

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

Civil Action No. 1:12-CV-1658-MSK-BNB

GASCO ENERGY, INC.,

Plaintiff,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Defendant,

SOUTHERN UTAH WILDERNESS ALLIANCE,

Intervenor-Defendant,

UNITED STATES OF AMERICA,

Counterclaim-Plaintiff,

SOUTHERN UTAH WILDERNESS ALLIANCE,

Intervenor-Counterclaim-Plaintiff,

v.

GASCO ENERGY, INC.,

Counterclaim-Defendant.

CONSENT DECREE

WHEREAS, Plaintiff Gasco Energy, Inc. (“Gasco”) is a publicly held corporation organized and existing under the laws of the State of Nevada with its principal place of business in Denver, Colorado. Gasco is a natural gas exploration and production company that focuses on developing natural gas resources in the Rocky Mountain region;

WHEREAS, Gasco acquired rights to drill for natural gas on private property that the Lamb Trust owns in Uintah County, Utah, located in Township 9S, R19E, sections 14, 22, and 23. The acreage abuts the northwest bank of the Green River downstream from Ouray, Utah, and the Green River’s confluences with the Duchesne and White Rivers; the property is located approximately thirty miles south-southwest from Vernal, Utah;

WHEREAS, on September 29, 2011, the United States Environmental Protection Agency (“EPA”) issued to Gasco a *Findings of Violation and Administrative Order for Compliance* (the “Compliance Order”) under the Clean Water Act arising from EPA’s determination that Gasco conducted activities related to natural gas production that resulted in the discharge of dredged and/or fill material to wetlands subject to federal regulation under the Clean Water Act;

WHEREAS, on June 25, 2012, Gasco initiated this case by filing a petition for review of final agency action under the Administrative Procedure Act (“APA”) against EPA that requests the Court to set aside the Compliance Order;

WHEREAS, Gasco’s complaint alleges that the Compliance Order is arbitrary and capricious because the preliminary jurisdictional determination that the United States Army Corps of Engineers (“Corps”) issued fails to comply with the applicable standards for delineating wetlands, is not supported by substantial evidence, and is otherwise not in accordance with law;

WHEREAS, on September 5, 2012, the Counterclaim-Plaintiff, the United States of America, on behalf of EPA, filed counterclaims against Gasco alleging that Gasco violated Sections 301(a) and 309 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319;

WHEREAS, on September 4, 2013, Intervenor and Counterclaim-Plaintiff Southern Utah Wilderness Alliance (“SUWA”) also filed counterclaims against Gasco alleging that Gasco violated Sections 301(a) and 309 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1319;

WHEREAS, the counterclaims the United States and SUWA filed allege that Gasco violated Clean Water Act Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at property the Lamb Trust owned, located in portions of Sections 14 and 23, Township 9 South, Range 19 East, Uintah County, Utah, (the “Lamb Trust Site”) and more fully described in the counterclaims, without the Corps’ authorization ;

WHEREAS, the counterclaims also allege that Gasco did not comply with the terms of the Compliance Order;

WHEREAS, the counterclaims seek (1) to enjoin the discharge of pollutants into waters of the United States in violation of Clean Water Act Section 301(a), 33 U.S.C. § 1311(a); (2) to require Gasco, at its own expense and at the direction of EPA, to restore and/or mitigate the damages resulting from Gasco’s allegedly unlawful activities; and (3) to require Gasco to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, the parties, after due and good faith consideration of all claims and defenses, have agreed to enter into this Consent Decree to mitigate the mutual risks of proceeding in litigation, and to settle the claims between and among the parties;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of Gasco's claims against EPA and SUWA and the United States' and SUWA's claims against Gasco arising from the facts alleged in the complaint and the counterclaims;

WHEREAS, the United States, EPA, SUWA, and Gasco agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the claims and counterclaims in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the claims and counterclaims in this case, and that this Consent Decree adequately protects the public interest in accordance with the Clean Water Act and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 5 U.S.C. § 702, 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) and 505 of the Clean Water Act, 33 U.S.C. § 1319(b) and 1365.

2. Venue is proper in the District of Colorado pursuant to Clean Water Act Sections 309(b) and 505(c), 33 U.S.C. § 1319(b) and 1365(c), and 28 U.S.C. §§ 1391(b), (c), and (e), because Gasco conducts business in this district and because EPA issued the Compliance Order from its Region 8 office located in this district.

