IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00395-RPM-MEH

UNITED STATES OF AMERICA

Plaintiff,

v.

SG INTERESTS I, LTD.,
SG INTERESTS VII, LTD., and
GUNNISON ENERGY CORPORATION

Defendants.

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 15, 2012, the United States filed a civil antitrust complaint against Defendant Gunnison Energy Corporation ("GEC") and Defendants SG Interests I, Ltd. and SG

Interests VII, Ltd. ("SGI") alleging that GEC and SGI violated Section 1 of the Sherman Act, 15 U.S.C. § 1.

Prior to 2005, GEC and SGI were separately engaged in exploration and development of natural gas resources in the Ragged Mountain Area (or "RMA") of Western Colorado.[1] Recognizing that they would be the primary competitors to acquire three natural gas leases for exploration and development on federal lands in the RMA that were to be auctioned by the Bureau of Land Management ("BLM") in February 2005, GEC and SGI executed a Memorandum of Understanding (the "MOU") on the eve of the auction pursuant to which they agreed not to compete for the leases. Instead, under the MOU, SGI would bid at the auction and then assign a fifty percent interest in the acquired leases to GEC. The parties extended the MOU to include a fourth lease auctioned by the BLM in May 2005. As a result of the MOU, the United States received substantially less revenue from the sale of leases than it would have had SGI and GEC competed at the auctions.

At the same time the Complaint was filed, the United States also filed an agreed-upon proposed Final Judgment that would remedy the violation by having SGI and GEC each pay damages of $275,000 to the United States. The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

[1] For purposes of this case, we define the Ragged Mountain Area as covering roughly a region encompassed by the Townships 10S thru 12S and Ranges 89W thru 91W, as designated by the Public Land Survey System, comprising portions of Delta, Gunnison, Mesa and Pitkin Counties.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Defendants

SG Interests I, Ltd. and SG Interests VII, Ltd. are Texas limited partnerships with their headquarters in Houston, Texas. The managing partner both of the limited partnerships is Gordy Oil Company, a Texas corporation. SGI was formed for the purpose of developing natural gas resources in the Ragged Mountain Area. SGI holds, in whole or in part, interests in federal leases on approximately 40,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

GEC is a Delaware corporation with its principal place of business in Denver, Colorado. GEC holds, in whole or in part, interests in federal leases on approximately 52,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

B. Oil and gas interests on federal lands

The federal government owns hundreds of millions of acres of land in the United States. The BLM manages natural resources on federal lands, including rights to subsurface oil and natural gas. The BLM sells onshore oil and gas leases to private parties, granting leaseholders the exclusive right to explore and develop oil and gas deposits found on their leased land. The initial term of a BLM onshore oil and gas lease is ten years.

Private parties, such as oil and gas companies, typically acquire onshore oil and gas leases on federal lands at auctions which each regional BLM office conducts as often as quarterly. In advance of each auction, the regional BLM office publishes a Notice of Competitive Lease Sale identifying the lease parcels to be offered at the quarterly auction. Private parties may nominate lands for BLM to consider offering at auction by submitting an "expression of interest." Auctions are conducted orally and openly, with each lease starting at a

minimum bid of two dollars per acre. Bidding on a lease ends when no other person attending the auction bids a higher price than the then outstanding offer. In addition to the amount of the bid, the winning bidder must make annual rental payments during the life of the lease and, if development is successful, pay a royalty on the value of production from the leases. Revenues from BLM leases flow to the United States Treasury.

At the conclusion of an auction, each successful bidder must submit a lease bid form, which constitutes a legally binding lease offer for the amount of the winning bid. By signing the form, the bidder also certifies that it is qualified to bid and that the bid was "arrived at independently" and "tendered without collusion with any other bidder for the purpose of restricting competition."

A lease grants the leaseholder the exclusive right for ten years to drill for, extract, remove and dispose of the oil and gas on the leased land. A lessee may assign a lease, or a portion of a lease, to another party with approval from the BLM. Oil and natural gas leases expire at the end of their ten-year term, but may be extended for as long as the lease has at least one well capable of producing oil or natural gas.

