agreement by addressing individual plans rather than by using a

programmatic approach, Defendants will only offer lands for competitive tar sands leasing, or accept expressions of interest in tracts for competitive tar sands leasing, in planning areas subject to a new decision regarding plan amendments, as described in Paragraph 5.

9. Those acting with actual authority of Plaintiffs shall not authorize Plaintiffs to fund any other entity or person not a party to this Settlement Agreement specifically to commence or maintain a legal challenge against Defendants regarding the agency actions at issue in the above-captioned civil action. Defendants may terminate this Settlement Agreement upon notice to Plaintiffs of any violation of this paragraph, subject to the dispute resolution provisions of Paragraph 13.

10. In consideration of Defendants' agreement, as described above, to initiate a new planning process addressing the land use planning decisions made by the 2008 OSTS ROD, Plaintiffs waive and release all claims against Defendants arising from the issuance of the 2008 OSTS ROD. Nothing in this Settlement Agreement waives or limits in any way any legal claim Plaintiffs may pursue: (a) against any final decision or decisions regarding amendments for each of the planning decisions made by the 2008 OSTS ROD as set forth in Paragraph 5; (b) against any agency action that tiers to, relies upon, or incorporates any such final decision or decisions; (c) against any agency action that tiers to, relies upon, or incorporates by reference the 2008 OSTS PEIS, except for any decision concerning an RD&D lease issued prior to the publication of a final decision regarding amendments for the applicable planning decision(s) made by the 2008 OSTS ROD as set forth in Paragraph 5; or (d) against any agency action that tiers to, relies upon, or incorporates by reference BLM's determination of "no effect" pursuant to ESA Section 7 concerning the 2008 OSTS RMP amendments, except for any decision concerning an RD&D lease issued prior to the publication of a final decision regarding amendments for the applicable planning decision made by the 2008 OSTS ROD as set forth in Paragraph 5.

11. The Settling Parties agree to jointly move to administratively close this action pursuant to D. C. Colo. L. Civ. R. 41.2 as set forth in the attached joint motion and proposed order, which is hereby made a part of this Settlement Agreement. The terms of this Settlement Agreement shall become effective upon entry of an order by the Court administratively closing the action as set forth in the proposed order. Upon issuance of a new decision or decisions regarding amendments for each of the planning decisions made by the 2008 OSTS ROD, the

Settling Parties shall promptly file a motion to voluntarily dismiss Plaintiffs' claims with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

12. Defendants' issuance of a new decision or decisions regarding amendments for each of the planning decisions made by the 2008 OSTS ROD discharges all of Defendants' obligations under this Settlement Agreement. If Defendants fail to fulfill any obligation required by this Settlement Agreement, Plaintiffs' sole remedy will be to move the Court to reopen this lawsuit, subject to compliance with D. C. Colo. L. Civ. R. 41.2 and Paragraph 13. Plaintiffs shall be permitted to move to reopen this action only on the following grounds: (a) Defendants fail to publish a notice of intent ("NOI") by 120 days after the effective date of this Settlement Agreement to consider amending each of the land use planning decisions made by the 2008 OSTS ROD, in violation of Paragraph 1; (b) Defendants issue a notice of intent proposing plan amendments that does not propose excluding from commercial oil shale or tar sands leasing one or more of the areas identified in Paragraph 1; (c) Defendants issue a NEPA document that does not analyze one or more of the alternatives identified in Paragraph 2; (d) Defendants fail to provide a public protest period pursuant to 43 C.F.R. §§ 1610.2 and 1610.5-2 or fail to provide for state consistency review pursuant to 43 U.S.C. § 1712(c)(9) and 43 C.F.R. § 1610.3-2(e) in violation of Paragraph 3; (e) Defendants fail to issue a new planning decision or decisions by December 31, 2012 as provided in Paragraph 5; (f) Defendants approve an application to convert an RD&D lease to a commercial lease before conducting additional NEPA analysis in violation of Paragraph 6; (g) prior to January 15, 2013, Defendants issue a call for expression of leasing interest for oil shale before issuing a new planning decision applicable to the area of the proposed leases in violation of Paragraph 7; or (h) prior to January 15, 2013, Defendants offer lands for competitive tar sands leasing, or accept expressions of interest in tracts for competitive tar sands leasing before issuing a new planning decision applicable to the area of the proposed leases in violation of Paragraph 8. This Settlement Agreement shall not be enforceable through a motion to enforce this Settlement Agreement or a proceeding for contempt of court.