3. The complaint states a claim upon which relief can be granted pursuant to Section 706 of the APA, 5 U.S.C. § 706, and the counterclaims state claims upon which relief can be

granted pursuant to Sections 301, 309, 404, and 505 of the Clean Water Act, 33 U.S.C. §§ 1311, 1319, 1344, and 1365.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Gasco, its officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with Gasco whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against Gasco, Gasco shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with Gasco, to take any actions necessary to comply with the provisions hereof.

5. The ownership of the "Restoration Sites" (as described in Appendix A appended hereto and incorporated herein by reference) by a third party or the transfer of ownership or other interest in the Restoration Sites shall not alter or relieve Gasco of its obligation to comply with all of the terms of this Consent Decree. At least 15 days before the transfer of ownership or other interest in the Restoration Sites, Gasco shall provide written notice and a true copy of this Consent Decree to the successors in interest and shall simultaneously notify EPA, the United States Department of Justice, and SUWA at the addresses specified in Section X below that such notice has been given. As a condition to any transfer of interests Gasco possesses, Gasco shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for equitable relief, injunctive relief, and civil penalties alleged in the complaint and the counterclaims concerning the Lamb Trust Site through the date of lodging this Consent Decree. Gasco waives any right to seek termination or modification of this Consent Decree based upon future decisions of any court in any case unrelated to Gasco and this Consent Decree, with respect to the regulatory jurisdiction under the Clean Water Act.

7. Gasco covenants not to sue or initiate any claims or causes of action against the United States, its departments or agencies, related to any matters asserted in the pleadings, including but not limited to claims or causes of action seeking compensation under the Fifth Amendment of the United States Constitution or other applicable law based on the alleged taking of property arising from the Lamb Trust Site occurring up to and including the date of lodging this Consent Decree.

8. The United States and SUWA hereby covenant not to sue or initiate any claims against Gasco for any liability associated with alleged violations of Section 404 of the Clean Water Act on the Lamb Trust property asserted in the pleadings occurring up to and including the date of lodging this Consent Decree.

9. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in Clean Water Act Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities this Consent Decree requires shall have the objective of

causing Gasco to achieve and maintain full compliance with, and to further the purposes of, the Clean Water Act.

10. Except as in accordance with this Consent Decree, Gasco and Gasco's agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the Clean Water Act and its implementing regulations.

11. The parties acknowledge that Nationwide Permit 32, found at 77 Fed. Reg. 10,184, 10,277 (Feb. 21, 2012), authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work this Consent Decree requires shall be subject to the conditions of the Nationwide Permit and this Consent Decree.

12. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the Clean Water Act, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit EPA's ability to exercise its authority pursuant to Section 404(c) of the Clean Water Act, 33 U.S.C. § 1344(c).

13. This Consent Decree in no way affects or relieves Gasco of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

14. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

15. The United States and SUWA reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

16. This Consent Decree is the result of compromise and settlement, and shall not be construed as an admission on any party's behalf of any legal or factual matter relating to the claims at issue in this litigation.

IV. SPECIFIC PROVISIONS

A. CIVIL PENALTIES

17. Gasco shall pay a civil penalty to the United States in the amount of \$110,000.00 within 30 days of entry of this Consent Decree.

18. Gasco shall make the above-referenced payment by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice account in accordance with current electronic funds transfer procedures, referencing EPA Region 8 and the DOJ case number 90-5-1-1-19544. Payment shall be made in accordance with instructions the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado provides to Gasco. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

19. Upon payment of the civil penalty this Consent Decree requires, Gasco shall provide written notice, at the addresses specified in Section X of this Consent Decree, that such payment was made in accordance with Paragraph 18.

20. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section IX) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

B. RESTORATION

21. Gasco shall perform restoration projects under the terms and conditions stated in the *Restoration and Monitoring Plan for Lamb Trust Parcel* (the “Restoration Plan”). The Restoration Plan is attached to this Consent Decree as Appendix A, and is incorporated herein by reference as an enforceable part of this Consent Decree.

22. Upon completion of the terms and conditions of Appendix A, Gasco shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any location identified in Appendix A, without EPA’s approval.

V. NOTICES AND OTHER SUBMISSIONS

23. Within 30 days after the deadline for completing any task set forth in Appendix A of this Consent Decree, Gasco shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

24. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time the Consent Decree establishes for such completion.

