

**SETTLEMENT AGREEMENT**  
*WildEarth Guardians v. Haaland*, 2:16-cv-00168  
U.S. District Court for the District of Utah

This Settlement Agreement (“Agreement”) is made by and between Plaintiffs, WildEarth Guardians and The Grand Canyon Trust (collectively “Plaintiffs”); Federal Defendants, Debra Haaland, in her official capacity as Secretary of the Interior, the U.S. Bureau of Land Management, and the U.S. Forest Service (collectively “Federal Defendants”); and Intervenor-Defendants, the State of Utah and Canyon Fuel Company, LLC (“Canyon Fuel”).

**RECITALS**

1. In July 2015, the Bureau of Land Management (“BLM”) and Canyon Fuel executed a 20-year lease of federally owned coal reserves situated on public lands in Utah that are managed as part of the Manti-La Sal National Forest. The lease is known as the Flat Canyon Lease (UTU-77114). It is part of the Skyline Mine. When issued, the Flat Canyon Lease included coal reserves estimated at 42 million tons. Canyon Fuel estimates that it has mined about 11.94 million tons of coal from the Flat Canyon Lease as of the end of 2022.
2. Canyon Fuel also owns and operates the Soldier Creek Logical Mining Unit (LMU) serialized with BLM as UTU-73340 and approved effective March 1, 1996. LMU UTU-73340 includes both the Dugout Canyon and the Soldier Canyon Mines in the Book Cliffs coalfield northeast of Price, Utah. Production of coal at the Dugout Canyon Mine and the Soldier Canyon Mine has historically come from a combination of federal, state, and private leases. BLM has received relinquishments or partial relinquishments on all the federal leases within the Soldier Canyon Mine. Canyon Fuel estimates the following coal reserves remaining under lease at the Dugout Canyon Mine:

<b>Lease No.</b>	<b>Type</b>	<b>Remaining Tons</b>
UTU-07064-27821	Federal	4.1 million
ML-42648	State/SITLA	3.4 million
ML-42649/ML-44365	State/SITLA	3.1 million

Canyon Fuel estimates that about 28 million more tons of coal are accessible from the Dugout Canyon Mine workings.

3. Canyon Fuel also owns and operates the SUFCO Logical Mining Unit (LMU) serialized with BLM as UTU-73341 and approved effective April 2, 1990. LMU UTU-73341 includes the Sufco Mine in the Wasatch Plateau coalfield located west of Emery, Utah. Production of coal at the Sufco Mine has historically come from a combination of federal, state, and private leases. In March, 2019, BLM approved modifications to two federal coal leases -- UTU-84102 and UTU-63214 -- totaling an estimated 6.25 million tons of federal coal (“2019 Sufco Lease Modifications”). The 2019 Sufco Lease Modifications were also intended to avoid the sterilization of 2.3 million tons of coal in the parent leases. To date, mining has not occurred in either lease modification.

4. In 2015, Plaintiffs filed a lawsuit in the U.S. District Court for the District of Utah, Case No. 2:16-cv-00168 (“the Lawsuit”), alleging that BLM, with the Forest Service’s consent, issued the Flat Canyon Lease without satisfying the requirements of the Administrative Procedure Act, National Environmental Policy Act (“NEPA”), and Mineral Leasing Act. Plaintiffs filed an amended petition for review of agency action on November 30, 2015.

5. Motions to transfer venue,<sup>1</sup> for intervention,<sup>2</sup> to amend the complaint,<sup>3</sup> to add documents to the administrative record,<sup>4</sup> and for reconsideration<sup>5</sup> of the Court’s order concerning the administrative record,<sup>6</sup> have delayed briefing on the merits. Plaintiffs filed their opening brief in April 2021.<sup>7</sup>

6. In August 2021, the BLM, Forest Service, and U.S. Office of Surface Mining Reclamation and Enforcement announced their intent to prepare an environmental impact statement (EIS) analyzing proposals to modify the Flat Canyon Lease (“Flat Canyon LM”) and to lease additional federal coal reserves in an area called the Little Eccles Federal Coal Lease By Application (LBA) Tract (UTU-92226) (“Little Eccles LBA”). The Little Eccles LBA area is adjacent to the Skyline Mine. Both proposals respond to applications submitted by Canyon Fuel.

7. The 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 of the Lawsuit and stipulate and agree to the following terms and conditions.

#### **TERMS AND CONDITIONS**

1. **Effective Date.** This Agreement shall be effective on the date it is executed by all parties.

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<sup>1</sup> ECF 9 (Nov. 20, 2015).

<sup>2</sup> ECF 19 (Feb. 10, 2016); ECF 34 (Mar. 23, 2016).

<sup>3</sup> ECF 58 (June 24, 2016).

<sup>4</sup> ECF 70 (Sep. 29, 2016).