C. The Alleged Violation

In 2001, SGI and GEC began independently acquiring and developing gas leases in the Ragged Mountain Area. Prior to 2003, their activities generally focused on different parts of the Ragged Mountain Area, with SGI acquiring leases on the eastern side of the area (which BLM has designated as the Bull Mountain Unit Area) while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap as each sought pipelines and leases held by BDS International, LLC and affiliated entities (collectively, "BDS") and as the BLM leased additional parcels. Conflicting efforts by SGI and GEC to acquire assets held by BDS resulted in litigation between Defendants in 2004.

In September 2004, SGI submitted expressions of interest to the BLM for additional lands within the Ragged Mountain Area, including parcels adjacent to leases held by GEC.

In October 2004, GEC and SGI met to discuss the prospect of settling the litigation and entering into a collaboration to develop the Ragged Mountain Area. The potential collaboration contemplated joint acquisition of the BDS assets, improvements to the existing BDS pipelines, and joint development of new pipelines to serve the area. These discussions, however, quickly foundered.

On or about December 23, 2004, BLM announced a Notice of Competitive Lease Sale that included three tracts in the Ragged Mountain Area, COC068350 (comprising 320 acres), COC068351 (comprising 1280 acres) and COC068352 (comprising 1404 acres). The three leases covered areas contained in SGI's September 2004 expression of interest. The auction was set to occur on February 10, 2005.

Both SGI and GEC were independently interested in certain of the tracts that would be auctioned and both likely would have bid – and bid against each other – at the February auction. On or about February 2, 2005, SGI and GEC embarked on discussions to forestall competing against one another for the three BLM leases to be auctioned. These discussions resulted in the drafting of the written MOU by attorneys for SGI and GEC that was executed by the parties on February 8, 2005, just two days before the February 10, 2005 auction. The MOU was not part of a procompetitive or efficiency enhancing collaboration. The Defendants did not reach an agreement to engage in a broad collaboration to jointly acquire and develop leases and pipelines in the Ragged Mountain Area until the summer of 2005. The MOU was not ancillary to the latter agreement.

Under the MOU, only SGI would bid at the auction for the three leases in the Ragged Mountain Area offered by the BLM at the February auction. SGI and GEC would jointly set a

maximum price for SGI to bid for the three leases. If SGI successfully acquired the leases, it would assign a fifty percent interest to GEC at cost.

At the February auction, SGI bid for and obtained the three BLM leases covered by the MOU. GEC attended the auction, but, honoring the terms of the MOU, did not bid. SGI obtained COC068350, COC068351 and COC068352 for $72 per acre, $30 per acre and $22 per acre, respectively.

On or about May 10, 2005, SGI and GEC amended the MOU to include an additional lease, COC068490 (comprising 643 acres), in the Ragged Mountain Area set to be auctioned by the BLM on May 12, 2005. The parties agreed to bid as high as $300 per acre for this parcel. Though the Defendants had recommenced their discussions regarding litigation settlement and a development collaboration in March 2005, they had not yet been able to reach terms of an agreement.

On May 12, 2005, SGI bid for and obtained COC068490 pursuant to the terms of the MOU. Again, GEC attended the auction but did not bid. SGI won the lease with a bid of only $2 per acre.

As a result of the MOU, the United States, through the BLM, received less revenue that it would have received had SGI and GEC competed for leases in the Ragged Mountain Area at the February and May 2005 auctions. Pursuant to the MOU, SGI and GEC successfully avoided bidding against one another for leases covering approximately 3650 acres. If SGI and GEC had bid against each other, the winner would have paid BLM a higher price.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment relates to a *qui tam* action captioned *United States ex rel. Anthony B. Gale v. Gunnison Energy Corporation, et al.*, Civil Action No. 09-cv-02471-RBJ-KLM (D. Colo.), and settlements with the United States Attorney's Office for the District of

Colorado. Both this action and the *qui tam* action arise from common facts related to BLM auctions in February 2005 and May 2005 and the anticompetitive MOU.

