IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-01017-PAB

ROCKY MOUNTAIN PEACE & JUSTICE CENTER; CANDELAS GLOWS/ROCKY FLATS GLOWS; ROCKY FLATS RIGHT TO KNOW; ROCKY FLATS NEIGHBORHOOD ASSOCIATION; and ENVIRONMENTAL INFORMATION NETWORK (EIN) INC.,

Plaintiffs,

v.

UNITED STATES FISH AND WILDLIFE SERVICE;
GREG SHEEHAN, in his official capacity as Acting Director, U.S. Fish and Wildlife Service;
RYAN ZINKE, in his official capacity as Secretary of the Interior; and
DAVID LUCAS, in his official capacity as Project Leader, Region 6, U.S. Fish and Wildlife Service;

and

UNITED STATES FEDERAL HIGHWAY ADMININSTRATION;
BRANDYE HENDRICKSON, in her official capacity as Acting Administrator of the United States Federal Highway Administration; and
ELAINE L. CHAO, in her official capacity as Secretary of Transportation,

Defendants.

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION[1]

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

1. The FWS' Failure to Prepare even an Environmental Assessment Contradicts the "Tiered" Approach Approved by this Court in the *Superior* Case and Violates NEPA's Segmentation and Cumulative Impacts Requirements

FWS is relying on a 14-year old environmental impact statement (EIS) to authorize the construction and opening of the Rocky Flats Wildlife Refuge (the "Refuge") to Public Trails and

[1] Plaintiffs submit this Reply to the Federal Defendants' Opposition, ECF No. 14.

15 separate access points (ECF No. 7-13 at 5). The newly configured Public Trails are to be constructed across Refuge soils contaminated with plutonium, which DOE acknowledges "can be extremely dangerous, even in tiny quantities, if it is inhaled." **Exhibit 27**. FWS is engaging in the fiction that the plutonium does not exist (rather than just at safe levels), and is effectively acting as though all the soils in the Refuge are pristine, which skews its analysis of where to construct the Public Trails to maximize safety. FWS is also ignoring the significant new circumstances and information arising since the 2004 CCP/EIS was issued. This is the very definition of agency action which is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Camp v. Pitts,* 411 U.S. 138, 142 (1973).

It is undisputed that the Public Trails reflect numerous changes from the routes outlined in the 2004 CCP/EIS. *See* ECF No. 7-13 at 7-8 (adjusting trail routes, building additional trail routes, and realigning trail routes); *compare* ECF No. 7-3 *with* ECF No. 7-13. Moreover, Defendants acknowledge that the Public Trials are now partially located over land acquired in 2010 – the Section 16 Parcel – and that this land has not been sampled or tested for radionuclide (including plutonium) contamination. ECF No. 7-21 and ECF No. 14-11 at 18. Incredibly, the agency argues that the new developments, including the erosion events of 2013 and 2015 and the 2006 *Cook v. Rockwell* proceedings that confirmed missing plutonium and found that plutonium from Rocky Flats' operations had contaminated a wide area of land beyond Rocky Flats' borders, and would cause the plaintiff neighbors to suffer "increased risk of health problems as a result of this exposure," need *never* be subjected to NEPA review, even an environmental assessment. ECF Nos. 7-12 at ¶¶ A(1-3) and B(1-3); *Cook v. Rockwell Int'l Corp.*, 580 F. Supp. 2d 1071, 1145–46 (D. Colo. 2006).

This contradicts the approach taken by this Court in *Town of Superior v. U.S. Fish and Wildlife Service ("Superior")*, 913 F.Supp.2d 1087 (D.Colo. 2012)(Brimmer, J.). In *Superior*, this Court approved a "tiering" approach to FWS' transfer of the transportation corridor where the agency prepared the 2004 CCP/EIS on general matters but subsequently issued an environmental assessment (EA) "focused specifically on the impacts of several proposed transactions." *Id.* at 1115.

While a tiered approach is allowed, FWS may not ignore the second step of its tiered analysis by failing to prepare a subsequent NEPA analysis when final, specific details become available. Nor can the agency engage in the type of segmented analysis discussed by this Court in *Superior*:

> In addition, an agency may not ''divid[e] a project into multiple 'actions,' each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.'' *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir.1985)...