<sup>5</sup> ECF 103 (Aug. 19, 2019).

<sup>6</sup> ECF 97 (Aug. 7, 2019).

<sup>7</sup> ECF 127 (Apr. 2, 2021).

**2. Dugout Canyon and Sufco Mine Lease Relinquishments.**

A. Dugout Canyon -- Within 30 days after this Agreement's effective date, Canyon Fuel will submit a full relinquishment of the Utah School and Institutional Trust Lands Administration ("SITLA") leases ML-42649 and ML-44365 within the Soldier Creek LMU. Canyon Fuel will provide a copy of the relinquishment request to all parties contemporaneously with the request's submission.

B. Sufco -- Within 30 days after this Agreement's effective date, Canyon Fuel will submit a relinquishment of the 2019 Sufco Lease Modifications to UTU-84102 and UTU-63214 within the Sufco LMU. Canyon Fuel will provide a copy of the relinquishment request to all parties contemporaneously with the request's submission.

C. BLM and SITLA will process and accept the relinquishment of each lease identified in Paragraphs 2.A. and 2.B. in accordance with applicable regulations. As noted in Mining and Reclamation Permit No. C/007/039 and Permit No. C/041/002 issued by the Utah Division of Oil, Gas and Mining (DOG M), any changes to the approved mine closure and reclamation work will require approval from DOGM with BLM's concurrence and, for Permit No. C/041/002, the Forest Service's concurrence.

**3. Prospective EIS for the Little Eccles LBA and Flat Canyon LM.**

A. To decide whether to approve the Flat Canyon LM and whether to issue a new federal coal lease in the Little Eccles LBA, the Federal Defendants will:

i. complete an environmental impact statement under NEPA (the "Prospective EIS") that analyzes, at a minimum:

a. the direct, indirect, and cumulative effects of climate change attributable

to the Little Eccles LBA and Flat Canyon LM and alternatives to those lease proposals, including consideration of the social cost of greenhouse gas emissions resulting from each alternative analyzed, to the extent not prohibited by law, *see* Subparagraph 3.C., *infra*; and,

b. the direct, indirect, and cumulative air-quality effects resulting from the Little Eccles LBA and Flat Canyon LM and alternatives to those lease proposals, including downstream air-quality effects of transporting and combusting leased coal; and,

ii. include in the administrative record an assessment of whether the Little Eccles LBA and Flat Canyon LM comply with the criteria established in 43 C.F.R. § 3425.1–8(a).

B. As part of the baseline environmental information for the Little Eccles LBA and Flat Canyon LM submitted to the Federal Defendants for review under NEPA, Canyon Fuel will submit to BLM an inventory of projected air emissions and monetary estimates of the social cost of greenhouse gases that would result if the Little Eccles LBA and Flat Canyon LM are: (a) approved by the Federal Defendants; and (b) not approved by the Federal Defendants. The inventory and estimates will include emissions arising from activities on the lease and downstream emissions resulting from transportation and combustion of the coal proposed for leasing. Emissions will be provided for each greenhouse gas (carbon dioxide, methane, and nitrous oxide) for each year coal production is anticipated to occur from the lease. Canyon Fuel agrees to engage Tetra Tech to prepare the baseline inventory and estimates (the “Work”), except that if Tetra Tech cannot or does not undertake or complete the Work for any reason, Canyon

Fuel agrees to engage a replacement consultant to complete the Work who has the technical skills and experience to perform the Work in a competent manner. The estimates of the social cost of greenhouse gas emissions shall use the figures and methods developed by the Interagency Working Group on the Social Cost of Greenhouse Gases (“IWG”) as described in the technical support document, or any final supplemental or substitute publication that the IWG has published most recently at the time the baseline information is submitted. Canyon Fuel will provide the inventory and estimates to Plaintiffs contemporaneously with their submission to BLM.

C. The parties acknowledge that the Federal Defendants are currently parties to a lawsuit seeking relief that may constrain how the Federal Defendants may assign monetary costs to greenhouse gas emissions in NEPA analyses, and they acknowledge that the Federal Defendants are not agreeing to violate any judicial order or other provision of law in carrying out their obligations in Subparagraph 3.A.i.a. or in the consideration of any baseline information submitted by Canyon Fuel.<sup>8</sup>

D. The obligations in this Section 3 shall apply only to Canyon Fuel’s pending applications for a new federal coal lease in the Little Eccles LBA and the Flat Canyon LM and any revisions, modifications, or resubmissions of those applications.