For violations of Section 1 of the Sherman Act, the United States may seek equitable relief, including equitable monetary remedies. *See United States v. KeySpan Corp.*, 763 F. Supp. 2d 633, 638-641 (S.D.N.Y. 2011). Further, where the United States is an injured party by a Section 1 violation, it may seek damages. 15 U.S.C. § 15a.

The proposed Final Judgment requires GEC and SGI to each pay $275,000, for a total of $550,000, to the United States within 10 days of entry of the Final Judgment pursuant to instructions provided by the United States Attorney for the District of Colorado. These payments will satisfy claims that the United States has against GEC and SGI under Section 1 of the Sherman Act, as alleged in this action, and the False Claims Act, as set forth in the separate agreements reached between GEC and SGI and the United States Attorney's Office for the District of Colorado (which are Attachments 1 and 2 to the proposed Final Judgment).[2]

As a result of the unlawful agreement in restraint of trade between GEC and SGI, the BLM received lower bid payments. The payment of damages to the United States reflects the likely additional bid revenue that the BLM would have received had SGI and GEC acted as independent competitors at the February and May 2005 auctions. Requiring GEC and SGI to pay damages in these circumstances will protect the public interest by deterring them and other parties from entering into similar anticompetitive agreements in the future.[3]

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[2] The proposed Final Judgment does not preclude the United States from bringing an action against GEC or SGI for any antitrust claims arising from their acquisition and operation of the Ragged Mountain pipeline, as agreed in the Stipulation at paragraph 4.

[3] In 2005, GEC and SGI paid bids totaling approximately $94,000 for the four leases they acquired pursuant to the MOU, resulting in an average per acre price of approximately $25. By paying an additional $550,000, GEC and SGI will have been required to pay approximately $175 per acre, seven times its initial bid amount.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

William H. Stallings
Chief, Transportation, Energy and Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that the relief contained in the proposed Final Judgment remedies the violation of the Sherman Act alleged in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court is directed to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to

> a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B); *see generally KeySpan Corp.*, 763 F. Supp. 2d at 637-38 (discussing Tunney Act standards); *United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the Defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, the court's function is "not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is within the *reaches* of the public interest." *KeySpan*, 763 F. Supp. 2d at 637 (quoting *United States* v. *Alex Brown & Sons, Inc.*, 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (internal quotations omitted)). In making this determination, "[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable." *Id.* at 637-38 (quoting *United States* v. *Abitibi-Consolidated Inc.*,

584 F. Supp. 2d 162, 165 (D.D.C. 2008)).[4] The government's predictions about the efficacy of its remedies are entitled to deference.[5]

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *KeySpan,* 763 F. Supp. 2d at 638 ("A court must limit its

[4] *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981) ("The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General."). *See generally Microsoft, 56* F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

[5] *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

review to the issues in the complaint ...."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459-60.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[6]

VIII. DETERMINATIVE DOCUMENTS

In formulating the term of the proposed Final Judgment that requires GEC and SGI to each pay $275,000 to the United States in satisfaction of claims that the United States has against each Defendant under this antitrust cause of action and the False Claims Act, the United States

[6] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone").

considered two documents to be determinative documents within the meaning of the APPA: (1) the Settlement Agreement dated December 9, 2011 between the United States Attorney's Office for the District of Colorado, SGI, and Anthony Gale. This agreement settled False Claims Act claims between the United States, SGI, and Anthony Gale in Civil Action 09-cv-02471-RBJ-KLM (D. Colo.). A copy of this document is attached hereto as Attachment 1. (2) The Settlement Agreement dated February 14, 2012 between the United States Attorney's Office for the District of Colorado, GEC, and Anthony Gale. This agreement settled False Claims Act claims between the United States, GEC, and Anthony Gale in Civil Action 09-cv-02471-RBJ-KLM (D. Colo.). A copy of this document is attached hereto as Attachment 2.