25. In all notices, documents or reports submitted to the United States and SUWA pursuant to this Consent Decree, Gasco shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

26. Until termination of this Consent Decree, Gasco shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in Appendix A, regardless of any corporate retention policy to the contrary. Until termination of this Consent Decree, Gasco shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix A.

27. At the conclusion of the document retention period, Gasco shall notify the United States at least 90 days before the destruction of any such records or documents, and, upon the United States' request, Gasco shall deliver any such records or documents to EPA. Gasco may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege federal law recognizes. If Gasco asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege Gasco asserts. No documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

28. A. Until termination of this Consent Decree, and subject to the provisions of this paragraph, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Lamb Trust Site to:

- 1) Monitor the activities this Consent Decree requires;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples; and
- 4) Inspect and evaluate Gasco's restoration activities.

The United States will, except in the event of exigent circumstances, use its best efforts to provide notification to Gasco at least 48 hours in advance of entry. Within 30 days after entry of this Consent Decree, Gasco shall coordinate with the owner of the Lamb Trust Site to ensure that the United States and its authorized representatives and contractors will have the access this paragraph provides. If Gasco is unable to obtain such assurance from the owner of the Lamb Trust Site, it shall notify the United States in writing immediately, and shall specify the reasons for being unable to obtain such assurance of access.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring, and to obtain information from Gasco as authorized by law.

VII. DISPUTE RESOLUTION

29. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States, SUWA and Gasco to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond 30 days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless those parties agree to a longer period of time in writing. If a dispute between the United States, SUWA and Gasco cannot be resolved through informal negotiations, then the position the United States advances shall be considered binding unless, within 30 days after the end of the negotiations period, Gasco or SUWA files a

motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have 30 days to respond to the motion and propose an alternate resolution. The United States' position shall be binding unless the moving party proves by clear and convincing evidence that the moving party's proposal better meets the requirements of this Consent Decree and the requirements and objectives of the Clean Water Act.

30. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute before the expiration of the 30-day period for informal negotiations. Gasco and SUWA shall have 14 days to respond to the motion and propose an alternate resolution. The United States' position shall be binding unless the responding party proves by clear and convincing evidence that the responding party's proposal better meets the requirements of this Consent Decree and the requirements and objectives of the Clean Water Act.

31. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Gasco under this Consent Decree, except as provided in Paragraph 39 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

32. Gasco shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Gasco, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays an action this

Consent Decree requires beyond the time the Consent Decree specifies for the performance of the action or which prevents entirely the performance of an action this Consent Decree requires. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits. Flooding or very wet conditions that cause the restoration site to be too environmentally sensitive for work to be performed may constitute a Force Majeure event.

33. If Gasco believes that a Force Majeure event has affected Gasco's ability to perform any action required under this Consent Decree, Gasco shall notify the United States in writing within seven calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- A. What action has been affected;
- B. The specific cause(s) of the delay;
- C. The length or estimated duration of the delay; and
- D. Any measures taken or planned to prevent or minimize the delay and a schedule for the implementation of such measures.

Gasco may also provide to the United States any additional information that it deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

34. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the

delay the Force Majeure event caused. Gasco shall coordinate with EPA to determine when to begin or resume the operations delayed as a result of the Force Majeure event.

35. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

36. Gasco shall bear the burden of proving: (1) that any alleged noncompliance at issue was caused by circumstances beyond the control of Gasco and any entity under Gasco’s control, including its contractors and consultants; (2) that neither Gasco nor any entity Gasco controlled could have foreseen and prevented such alleged noncompliance; and (3) the number of days of delay that any circumstances alleged to represent a Force Majeure event caused.

IX. STIPULATED PENALTIES

37. After entry of this Consent Decree, if Gasco fails to timely fulfill any requirement of the Consent Decree (including Appendix A), other than violations of the Clean Water Act not addressed in the United States’ counterclaims, Gasco shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- A. For Day 1 up to and including Day 30 of non-compliance \$1000.00 per day
- B. For Day 31 up to and including Day 60 of non-compliance \$2,000.00 per day
- C. For Day 61 and beyond of non-compliance \$3,000.00 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

38. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that the parties cannot resolve pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 29 and 30.