Id. at 1116.[2]

Here**,** FWS has failed to prepare the type of follow-up EA it did in *Superior* when the site specific, final details became available. *See also San Juan Citizens Alliance v. Stiles*, 654 F.3d 1038, 1053-55 (10th Cir. 2011) (not shown to be unreasonable "for the EIS to leave further detail to *environmental analyses* tied to specific site approvals.") (emphasis added). Nor can it divide its actions into unreviewable components. Accordingly, FWS has very clearly violated NEPA.

2. <u>Although FWS could Incorporate Subsequent DOE, EPA and CDPHE Analyses into its Findings, it could not Ignore the Presence of Plutonium in the Soils when Determining the Ultimate Location of the Public Trails.</u>

[2] Although FWS argues that Plaintiffs are challenging the Final Comprehensive Conservation Plan ("CCP"), Plaintiffs are only challenging the agency's latest "actions" that were approved in the "2018 Environmental Action Statement." ECF No. 7-13 at 4 ("I have…determined that the following proposed action is categorically excluded…").

FWS essentially argues that it can ignore any aspect of the acknowledged plutonium contamination on the Refuge because other agencies made subsequent determinations of safety.[3]

However, even though these other agencies determined that the risk to the public from visiting the Refuge *as a whole* falls within the CERCLA acceptable risk standards, there is admittedly still *some* risk associated with the presence of plutonium on the Refuge,[4] and that risk is greater in some locations as compared to others. *See* 2006 DOE map known as "Figure 10," ECF No. 7-2 (showing, for instance, a higher level of plutonium activity in the southeast and eastern portions of the Refuge).[5] At a minimum, FWS should have prepared an EA that assessed its determinations about where to specifically locate the Public Trails in light of this comprehensive DOE data.[6]

Neither EPA, DOE nor CDPHE assessed plutonium risks related to specific Public Trails locations in their 2006 or 2011 analyses, and FWS has never done so.[7] As a result, the primary Public Trail has been located over surface soils found by DOE to possess some of the highest concentration of plutonium activity. *Compare* ECF No. 7-2 *with* ECF No. 7-14. *See also* Nichols 2nd Affidavit at ¶ 9 (**Exhibit 28**) ("tens of billions of plutonium particles per acre"

[3] This Court found that FWS may rely on subsequent studies in 2006 and 2011 undertaken by the U.S. Environmental Protection Agency ("EPA"), U.S. Department of Energy ("DOE") and Colorado Department of Public Health and Environment ("CDPHE") "[g]iven the expertise of the DOE, EPA, and the CDPHE in managing the risk of radionuclide exposure in the Refuge, the agencies' mandate under CERCLA to assess exposure levels and select remedial action, and the agencies' compliance with the CERCLA standards…." *Superior*, 913 F.Supp.2d at 1123 (FWS did not act arbitrarily and capriciously by "incorporat[ing] the agencies' findings into its analysis").

[4] CDPHE and EPA acknowledged that there is risk associated with the "levels of remaining plutonium contamination in Refuge lands." *Id*. at 1122.

[5] Figure 10 is based on thousands of soil samples taken by the government and its contractors between 1991 and 2005. ECF No. 7-2.

[6] The data is based on "[a]pproximately two million environmental data records." ECF No. 14-5 at 20.

[7] This issue was not addressed in the *Superior* case which analyzed NEPA obligations in relation to a proposed land swap.

between the access and egress to the Lindsay Ranch Loop.) While FWS may rely on the other agencies' radionuclide expertise, it is arbitrary and capricious for it to pretend that the soils at Rocky Flats are as clean as pristine soils and thereby neglect a significant issue when making its final decisions on where to locate the Public Trails. The agency should make the safest decision – using all the relevant available data to do so. "If *any* 'significant' environmental impacts *might* result from the proposed agency action then an EIS must be prepared before agency action is taken." *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 340 (D.C. Cir. 2002) (emphasis added). *See also Forest Guardians v. U.S. Forest Serv.*, 495 F.3d. 1162, 1172 (10th Cir. 2007) ("NEPA…requires a reasoned evaluation of the relevant factors.").