Dated: February 15, 2012

Respectfully submitted,

s/ Sarah L. Wagner
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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

L. Poe Leggette
pleggette@fulbright.com

Timothy R. Beyer
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s/ Sarah L. Wagner
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Attachment 1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Interior, Bureau of Land Management (collectively the "United States"), SG Interests VII, Ltd. ("SG"), and Anthony B. Gale ("Gale") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. SG is an energy corporation that, for purposes relevant to this Agreement, participated at public auctions for federal oil and gas leases conducted by the Bureau of Land Management ("BLM") in Lakewood, Colorado, from February 10, 2005 through November 9, 2006. At these auctions, SG, acting through a proxy bidder, bid on and won several federal gas leases located in Gunnison and Delta Counties, Colorado. SG was a party, along with another energy company, to two agreements under which SG assigned an undivided 50% interest in the federal leases it obtained at the public auction to the other company. These agreements were a Memorandum of Understanding dated February 8, 2005 (the "MOU") and an Area of Mutual Interest Agreement dated June 3, 2005 (the "AMIA").

B. In October 2009, Gale filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States ex rel. Anthony B. Gale v. Gunnison Energy Corporation, et al.*, Civil Action No. 09-cv-02471-RBJ-KLM, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) ("the Civil

Action"). In that complaint, Gale alleges that SG defrauded the United States in connection with public auctions of federal gas leases conducted by the BLM in Lakewood, Colorado beginning on February 10, 2005 through November 9, 2006. SG was the winning bidder on 22 federal gas leases at the BLM's public auctions between February 10, 2005 through November 9, 2006. As part of the BLM's bidding process, SG was required to complete and sign a bid form certifying that SG's bid was reached "independently and without collusion for the purpose of restricting competition," and that it had not violated 18 U.S.C. § 1860, which prohibits unlawful combination or intimidation of bidders. Gale alleges that SG's certifications on the BLM bid forms were false statements since SG had allegedly colluded with the other company to drive down the price of the bids for leases that were subject to the MOU and AMIA. As a result, Gale alleges that the BLM received significantly reduced revenues from these leases. The conduct described in this paragraph is referred to herein as the Covered Conduct.

C. The United States contends that it has certain civil claims against SG arising from the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by SG nor a concession by the United States that its claims are not well founded.

E. Gale claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement ("Relator's Share") and to Gale's reasonable expenses, attorneys' fees, and costs ("Relator's Legal Fees").

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. SG shall pay to the United States two hundred seventy-five thousand dollars ($275,000.00) ("the Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Colorado no later than ten (10) days after entry of the Final Judgment in the civil action to be brought by the Antitrust Division pursuant to the Antitrust Procedures and Penalties Act ("the Tunney Act"), 15 U.S.C. §§ 16(b) – (d).

2. Conditioned upon the United States receiving the Settlement Amount from SG and as soon as feasible after receipt, the United States shall pay Gale a Relator's Share of forty-one thousand two hundred and fifty dollars ($41,250.00), by electronic funds transfer.

3. SG shall pay Gale $25,000.00 for Relator's Legal Fees by electronic funds transfer, no later than ten (10) days after the Effective Date of this Agreement. Payments of Relator's Legal Fees shall be made in accordance with instructions to be provided by Relator's counsel.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon SG's full payment of the Settlement Amount, the United