39. The filing of a motion requesting that the Court resolve a dispute shall stay Gasco's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Gasco does not prevail on the disputed issue, Gasco shall pay stipulated penalties as provided in this Section.

40. To the extent Gasco demonstrates to the Court that a delay or other non-compliance resulted from a Force Majeure event (as defined in Paragraph 32 above) or otherwise prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

41. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

42. Gasco shall make any payment of a stipulated penalty by FedWire EFT or wire transfer to the United States Department of Justice account in accordance with current electronic funds transfer procedures, referencing EPA Region 8 and the DOJ case number 90-5-1-1-19544. Payment shall be made in accordance with instructions provided to Gasco by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado. Any

payments the Department of Justice receives after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Gasco shall provide written notice at the addresses specified in Section X of this Decree.

X. ADDRESSES

43. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Sheldon Muller, 8ENF-L
Senior Attorney
United States Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202
- (2) Monica Heimdal, 8ENF-L
United States Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Alan D. Greenberg, Attorney
Environmental Defense Section
U.S. Department of Justice
999 18th Street, Suite 370
Denver, CO 80202

C. TO SUWA

Steve Bloch
Energy Program Director/Attorney
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

David Garbett
Staff Attorney
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

D. TO GASCO:

Michael K. Decker, Executive Vice-President & Chief Operating Officer
Gasco Energy, Inc.
7979 East Tufts Avenue, Suite 1150
Denver, Colorado 80237

L. Poe Leggette
Mark S. Barron
FULBRIGHT & JAWORSKI LLP
1200 17th Street, Suite 1000
Denver, Colorado 80202

XI. COSTS OF SUIT

44. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should the Court subsequently determine that Gasco has violated the terms or conditions of this Consent Decree, Gasco shall be liable for any costs or attorneys' fees the United States incurs in any action against Gasco for noncompliance with or enforcement of this Consent Decree.

XII. PUBLIC COMMENT

45. The parties acknowledge that after the lodging and before the entry of this Consent Decree, the United States' final approval is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Gasco agrees not to withdraw from, oppose entry of, or

challenge any provision of this Consent Decree, unless the United States has notified Gasco in writing that it no longer supports entry of the Consent Decree.

XIII. CONTINUING JURISDICTION OF THE COURT

46. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIV. MODIFICATION

47. Upon the Court's entry of this Consent Decree, the Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Gasco and approved by the Court.

XV. TERMINATION

48. After Gasco has completed the requirements of Section IV of this Consent Decree and has paid any outstanding stipulated penalties this Consent Decree requires, Gasco may submit to the United States, at the addresses specified in Section X of this Consent Decree, a Request for Termination, stating that Gasco has satisfied those requirements, together with supporting documentation.

49. Following the United States' receipt of Gasco's Request for Termination, the parties may confer informally concerning the request and any disagreement that the parties may have as to whether Gasco has satisfactorily complied with the requirements for termination of

this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the United States shall submit a motion to terminate the Consent Decree.

50. If the United States does not agree that the Consent Decree may be terminated, Gasco may invoke Dispute Resolution under Section VII of this Consent Decree. Provided, however, that Gasco shall not seek Dispute Resolution of any dispute regarding termination, under Section VII of this Consent Decree, until 60 days after service of its Request for Termination.

51. Termination of this Consent Decree does not extinguish the prohibitory injunction set forth in Paragraph 10 of this Consent Decree.

XVI. SIGNATORIES/SERVICE

52. Each undersigned representative of Gasco, EPA, the United States Department of Justice, and SUWA certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the party he or she represents to this document.

53. This Consent Decree may be signed in counterparts, such counterpart signature pages shall be given full force and effect, and its validity shall not be challenged on that basis.

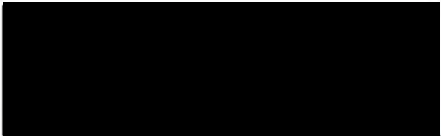
IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2014.