3. <u>In any Event, the 2004 CCP/EIS is Stale and Does Not Address the Issue of Placing Portions of the Public Trails on the Section 16 Parcel.</u>

The Federal Defendants acknowledge that a Supplemental EIS ("SEIS") is required where "[t]here are significant *new* circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." ECF No. 14 at 14-15. They do not directly address the Council on Environmental Quality guidance that an EIS "more than 5 years old should be carefully reexamined to determine if the criteria in Section 1509.2 compel preparation of an EIS supplement." 46 Fed. Reg 18,026, 18,036 (March 23, 1981).

FWS argues that its plans to place a portion of the Greenway trail on the Section 16 Parcel is not "new" information because there is "no known or observed contaminant[] issues related to the parcel." ECF No. 14 at 16. To the contrary, the exhibit referenced by Defendants does indeed raise the specter of contamination on the Section 16 Parcel. *See* ECF No. 14-11 at 7 ("Mrs. Thornburg [of FWS]…highlighted a few areas of potential environmental concern."), at 10 (noting "the peculiar blue-green color of the infiltrated water present in the State Clay Mine…."), and at 17, Figs. 12 and 13 (showing abandoned chassis and a corroded barrel at the

State Clay Mine). Moreover, the "sampling" referenced by Defendants, ECF No. 14 at 16, was for basic water quality parameters. ECF No. 14-11 at 18. Sampling for plutonium or other radionuclides was not undertaken, despite the existence of the corroded barrel shown at ECF No. 14-11 at 17, Fig. 13. This, coupled with the proximity of the prior Refuge boundaries, renders arbitrary and capricious FWS' failure to conduct a supplemental environmental analysis before placing the Public Trails on the newly acquired Section 16 Parcel.

Defendants dismiss the fact that erosion at the Refuge caused by the 2013 and 2015 floods constitutes "significant *new* circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. 1502.9(c)(1). They argue that because FWS "has already considered the potential impacts of erosion on plutonium contamination in the CCP," ECF No. 14 at 16,[8] that it can ignore the circumstances which turned that hypothetical into reality. That is nonsensical. These recent floods may, as cautioned, have generated erosion sufficient to expose plutonium, ECF No. 7-5 at 3, and thus made portions of the Refuge unsafe. Indeed, because the cleanup standards permit unlimited quantities of plutonium to be buried eight feet or more below ground, ECF No. 14-4 at 40, the agency should have supplemented its EIS with an analysis of these significant events.[9]

4. <u>Defendants do not Address the Existence of Extraordinary Circumstances Associated with the Actions Approved by the 2018 EAS.</u>

FWS failed to address Plaintiffs' argument that merely stating "No" when analyzing the existence of categorical exclusions ("CEs") in the 2018 EAS (ECF No. 7-13 at 9-10) did not provide a sufficient explanation of the agency's determinations under the *Lockyer* and *Norton* tests. *See California ex rel. Lockyer v. U.S. Dept. of Agr*., 575 F.3d 999, 1018 (9th Cir., 2009)

[8] The referenced Exhibit 10 does not appear to contain any discussion of erosion and plutonium.
[9] Plaintiffs have corrected the omission of the studies cited in Randall Stafford's declaration that list the post-2014 studies regarding plutonium migration and increasing cancer rates in neighborhoods surrounding Rocky Flats. **Exhibit 29**.

(agency must provide a "[]sufficient explanation of why the rule would not fall into one of the exceptions to the categorical exclusion."); *California v. Norton,* 311 F.3d 1162, 1176 (9th Cir.2002)(requiring "contemporaneous documentation"). Accordingly, FWS' reliance on CEs is procedurally infirm.

Defendants argue that there are no extraordinary circumstances present when looking only at the "specific changes" since the 2004 CCP/EIS was issued. However, the regulations require a "cumulative" analysis regarding the existence of extraordinary circumstances. 40 C.F.R. § 1508.4; 10 C.F.R. § 1021.410(a) (CEs authorized only for actions which do not "individually or cumulatively" have a significant effect on the human environment). Before discarding its obligation to conduct a NEPA analysis, FWS should have taken a comprehensive look at the actions approved in <u>both</u> 2004 and 2018.