States releases SG, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers, directors, employees, and affiliates; and the successors and assigns of any of them, from any civil monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; from any claim the United States Department of the Interior may have for debarment of SG from participating in leasing under the Mineral Leasing Act and Minerals Leasing Act for Acquired Lands, 30 U.S.C. §§ 181-281 & §§ 351-359, and 43 C.F.R. Part 35; from any civil monetary claim the United States has under common law theories of breach of contract, payment by mistake, unjust enrichment, disgorgement, negligent misrepresentation, and fraud. SG's full payment of this Settlement Amount will also satisfy claims that the United States has against SG under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, as set forth in: (1) the proposed Final Judgment, and (2) the Stipulation between SG and the Department of Justice, Antitrust Division, attached hereto as Attachments 1 and 2, respectively.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon SG's full payment of the Settlement Amount and Relator's Legal Fees, Gale, for himself and for his heirs, successors, attorneys, agents, and assigns, releases SG together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers,

directors, employees, and affiliates; and the successors and assigns of any of them, from any civil monetary claim Gale has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in paragraph 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Any administrative liability, except as otherwise expressly released in paragraph 4;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and

i. Any liability of individuals, other than the liability of individuals within the categories of persons expressly released in paragraph 4.

7. Gale and his heirs, successors, attorneys, agents, and assigns agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Gale's receipt of the payments described in Paragraphs 2 and 3, Gale and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Gale, for himself and for his heirs, successors, attorneys, agents, and assigns (for the purpose of this paragraph, collectively "Gale"), releases SG, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers, directors, employees, and affiliates; and the successors and assigns of any of them (for the purpose of this paragraph, collectively "SG"), from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, conditioned upon the payments described in

Paragraphs 2 and 3. SG likewise releases Gale from any liability to SG arising from the filing of the Civil Action.

9. SG waives and shall not assert any defenses SG may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. SG fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that SG has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of SG, and

its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil or criminal investigation(s) of the matters covered by this Agreement;

(3) SG's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment SG makes to the United States pursuant to this Agreement and any payments that SG may make to Gale, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by SG, and SG shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, SG shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by SG or any of its subsidiaries or affiliates from the United States. SG agrees that the United States, at a minimum, shall be entitled to recoup from SG any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine SG's books and records and to disagree with any calculations submitted by SG or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by SG, or the effect of any such Unallowable Costs on the amount of such payments.

12. This Agreement is intended to be for the benefit of the Parties only.

13. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of Party with prejudice, pursuant to Rule 41(a)(1).

14. Other than SG's payments of Relator's Legal Fees, as set forth in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

16. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Colorado. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

17. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

18. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

20. This Agreement is binding on SG's successors, transferees, heirs, and assigns.

21. This Agreement is binding on Gale's successors, transferees, heirs, and assigns.

22. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/9/11 BY: Amanda Rocque

Amanda Rocque
Assistant United States Attorney
United States Attorney's Office
for the District of Colorado
1225 Seventeenth Street, Suite 700
Denver, CO 80202
Counsel for the United States of America

SG INTERESTS VII, LTD.

DATED: BY: _____
Robert H. Guinn, II
Vice President
SG Interests VII, Ltd.

DATED: BY: _____
Poe Leggette, Esq.
Fulbright & Jaworski
Republic Plaza
370 Seventeenth Street, Suite 2150
Denver, Colorado 80202-5638
Counsel for SG

ANTHONY B. GALE - RELATOR

DATED: BY: _____
Anthony B. Gale
Relator

DATED: BY: _____
William Cohan
P.O. Box 3448
Rancho Santa Fe, CA 92067
Counsel for Relator

SG INTERESTS VII, LTD.

DATED: BY: _____
Robert H. Guinn, II
Vice President
SG Interests VII, Ltd.

DATED: 12/9/11 BY: _____
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370 Seventeenth Street, Suite 2150
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ANTHONY B. GALE - RELATOR

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William Cohan
P.O. Box 3448
Rancho Santa Fe, CA 92067
Counsel for Relator

SG INTERESTS VII, LTD.

DATED: BY: _____
Robert H. Guinn, II
Vice President for Gordy Oil Company
General Partner of SG Interests VII, Ltd.