United States District Judge

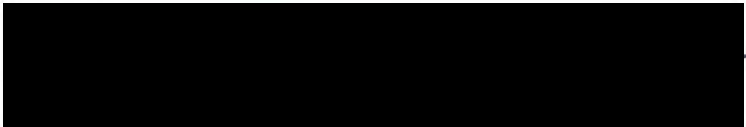
ON BEHALF OF THE UNITED STATES:

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division



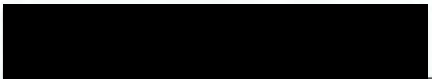
Dated: Feb. 3, 1994

Alan D. Greenberg
Environmental Defense Section
U.S. Department of Justice
999 18th Street, Suite 370
Denver, CO 80202



Dated: 1/30/2014

Andrew M. Gaydosh, Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202



Dated: Jan. 30, 2014

Sheldon H. Muller
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202

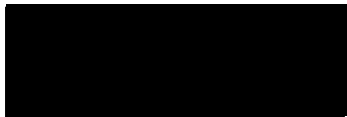


Mark Pollins, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460



James Vinch, Attorney
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

ON BEHALF OF SOUTHERN UTAH WILDERNESS ALLIANCE:



Dated: 1/23/14

Stephen Bloch
Attorney and Legal Director
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

ON BEHALF OF GASCO ENERGY, INC.:



Dated: January 20, 2014

Michael K. Decker
Executive Vice-President & Chief Operating Officer
Gasco Energy, Inc.
7979 East Tufts Avenue, Suite 1150
Denver, Colorado 80237

APPENDIX A

TO

CONSENT DECREE

GASCO v. EPA, et al.

Civil Action No. 1:12-CV-1658-MSK-BNB

RESTORATION AND MONITORING PLAN FOR LAMB TRUST PARCEL

Prepared for

Gasco Energy, Inc.
7979 East Tufts Avenue, Suite 1150
Denver, Colorado 80237

Prepared for Submission to

U.S. Environmental Protection Agency, Region VIII
1595 Wynkoop Street
Denver, Colorado 80202-1129

Prepared by

SWCA Environmental Consultants
257 East 200 South, Suite 200
Salt Lake City, Utah 84111

January 21, 2014

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RESPONSIBLE PARTY DATA

Applicant	Gasco Energy, Inc. 7979 East Tufts Avenue, Suite 1150 Denver, Colorado 80237 (303) 483-0044
Plan Preparer	SWCA Environmental Consultants (SWCA) 257 East 200 South, Suite 200 Salt Lake City, Utah 84111 (801) 322-4307
Location	Sections 14 and 23, Township 9 South, Range 19 East, Uintah County, Utah

INTRODUCTION

Gasco Energy, Inc. (“Gasco”) has agreed to conduct restoration and monitoring on the Lamb Trust parcel to address the alleged placement of fill on lands over which the United States Environmental Protection Agency (“EPA”) contends it has regulatory jurisdiction under the Clean Water Act, 33 U.S.C. §§ 1251-1387. Specific tasks include the following:

- Plug and abandon LT 12-23-9-19 well.
- Remove fill material from the LT 12-23-9-19 well pad and access road.
- Re-vegetate the LT 12-23-9-19 well pad and access road.
- Remove fill material from wetlands along the access road leading to well LT 24-14-9-19.
- Place a bottomless culvert at the same location to avoid and minimize wetland impacts.
- Initiate a monitoring plan for the well pad and access roads.

The well pad and access road associated with the LT 12-23-9-19 well and the access road to the LT 24-14-9-19 well, shown in green on Figure 1, are collectively referenced as the “Restoration Sites.”

Description of Site Vegetation Communities

LT 12-23-9-19 Well Pad and Access Road

This well pad and access road are in the historical floodplain of the Green River (Figure 1). The vegetation community is dominated by *Distichlis spicata* (Salt Grass) and *Tamarix chinensis* (Five-Stamen Tamarix), and contains small populations of *Pascopyrum smithii* (Western Wheat Grass), *Lepidium latifolium* (Broad-Leaf Pepperwort), *Xanthium strumarium* (Rough Cocklebur), *Iva axillaris* (Deer-Root), and *Bassia hyssopifolia* (Five-Horn Smotherweed). This species list is derived from data forms Mr. Jim Spencer completed during a regulatory site visit on June 26, 2013, in his capacity as vegetation expert for EPA. The common names noted here are as they appear with the corresponding scientific name in the 2012 National Wetland Plant List (Lichvar 2012). Of these seven species,

Lepidium latifolium is listed on the State of Utah noxious weed list (Utah Administrative Code R68-9, November 1, 2013) and the Uintah County noxious and invasive weeds list (Uintah County Weed Department, Noxious Weed Identification). In addition, *Tamarix ramosissima* is listed on both lists, and has been synonymized with *Tamarix chinensis*. Therefore, *Tamarix chinensis* should also be considered a noxious or invasive weed. None of the other species noted above appear on either list.