Even if limited to the proposed changes since 2004, there are clearly new actions to which the extraordinary circumstances apply. For instance, both 2006 *Cook v. Rockwell* proceedings implicate public health issues about missing and migrating plutonium. *See* ECF No. 7 at 17. As discussed above, information on the Section 16 Parcel, *which was newly added for trails in the 2018 EAS*, shows that the agency's CE decision involves "unknown environmental risks," thereby implicating 46 C.F.R. § 46.215(d). Similarly,the decision to place some of the trails on Preble's mouse critical habitat designated in 2010 shows that the extraordinary circumstance for threatened species specified in 46 C.F.R. § 46.215(h) exists here.

In short, the FWS decision to apply a "minor change" CE to the proposed opening of the Refuge violates both procedural and substantive requirements.

5. <u>FWS Cannot Ignore the Expiration of its Expired Compatibility Determination (CD) for Multi-Use Trails. It is Not Entitled to *Chevron* Deference in its Interpretation of the NWRSAA where it's Interpretation Violates a Canon of Statutory Construction</u>.

Turning to FWS' obligations under the National Wildlife Refuge System Improvement Act ("NWRSAA"), FWS does not dispute that the Multi-Use (Equestrian, Bicycle and Foot access) Trails CD ("Multi-Use Trails CD") expired on its ten year anniversary on September 8, 2014. ECF No. 14-10 at 173 (CD "for this use is subject to a mandatory re-evaluation in 10 years…"). Rather, FWS argues that it is meeting its NWRSAA obligations because two other unexpired CDs[10] also "analyze public use of trails on the Refuge." ECF No. 14 at 19.

FWS' explanation contradicts the express "re-evaluation" requirement in the Multi-Use Trails CD. When an agency contradicts a prior policy, it must provide a "reasoned explanation…for disregarding facts and circumstances that underlay or were engendered by the prior policy." *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515-16 (2009). Indeed, FWS' explanation violates the cannons of statutory construction favoring specific language over general language, and which disfavor any construction which leads to irreconcilable inconsistency. *See Crawford Fitting Co. v. J. T. Gibbons, Inc*., 107 S.Ct. 2494, 2499 (1987) ("As always, where there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.") (citations omitted) (emphasis in original); *accord Franklin v. U.S.*, 992 F.2d 1492, 1502 (10th Cir 1993); *see also Russell v. Department of Air Force*, 915 F.Supp. 1108, 1115 (D. Colo.1996) ("Statutes that relate to the same subject matter are considered *in pari materia* and should be construed together. In construing statutes, the specific governs the general. If construction *in pari materia* leads to irreconcilable inconsistency, the later and more specific statute usually controls the earlier and more general.").

[10] These are the CDs for "Wildlife Observation and Photography, Including Public Use Facility Development to support those uses" ("Wildlife Observation CD") and "Interpretation and Environmental Education" ("Education CD"). ECF No. 14-10 at 151-153 and 158-161.

A few weeks ago, the U.S. Supreme Court addressed the issue of whether an agency was entitled to *Chevron* deference where its interpretation of a statute contradicts a canon of statutory construction, and in an opinion authored by Justice Gorsuch, the majority decided that the agency was entitled to no deference in such a circumstance:

> Finally, the *Chevron* Court explained that deference is not due unless a "court, employing traditional tools of statutory construction," is left with an unresolved ambiguity. 467 U. S., at 843, n. 9. And that too is missing: the canon against reading conflicts into statutes is a traditional tool of statutory construction and it, along with the other traditional canons we have discussed, is more than up to the job of solving today's interpretive puzzle. Where, as here, the canons supply an answer, "*Chevron* leaves the stage." *Alternative Entertainment*, 858 F. 3d, at 417 (opinion of Sutton, J.).

Epic Systems Corp. v. Lewis, No. 16–285, slip op. at *21 (S.Ct. May 21, 2018).

Thus, because the Multi-Use Trails CD directly addresses the proposed uses authorized in the 2018 EAS, and because this CD expired by its own terms on September 8, 2014, it was arbitrary and capricious for FWS to rely on tangentially related CDs to authorize the use of the Public Trails. The Service must reinstitute the NWRSAA process (a public process) and re-determine whether the proposed uses are compatible with the purposes of the Refuge before opening Rocky Flats for hiking, biking and horseback riding.