DATED: BY: _____
Poe Leggette, Esq.
Fulbright & Jaworski
Republic Plaza
370 Seventeenth Street, Suite 2150
Denver, Colorado 80202-5638
Counsel for SG

ANTHONY B. GALE - RELATOR

DATED: BY: _____
Anthony B. Gale
Relator

DATED: BY: _____
William Cohan
P.O. Box 3448
Rancho Santa Fe, CA 92067
Counsel for Relator

Attachment 2

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Interior, Bureau of Land Management (collectively the "United States"), Gunnison Energy Corporation ("Gunnison"), and Anthony B. Gale ("Gale") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Gunnison is an energy corporation that, for purposes relevant to this Agreement, participated at public auctions for federal oil and gas leases conducted by the Bureau of Land Management ("BLM") in Lakewood, Colorado, including from February 10, 2005 through November 9, 2006. Gunnison was a party, along with SG Interests VII, Ltd. ("SG"), another energy company, to two agreements under which it was agreed, among other things, that SG would bid on leases at the BLM auctions, and if it won, SG would assign an undivided 50% interest in the federal leases it obtained at the public auction to Gunnison. These agreements were a Memorandum of Understanding dated February 8, 2005 (the "MOU") and an Area of Mutual Interest Agreement dated June 3, 2005 (the "AMIA").

B. In October 2009**,** Gale filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States ex rel. Anthony B. Gale v. Gunnison Energy Corporation, et al.*, Civil Action No. 09-cv-02471-RBJ-KLM, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) ("the Civil

Action"). In that complaint, Gale alleges that Gunnison defrauded the United States in connection with public auctions of federal gas leases conducted by the BLM in Lakewood, Colorado beginning on February 10, 2005 through November 9, 2006. SG, acting through a proxy bidder, was the winning bidder on 22 federal gas leases at the BLM's public auctions between February 10, 2005 through November 9, 2006. After winning the federal leases at the BLM auctions, SG assigned a 50% interest in those leases to Gunnison. As part of the BLM's bidding process, SG was required to complete and sign a bid form certifying that the winning bid was reached "independently and without collusion for the purpose of restricting competition," and that it had not violated 18 U.S.C. § 1860, which prohibits unlawful combination or intimidation of bidders. Gale alleges that these certifications on the BLM bid forms were false statements since SG and Gunnison had allegedly colluded to drive down the price of the bids for leases that were subject to the MOU and AMIA. As a result, Gale alleges that the BLM received significantly reduced revenues from these leases. The conduct described in this paragraph is referred to herein as the Covered Conduct.

C. The United States contends that it has certain civil claims against Gunnison arising from the Covered Conduct.

D. Gunnison denies liability for the allegations asserted in the *qui tam* complaint. This Settlement Agreement is not a concession by the United States that its claims are not well founded.

E. Gale claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement ("Relator's Share") and to Gale's reasonable expenses, attorneys' fees, and costs ("Relator's Legal Fees").

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Gunnison shall pay to the United States two hundred seventy-five thousand dollars ($275,000.00) ("the Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Colorado no later than ten (10) days after entry of the Final Judgment in the civil action to be brought by the Antitrust Division pursuant to the Antitrust Procedures and Penalties Act ("the Tunney Act"), 15 U.S.C. §§ 16(b) – (d).

2. Conditioned upon the United States receiving the Settlement Amount from Gunnison and as soon as feasible after receipt, the United States shall pay Gale a Relator's Share of sixty-eight thousand seven hundred and fifty dollars ($68,750.00), by electronic funds transfer.

3. Gunnison shall pay William A. Cohan, counsel for Gale ("Relator's Counsel"), twenty-five thousand dollars ($25,000.00) for Relator's Legal Fees by electronic funds transfer, no later than ten (10) days after the Effective Date of this