LT 24-14-9-19 Well Access Road

This location is also part of the historical Green River floodplain. The access road traverses a drainage swale that supports emergent vegetation (see Figure 1). The plant species found here consist of *Distichlis spicata*, *Schoenoplectus acutus* (Hard-Stem Club-Rush), *Tamarix chinensis*, and *Lepidium latifolium*. Other trace populations include *Iva axillaris*, *Rumex crispus* (Curly Dock), *Typha latifolia* (Broad-Leaf Cat-Tail), and *Hordeum jubatum* (Fox-Tail Barley). Of these species, *Lepidium latifolium* and *Tamarix chinensis* are considered to be noxious or invasive weeds in Utah and Uintah County.

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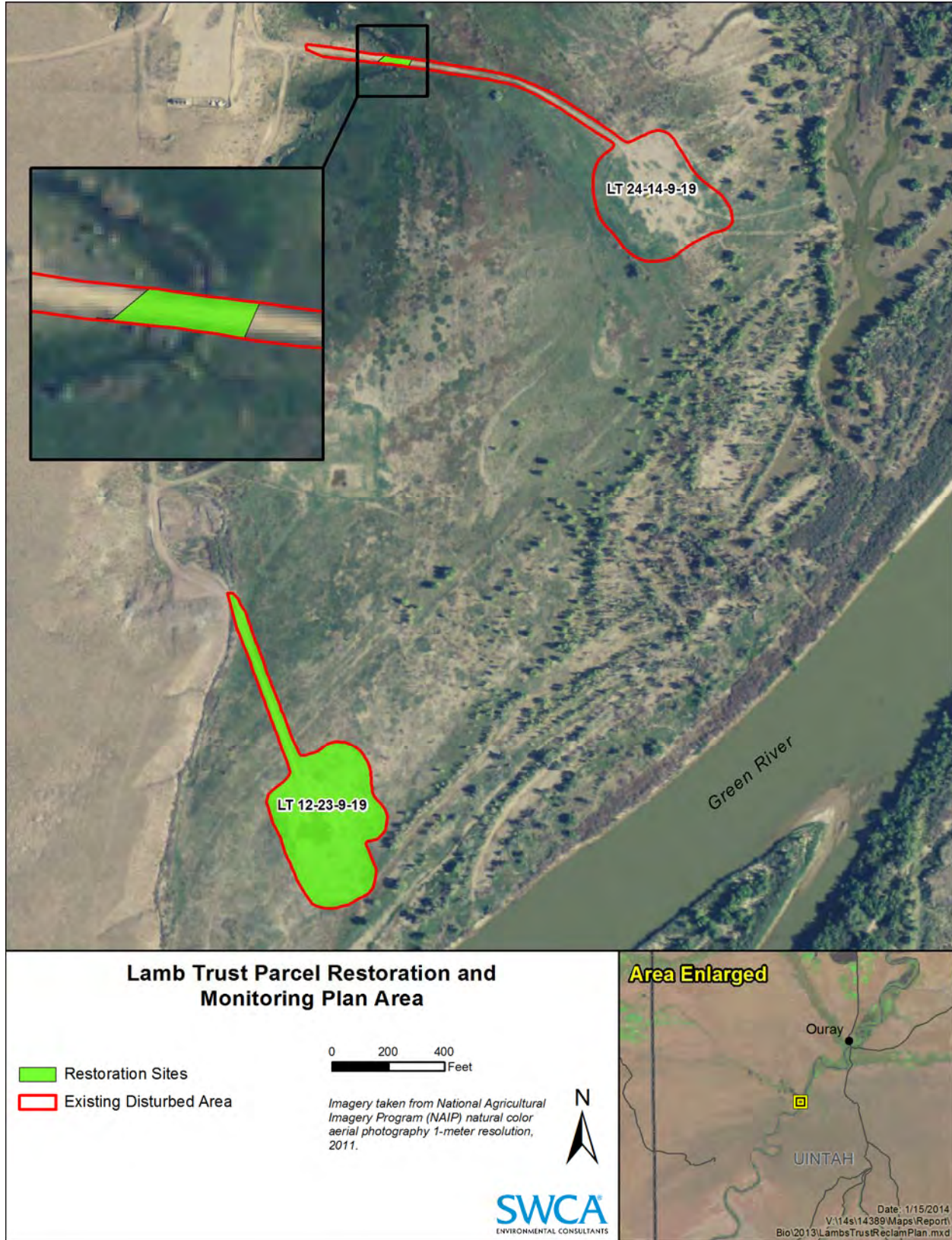


Figure 1. Restoration location map.

