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Title: President
Comments: David J. Finnerty

President

Ark Land LLC

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VIA ELECTRONIC DELIVERY USDA Forest Service,

Rocky Mountain Region

Attn: Reviewing Officer

C/O Director of Strategic Planning 2nd floor

1617 Cole Blvd. Building 17, Lakewood, CO 80401

Dear Reviewing Officer: I am providing comments on the draft Record of Decision ([ldquo]ROD[rdquo]) and draft Grand Mesa, Uncompahgre, and Gunnison ([ldquo]GMUG[rdquo]) Land Management Plan on behalf of Ark Land LLC, successor by conversion to Ark Land Company, the holder of existing coal leases in the GMUG, associated with the West Elk Mine.

At page 43 of the ROD, the Responsible Official proposes to defer coal leasing unsuitability determinations for a large area of the GMUG, until specific leasing applications are received. Specifically, the draft ROD states:

My decision identifies an additional approximately 41,000 acres (70% of the potential coal resource area) as [ldquo]may be unsuitable,[rdquo] but for those areas the final determination would be made at the time of a potential future coal lease application, with consideration of revised plan direction and other pertinent conditions. My decision is based upon the required coal unsuitability analysis and screening process, as detailed in the land management plan, appendix 10, Coal Screening and Unsuitability Analysis.

The proposed practice of a [ldquo]deferred unsuitability determination[rdquo] is problematic under the regulations and purposes of the regulations. An unsuitability determination is intended as broad guidance to assist in the Land Management Plan development process. It[rsquo]s not intended as a site-specific decision on an application. The fact that lands have been determined [ldquo]unsuitable[rdquo] generally means that the Forest will not entertain consenting to leasing on such lands, and prospective applicants should avoid such lands. Conversely, the fact that lands are not deemed unsuitable does not mean that there has been any waiver of

various restrictions applicable to those lands. If an applicant cannot devise a way to mine lands consistent with then-applicable restrictions, then it cannot

obtain approval to mine. A belated site-specific [ldquo]unsuitability determination[rdquo] is not the correct mechanism for such a decision, and Ark Land is concerned that such labeling will be confusing to applicants, the public, staff, and potentially the courts. Consequently, Ark Land requests that the Forest remove the [ldquo]may be unsuitable[rdquo] designation from the affected lands. As we understand it, the reason for the proposed designation is that the identified lands are subject to the roadbuilding restrictions associated with the Colorado Roadless Rule. If a label is needed, a more accurate label would be just that [ndash] [ldquo]lands subject to roadbuilding restrictions[rdquo]. These restrictions would then be considered in the context of any leasing application. Thank you for your consideration.

Sincerely,

David J. Finnerty