Agreement. Payments of Relator's Legal Fees shall be made in accordance with instructions to be provided by Relator's Counsel.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Gunnison's full payment of the Settlement Amount, the United States releases Gunnison, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers, directors, employees, and affiliates; and the successors and assigns of any of them, from any civil monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; from any claim the United States Department of the Interior may have for debarment from participating in leasing under the Mineral Leasing Act and Minerals Leasing Act for Acquired Lands, 30 U.S.C. §§ 181-281 & §§ 351-359, and 43 C.F.R. Part 35; from any civil monetary claim the United States has under common law theories of breach of contract, payment by mistake, unjust enrichment, disgorgement, negligent misrepresentation, and fraud. Gunnison's full payment of this Settlement Amount will also satisfy claims that the United States has against Gunnison under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, as set forth in: (1) the proposed Final Judgment, and (2) the Stipulation between Gunnison and the Department of Justice, Antitrust Division, attached hereto as Attachments 1 and 2, respectively. It is understood that Gunnison is making one single

payment of two hundred seventy-five thousand dollars ($275,000.00) to the United States to settle both the False Claims Act claims in this Civil Action and the antitrust claims in the civil action brought by the Antitrust Division pursuant to the Tunney Act.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon Gunnison's full payment of the Settlement Amount and Relator's Legal Fees, Gale, for himself and for his heirs, successors, attorneys (including without limitation Relator's Counsel), agents, and assigns, releases Gunnison together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers, directors, employees, and affiliates; and the successors and assigns of any of them, from any civil monetary claim Gale has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Any administrative liability, except as otherwise expressly released in paragraph 4;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and

i. Any liability of individuals, other than the liability of individuals within the categories of persons expressly released in paragraph 4 to the extent released in that paragraph.

7. Gale and his heirs, successors, attorneys (including without limitation Relator's Counsel), agents, and assigns agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Gale's receipt of the payments described in Paragraphs 2 and 3, Gale and his heirs, successors, attorneys (including without limitation Relator's Counsel), agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31

U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Gale, for himself and for his heirs, successors, attorneys (including without limitation Relator's Counsel), agents, and assigns (for the purpose of this paragraph, collectively "Gale"), releases Gunnison, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and current or former officers, directors, employees, and affiliates; and the successors and assigns of any of them (for the purpose of this paragraph, collectively "Gunnison"), from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, conditioned upon the payments described in Paragraphs 2 and 3. Gunnison likewise releases Gale, his heirs, successors, attorneys (including without limitation Relator's Counsel), agents, and assigns from any liability to Gunnison arising from any and all activities conducted which relate to the filing of the Civil Action.

9. Gunnison waives and shall not assert any defenses Gunnison may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy

sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. Gunnison fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Gunnison has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Gunnison, and its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil or criminal investigation(s) of the matters covered by this Agreement;

(3) Gunnison's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the

matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment Gunnison makes to the United States pursuant to this Agreement and any payments that Gunnison may make to Gale, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Gunnison, and Gunnison shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Gunnison shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Gunnison or any of its subsidiaries or affiliates from the United States. Gunnison agrees that the United States, at a minimum, shall be entitled to recoup from Gunnison any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit,

examine, or re-examine Gunnison's books and records and to disagree with any calculations submitted by Gunnison or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Gunnison, or the effect of any such Unallowable Costs on the amount of such payments.

12. This Agreement is intended to be for the benefit of the Parties, as well as the individuals and entities identified in Paragraphs 4, 5, 7, and 8.

13. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of Party with prejudice, pursuant to Rule 41(a)(1).

14. Other than Gunnison's payments of Relator's Legal Fees, as set forth in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

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23. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 2/13/12

BY: Amanda Rocque

Amanda Rocque
Assistant United States Attorney
United States Attorney's Office
for the District of Colorado
1225 Seventeenth Street, Suite 700
Denver, CO 80202
Counsel for the United States of America

GUNNISON ENERGY CORPORATION

DATED: BY: _____
M. Bradford Robinson
President
Gunnison Energy Corporation

AS TO FORM ONLY:

DATED: BY: _____
Timothy R. Beyer, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
Counsel for Gunnison Energy Corporation

ANTHONY B. GALE - RELATOR

DATED: 2/14/12 BY: _____
Anthony B. Gale
Relator

DATED: BY: _____
William Cohan
P.O. Box 3448
Rancho Santa Fe, CA 92067
Counsel for Relator