IMPLEMENTATION PLAN

The timing and sequence of restoration implementation are designed to optimize the growth of native or desirable species and to limit the growth of non-native or noxious weeds. Restoration activities in the Lamb Trust parcel areas consist of the tasks outlined in the following sections.

Plug and Abandon LT 12-23-9-19 Well

To initiate the restoration process, Gasco will plug and abandon the LT 12-23-9-19 well. The well will be plugged and abandoned in accordance with standards that the State of Utah Department of Natural Resources has issued, Utah Admin. Code r. 649-3-24 (Attachment A). All standard best management practices consistent with oil and gas operations on federal lands will be implemented.

Remove Fill from LT 12-23-9-19 Well Pad and Access Road

As part of this restoration process, Gasco will remove all fill deposited in association with the construction of the LT 12-23-9-19 well pad and access road. The depth of fill varies and will be removed to the native soil elevation. Test holes will be dug at various locations in the restoration area by hand or with machinery to estimate the average depth of fill material. The presence of fill will be determined primarily by changes in soil texture and structure, but will also include topography and previously recorded limits of disturbance. Both Gasco's environmental consultant and a representative of the United States with knowledge sufficient to assess the native soil elevation will be on site during fill removal activities to ensure fill is removed to the native soil elevation. Gasco will provide the United States with notice 21 days prior to the date on which the United States' representative is to be on site to assess the native soil elevation.

Once fill removal is complete, the area will be leveled to eliminate significant depressions that could act as a barrier to fish movement during periods of inundation. Fill removal will be conducted by an experienced excavation contractor using a smooth-edged bucket. The contractor will work backward from the edges of the fill material to avoid disturbing adjacent soil and vegetation. Fill will be placed in a dump truck, hauled out of the Green River floodplain, and placed in an upland location outside the 100-year floodplain of the Green River. The contractor will restrict travel to a pre-determined haul road corridor, which will be delineated in the field with lath, and will utilize existing access roads to the extent possible. No material will be imported to the haul road to create a road prism nor will the soil surface be graded.

Other best management practices include:

- Erosion and sediment control measures will be implemented both during and after the fill removal in compliance with the State of Utah storm water requirements, including permit requirements, to ensure sediment from the site does not enter the Green River.
- Earth moving activities will be limited to times when the soil is dry to avoid impacting aquatic resources.
- Vehicles and equipment will be washed in upland areas before working in the Restoration Sites to limit the spread of noxious and invasive weeds.
- All vehicles and equipment used will be well maintained and free of any leaks.
- All fueling and maintenance of vehicles will occur in designated upland areas.
- Gasco will implement a hazardous material spill response and clean-up plan and ensure that all construction staff are familiar with this plan before the start of construction.

Remove Fill and Culvert from LT 24-14-9-19 Well Access Road

Gasco will also remove the existing culvert and fill impacting approximately 0.08 acre of wetlands at the access road to well LT 24-14-9-19. The method of fill removal for the LT 24-14-9-19 access road will be the same as stated above for the removal of fill associated with the LT 12-23-9-19 well pad and access road.

Install Bottomless Culvert

In addition to removing fill, Gasco will place a bottomless culvert at the access road to well LT 24-14-9-19. Gasco shall submit a design drawing for the new bottomless culvert to EPA for EPA's approval before commencement of installation of the culvert. Culvert installation must be designed and constructed to minimize adverse impacts, both temporary and permanent, to wetlands to the maximum extent practicable. The culvert shall span the drainage channel so as to ensure that no more than minor impacts will occur to aquatic life and wildlife passage or expected high flows. Work will be conducted by an experienced excavation contractor using a smooth-edged bucket.