6. <u>Even if it Engaged in an Informal Consultation in 2018, the Agency Must Still Analyze the 2010 Designation of Critical Habitat in an Environmental Assessment.</u>

Despite Plaintiffs' previous requests, FWS for the first time has disclosed that it engaged in an informal Section 7 consultation in March 2018.[11] However, even this informal consultation does not fulfill the FWS' requirement to conduct a biological assessment ("BA") to "determine whether any [listed] species or [designated] habitat are likely to be adversely affected." 50

[11] Plaintiffs requested copies of documents related to the ESA in April 2018, after the recent consultation was completed ("...am I correct in assuming that there were no subsequent...forms or documents regarding informal consultation...?"), and were told by Mr. Lucas he would have to "check into that." **Exhibit 30**.

C.F.R. § 402.12(a). Here, FWS acknowledges that "[a]lthough no Preble's mice were found during this study, several factors suggest they could still exist on the refuge." ECF No. 14-8 at 9-10. Nor does the informal consultation obviate the agency's obligation to reinitiate consultation following the designation of Preble's mouse critical habitat in 2010. 50 C.F.R. § 402.14. By failing to conduct a reinitiated consultation following the 2010 designation, FWS has never considered the direct, indirect, interrelated and interdependent effects of all of its activities on the Refuge that may affect the Preble's mouse critical habitat. 50 C.F.R. § 402.02; *Sierra Club v. Marsh*, 816 F.2d 1376, 1387 (9th Cir. 1987); *Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1082 (9th Cir. 2015), *cert. denied*, 137 S. Ct. 293, 196 L. Ed. 2d 213 (2016). ("[P]roject-specific consultations do not include a unit-wide analysis comparable in scope and scale to consultation at the programmatic level.").[12] These are clear statutory ESA violations.

Finally, FWS interprets the standing requirements too narrowly. At this stage of the litigation, before Defendants have filed an Answer, Plaintiffs' general allegations of injury and interests as pled in the Complaint (*See* ECF 1 at 15, ¶¶12 – 15) and supported by the Stafford Declaration (ECF No. 7-7 at 2, ¶¶4 – 5), are deemed with "all reasonable inferences from those allegations [drawn] in the plaintiff's favor...." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015).

II. IRREPARABLE INJURY WILL OCCUR ABSENT A PRELIMINARY INJUNCTION

DOE acknowledges that "[p]lutonium can be extremely dangerous, even in tiny

[12] FWS incorrectly states that the sixty-day notice Plaintiffs sent to the agency on May 24, 2017 is inadequate because it relates to "prior litigation." ECF No. 14 at 21. No ESA claim was ever asserted in the "prior litigation" because the sixty-day period had not elapsed. Further, a notice of intent can apply to violations that occur after the notice that support similar claims specified in the notice. *See Rio Grande Silvery Minnow v. Keys*, 469 F. Supp. 2d 973, 1001 (D.N.M. 2002).

quantities, if it is inhaled." **Exhibit 27**. DOE's "Figure 10" map shows plutonium activity in the areas planned to be directly traversed by the Public Trails. *Compare* ECF No. 7-2 *with* ECF No. 7-14. It is difficult to imagine a more dangerous pollutant that will be suspended into the air above and around the Refuge by the proposed activities, thereby causing physical irreparable injury to Plaintiffs and the visiting public.[13]

Plaintiffs will present further evidence at the hearing that the threatened injuries are "certain, great, actual and not theoretical." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). Plaintiffs' members and experts will address how opening the Refuge for unlimited public use, including the construction and opening of the Public Trails and fifteen access points, will increase the Plaintiffs' and the public's risk of exposure to an environmental pollutant known to cause serious health problems, such as premature death, and thus warrants a finding of irreparable harm. *See Sierra Club v. U.S. Dep't of Agriculture, Rural Utils. Serv.*, 841 F.Supp.2d 349, 358 (D.D.C. 2012) (irreparable harm where coal plant expansion would endanger human health through exposure to particulate matter); *State v. Bureau of Land Management*, 286 F. Supp. 3d 1054, 1074 (N.D.Cal. 2018) (irreparable harm in the public health consequences resulting from exposure to air pollution) (citing *Beame v. Friends of the Earth*, 434 U.S. 1310, 1314 (1977) (acknowledging "the irreparable injury that air pollution may cause").[14]