13. If there is a dispute over compliance with any term or provision of this Settlement Agreement, the disputing Settling Party will notify the other Settling Party in writing of the dispute. The Settling Parties shall meet and confer orally in an attempt to resolve the dispute. The Settling Parties shall attempt to negotiate a resolution of the dispute within 30 days of the written notification of the dispute. If the Settling Parties do not reach a resolution during the 30-

day period, the disputing Settling Party may move to reopen this lawsuit based upon one of the grounds specified in Paragraphs 9 or 12. This Settlement Agreement shall terminate if the Court reopens this lawsuit.

14. No provision of this Settlement Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the APA, BLM regulations, FLPMA, NEPA, the ESA, or any other law or regulation, either substantive or procedural. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to Defendants by the APA, BLM regulations, FLPMA, NEPA, the ESA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

15. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a requirement that Defendants 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.

16. This Settlement Agreement was negotiated to avoid further litigation only. This Settlement Agreement has no precedential value and does not represent an admission or waiver by any Settling Party to any fact, claim, or defense relating to any issue in this lawsuit and may not be used as evidence of such fact, claim, or defense in any litigation.

17. Each Settling Party shall bear its own attorneys' fees and costs.

18. The undersigned representatives of each Settling Party certify that they are fully authorized by the Settling Party or Parties they represent to agree to the Court's entry of the terms and conditions of this Settlement Agreement and do hereby agree to the terms herein.

19. This Settlement Agreement may only be supplemented, modified, or amended by written agreement of the Settling Parties.

20. This Settlement Agreement represents the entirety of the Settling Parties' commitment with regard to settlement.

21. Counsel for Plaintiffs have reviewed this Settlement Agreement and have authorized Defendants' counsel to file this Settlement Agreement on behalf of the Settling Parties.

IT IS HEREBY AGREED.

Dated: February 15, 2011

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CENTER FOR BIOLOGICAL DIVERSITY,
THE WILDERNESS SOCIETY,
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DEFENDERS OF WILDLIFE, and
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WILMA LEWIS, Assistant Secretary, Land and Minerals
Management, in her official capacity;
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THE UNITED STATES DEPARTMENT OF THE INTERIOR and
THE BUREAU OF LAND MANAGEMENT, federal agencies.

Defendants, and

SHELL FRONTIER OIL & GAS INC.,

Intervenor Defendant.

ORDER ADMINISTRATIVELY CLOSING THE CASE

This matter is before the Court on Defendants' and Plaintiffs' Joint Motion to Administratively Close the Case pursuant to D.C. Colo. L. Civ. R. 41.2. Defendants and Plaintiffs have executed a Settlement Agreement, submitted with the Joint Motion, requiring Defendants to take certain actions and resolving Plaintiffs' claims upon timely completion of those actions. Pursuant to the terms of the Settlement Agreement, Defendants and Plaintiffs have requested that the Court administratively close this case pending further actions by the Defendants. The Settlement Agreement sets forth certain circumstances under which the Plaintiffs and Defendants may move to reopen this lawsuit. The Court finds that good cause exists to administratively close the case. Accordingly, this case is hereby administratively closed. In addition, Plaintiffs and Defendants are instructed to promptly notify the Court when the land use planning process required by the Settlement Agreement has been completed.

IT IS SO ORDERED.

Dated this ____ day of _____, 2011.

_____
John L. Kane, Senior District Judge
United States District Court