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<sup>8</sup> On February 11, 2022, a federal court in Louisiana issued an injunction barring many federal agencies, including the Department of the Interior, from, among other things, “[a]dopting, employing, treating as binding, or relying upon the work product of the Interagency Working Group, including without limitation, any and all Social Cost of Greenhouse Gas estimates published by the Interagency Working Group.” *Louisiana v. Biden*, No. 2:21-CV-01074, 2022 WL 438313, at \*5, 21 (W.D. La. Feb. 11, 2022). The federal government appealed the injunction, and on March 16, 2022, the Fifth Circuit granted the federal government’s emergency motion for stay pending appeal of the preliminary injunction. *See Louisiana v. Biden*, No. 22-30087, 2022 WL 866282 (5th Cir. Mar. 16, 2022). As of the date of this settlement, the litigation remains pending.

E. Nothing in this Agreement obligates the Federal Defendants to complete the Prospective EIS if the Little Eccles LBA or Flat Canyon LM applications are withdrawn by the applicant or are rejected under 43 C.F.R. § 3425.1–8 or other legal authority, or the Federal Defendants defer or suspend further processing of the Little Eccles LBA or Flat Canyon LM consistent with applicable law. This paragraph does not and shall not be construed to diminish or enlarge any party’s existing legal rights or obligations with respect to the Little Eccles LBA or Flat Canyon LM.

4. **Dismissal.** Within 7 days after this Agreement’s effective date, Plaintiffs will file the stipulation of dismissal attached as Exhibit A, dismissing the Lawsuit with prejudice pursuant to Fed. R. Civ. P. 41(a).

5. **No Waiver.** Nothing in this Agreement waives or limits in any way any legal claim or defense that any party may assert relating to any decision by the Federal Defendants to lease or to forgo leasing of the coal reserves covered by the Little Eccles LBA or Flat Canyon LM.

6. **Dispute Resolution.**

A. If a dispute arises over a party’s compliance with this Agreement, the parties will meet and confer to attempt to resolve the dispute. Any party may initiate this dispute-resolution process by notifying the other parties to this Agreement in writing of the nature of the dispute, including a detailed explanation of the dispute and providing all supporting evidence of alleged noncompliance with the Agreement. Notice to Federal Defendants under this paragraph shall be directed to the applicable BLM Utah Field Office and BLM Utah State Director, in addition to the persons identified in Section 9 of this Agreement. The parties will make good-faith efforts to

meet and confer either in person or by videoconference or telephone within 30 days of the date of the dispute-resolution notice.

B. For any dispute about the Federal Defendants' compliance with Section 3 of this Agreement, the Federal Defendants will memorialize the outcome of the meeting in a memorandum and will provide a copy of the memorandum to the parties to this Agreement within 30 days after the meeting. If the Federal Defendants cannot meet the 30-day deadline due to the nature of the issues or other exigent circumstances, Federal Defendants will notify the complaining party within 25 days after the meeting and will provide a response as expeditiously as possible, but no later than 60 days after the meeting. After providing a copy of the memorandum to the parties, Federal Defendants' obligations under this paragraph are complete. The parties agree not to seek administrative or judicial review of Federal Defendants' resolution of the dispute, or to assist in any way any person or entity that attempts to do so.

C. The parties may challenge BLM's final decisions regarding Canyon Fuel's applications for a new federal coal lease in the Little Eccles LBA or the Flat Canyon LM in a new lawsuit subject to the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701–06. The meet and confer process set forth in this section is not a prerequisite to the filing of such a lawsuit.

D. The dispute-resolution procedures in this section shall remain in effect until: (i) BLM makes final decisions regarding Canyon Fuel's applications for a new federal coal lease in the Little Eccles LBA and the Flat Canyon LM; and (ii) Canyon Fuel fully discharges its obligations under Section 2 of this Agreement.



7. **Attorneys' Fees.**

A. Plaintiffs agree to accept payment of \$175,000 in full satisfaction of any and all claims that Plaintiffs may have for attorneys' fees and costs associated with the Lawsuit.

Plaintiffs agree that receipt of this payment from Federal Defendants shall operate as a waiver and release of any and all of Plaintiffs' claims for attorneys' fees and costs in the Lawsuit.

B. The United States may offset the payment amount to account for any delinquent debts owed by the payee(s) to the United States pursuant to 31 U.S.C. §§ 3711, 3716.

C. The payment under Paragraph 7.A. will be made by electronic funds transfer. Within 14 days after the effective date of this Agreement, Plaintiffs' counsel will provide to Federal Defendants' counsel the following information necessary for Federal Defendants to process the disbursement to resolve attorneys' fees and costs: the payee's address, the payee's bank account number, the account type, the name of the payee's bank, the bank routing transit number, and the payee's tax identification number. Within 21 days after this Agreement's effective date, Federal Defendants will submit all paperwork necessary to effectuate the disbursement under this paragraph.

D. Plaintiffs and their counsel, assigns, executors, and administrators agree to forever release, abandon, waive, and discharge the United States and Federal Defendants from any and all claims, demands, damages, causes of action or suits at law or equity to recover fees, costs, or expenses in any way related to the Lawsuit.