[13] Given the alleged risk of contamination to large numbers of public citizens should the Refuge be prematurely opened, this Court should expand its analysis of irreparable harm to include the visiting public and not just Plaintiffs. Indeed, it is not a fixed rule that the movant himself must face irreparable injury for an injunction to be issued in his favor, so long as federal law is at issue and the public interest is involved. *Kansas v. Nebraska*, 135 S. Ct. 1042, 1053 (2015) ("When federal law is at issue and 'the public interest is involved,' a federal court's 'equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.'") (citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)); *see Virginian R. Co.*, 300 U.S. 515, 552 (1937) ("'Courts of equity may, and frequently do, go much farther' to give 'relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'").

[14] The affidavit of Elizabeth Panzer on irreparable harm, who will testify at the hearing, is

For purposes of the ESA, Plaintiffs' allegations of an interest in the survival and recovery of the Preble's mouse is adequate for the Court to find irreparable injury to support the requested injunctive relief. *Greater Yellowstone Coalition v. Flowers*, 321 F. 3d 1257-58 (10th Cir. 2003) (harm to endangered species sufficient "for evaluating irreparable harm" in NEPA challenge). *See also The Wilderness Soc'y v. Kane Cty., Utah*, 581 F.3d 1198, 1210 (10th Cir. 2009), *vacated on other grounds on reh'g en banc sub nom. The Wilderness Soc. v. Kane Cty., Utah,* 632 F.3d 1162 (10th Cir. 2011) ("It is well-settled that '[w]hile generalized harm to the forest or the environment will not alone support standing, if that harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice.'" (citations omitted)).

Such harm is also imminent, because Defendant Lucas delayed his final decision to not prepare an EA until just a few months before the opening of the Refuge planned for September 15, 2018, even though the NEPA process should have commenced when the agency began to expend funds and initiate planning. *Superior*, 913 F.Supp.2d at 1112-13 ("Agencies must begin the NEPA evaluation process as early as possible to ensure incorporation of environmental values into agency action and to avoid downstream delays."). At this juncture, any delay in opening the Refuge has been occasioned by the FWS' lack of diligence.[15,16] Moreover, upon information and belief, FWS is currently engaging in soils disturbance activities at the Refuge, by putting in trail markers, installing toilet shelters, and modifying the land, which should not be occurring absent NEPA, ESA and NWRSAA compliance.

---

submitted herewith. **Exhibit 31**.

[15] In the purpose of brevity, Plaintiffs rest on their public interest and balancing arguments set forth in their Memorandum. ECF No. 7 at 30-32.

[16] The parties are working on expediting the briefing schedule and the production of the administrative record (AR) in a joint case management plan.

III. CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court (1) vacate the 2018 EAS, (2) prohibit the planned opening of 15 separate access points into the Refuge, (3) enjoin any additional work by Defendants and/or their agents on the Trails and/or Multipurpose Facility, including construction of the Public Trails or the facilitation thereof.

Respectfully submitted this 20th day of June, 2018.

LAW OFFICES OF RANDALL M. WEINER, P.C.

By: */s/ Randall M. Weiner*
Randall M. Weiner
Annmarie Cording
Andrew G. Ogden, *of counsel*
Dana J. Stotsky, *of counsel*
3100 Arapahoe Avenue, Suite 202
Boulder, CO 80303
Telephone: (303) 440-3321
FAX: (720) 292-1687
E-mail: randall@randallweiner.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on June 20, 2018, the foregoing, along with all exhibits thereto, will be electronically filed with the Clerk of the Court via the CM/ECF system, which will generate automatic service upon all Parties enrolled to receive such notice, including:

Jessica Held
U.S. Department of Justice
Environment and Natural Resources Division Natural Resources Section
P.O. Box 7611
Washington, DC 20044-7611
Phone: 202.305.0492

/s/ Randall M. Weiner
Randall M. Weiner
Counsel for Plaintiffs