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

9. **Notice.** Notices under this Agreement must be given in writing and delivered by U.S. mail, courier, delivery service, or e-mail with proof of delivery requested to the following:

If to Plaintiffs:

Aaron M. Paul  
Staff Attorney  
Grand Canyon Trust  
4404 Alcott Street  
Denver, CO 80211  
apaul@grandcanyontrust.org

and to:

Samantha Ruscavage-Barz  
Legal Director  
WildEarth Guardians  
301 N. Guadalupe Street, Ste. 201  
Santa Fe, NM 87501  
ruscavagebarz@wildearthguardians.org

If to Federal Defendants:

Luther L. Hajek  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
999 18th St., South Terrace, Suite 370  
Denver, CO 80202  
(303) 844-1376  
luke.hajek@usdoj.gov

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If to Canyon Fuel Company:

Kim S Colton  
General Counsel  
Canyon Fuel Company, LLC  
9815 South Monroe Street, Ste 203  
Sandy, UT 84070

If to the State of Utah:

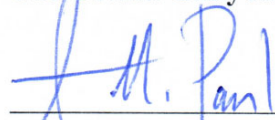
Director  
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Salt Lake City, Utah 84116  
(801) 537-9801

Jake Garfield  
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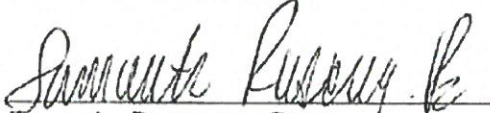
10. **Modification.** This Agreement shall not be modified except in a writing signed by the parties.
11. **Construction.** This Agreement constitutes the entire agreement between the parties with respect to settlement of the Lawsuit and merges all prior and contemporaneous communications, negotiations, oral agreements, correspondence and course of dealing between the parties on this subject.
12. **Severability.** If any part of this Agreement is deemed to be unlawful, void, or unenforceable, and if that part of the Agreement is severable from the rest of the Agreement without frustrating the Agreement's essential purpose, then the rest of the Agreement shall remain valid, binding, and enforceable.
13. **Counterparts.** This Agreement may be executed electronically and in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.
14. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns.
15. **Authority.** Each signatory represents that he or she has the full authority to legally bind the party on whose behalf he or she has executed this Agreement.

**The Grand Canyon Trust**

  
\_\_\_\_\_  
Aaron M. Paul  
*Counsel for The Grand Canyon Trust*

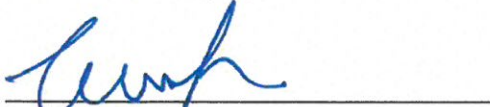
Dated: March 2, 2023

**WildEarth Guardians**

  
Samantha Ruscavage-Barz  
Counsel for WildEarth Guardians


Dated: 3-1-23, 2023

**Federal Defendants**

  
Luther L. Hajek  
Trial Attorney  
U.S. Department of Justice

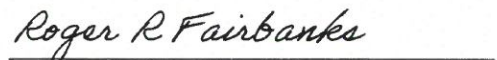
Dated: March 2, 2023

**Canyon Fuel Company, LLC**

  
Carson Pollastro  
Chief Executive Officer

Dated: March 7, 2023

**State of Utah**

  
Roger R. Fairbanks  
Assistant Attorney General  
Utah Attorney General's Office

Dated: March 2, 2023

# EXHIBIT A

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Attorneys for Plaintiffs *WildEarth Guardians and Grand Canyon Trust*

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

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WILDEARTH GUARDIANS and  
GRAND CANYON TRUST,

Plaintiffs,

v.

DEB HAALAND, in her official capacity as  
Secretary of Interior, *et al.*,

Defendants,

and,

STATE OF UTAH and  
CANYON FUEL COMPANY, LLC,

Defendant-Intervenors.

**STIPULATION OF DISMISSAL WITH  
PREJUDICE**

Case No. 2:16-cv-00168-DN

District Judge David Nuffer

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In accordance with Fed. R. Civ. P. 41(a)(1)(A)(ii) and the parties' settlement agreement

resolving all claims asserted in this action, the parties hereby stipulate that this action is dismissed with prejudice pursuant to the terms of the settlement agreement, which is attached as Exhibit 1.

Respectfully submitted this [day] of [month], 2023.

/s/ Aaron M. Paul

Aaron M. Paul (*admitted pro hac vice*)

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Assistant Attorney General

/s/ Luther L. Hajek

LUTHER L. HAJEK

Trial Attorney, CO Bar # 44303

ARWYN CARROLL

Trial Attorney, MA Bar #675926

United States Department of Justice

Environment & Natural Resources Division



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*/s/ Alison Garner*

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/s/ Roger R. Fairbanks\_\_\_\_\_

Roger R. Fairbanks

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