Reseed

After fill removal, a consultant with wetland mitigation experience will assess vegetation and soil conditions of the newly exposed surface. The soil will be prepared for seeding using a harrow and small all-terrain vehicle. The exposed surface will be reseeded with a mix of species similar to what is currently found on the parcel. The seed mix will be *Distichlis spicata* (70%) and *Pascopyrum smithii* (30%) unless the desired species cannot be obtained, in which case any different mix must be approved by EPA before seeding. Seeds will be sown either through a seed driller at a rate of 15 pounds of pure live seed per acre or with a broadcast seeder at a rate of 20 pounds of pure live seed per acre. Seeds will be pressed into the soil using a seed imprinter and a vehicle that minimizes impacts to the soil.

Seeding is best done in the late fall or early winter to improve germination and take advantage of higher moisture content in the soil when germination occurs in the spring. Seeding in the late spring or summer is not recommended in arid climates without supplemental irrigation water. Fertilizers have shown to stimulate weed growth and will not be used. Gasco will treat the Restoration Sites with herbicide before commencing restoration activities to avoid the spread of noxious and invasive weeds. Weeds will be treated again in the area surrounding the Restoration Sites immediately before seeding to reduce the chance for noxious and invasive species to spread onto the restoration areas. Gasco shall retain a certified herbicide applicator who will conduct weed treatment using a herbicide registered with EPA. The selected EPA-registered herbicide shall be used in a manner consistent with its labeling. Gasco shall use a herbicide that is designated for aquatic use and will be selected to avoid harm to fish or other aquatic wildlife. Application of herbicides shall comply with all applicable State of Utah and local laws regarding the proper use of pesticides, including permitting requirements.

IMPLEMENTATION SCHEDULE

Pending entry of the consent decree by the Court, restoration will begin as early as March 2014. Table 1 provides deadlines for each restoration activity. If the Court does not enter the consent decree in March 2014 and earth moving activities cannot occur before the wet season, the implementation schedule shall commence in accordance with the dates identified in the Column labeled "Contingency Deadline" in Table 1. The parties recognize that all deadlines included in this Restoration Plan are contingent on

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weather and surface conditions at the Restoration Sites being suitable for the completion of the work contemplated herein.

Table 1. Implementation Timeline

Activity	Deadline	Contingency Deadline	Description or Season	Best Management Practices
Plug and abandon LT 12-23-9-19 well	30 days after entry of consent decree	30 days from July 10 or from when site is determined dry enough for work	The well will be plugged and abandoned in accordance with Utah Admin.Code r. 649-3-24..	Erosion and sediment controls All other applicable oil and gas best management practices.
Weed treatment	35 days after entry of consent decree	35 days from July 10, or from when site is determined dry enough to work	Gasco will treat the Restoration Sites areas with herbicide in early 2014, before restoration activities, to avoid the spread of noxious and invasive weeds.	Certified applicator to apply registered herbicide.
Remove fill from LT 12-23-9-19 well pad and access road	45 days after entry of consent decree	45 days from July 10, or from when site is determined dry enough for work	Gasco will remove all fill associated with the LT 12-23-9-19 well and access road	Erosion and sediment controls, avoid wet season, vehicle washing, maintained equipment, designated fueling areas, spill response plan
Submit design drawing for bottomless culvert	15 days after entry of consent decree	15 days after entry of consent decree	.	.
Remove fill and culvert from LT 24-14-9-19 well access road	20 days after EPA approval of design drawing	20 days after EPA approval of design drawing, provided site is dry enough for work	Gasco will remove all fill associated with the LT 24-14-9-19 well access road.	Erosion and sediment controls, avoid wet season, vehicle washing, maintained equipment, designated fueling areas, spill response plan
Install bottomless culvert	20 days after EPA approval of design drawing	20 days after EPA approval of design drawing, provided site is dry enough for work	Gasco will place a bottomless culvert at the access road to well LT 24-14-9-19 .	Erosion and sediment controls, avoid wet season, vehicle washing, maintained equipment, designated fueling areas, spill response plan
Submit as-built report	90 days after entry of consent decree	30 days from completion of all fill removal	The as-builts will show topography for all restored areas. The as-built submission will include before and after photos.	Photographs will be labeled with the location, date photographed, compass heading, and GPS location recorded.
Reseed	November 1, 2014	November 1, 2014	Gasco will first treat for weeds again in areas surrounding the Restoration Sites, and then will reseed Restoration Sites with approved seed mix in the fall 2014.	Erosion and sediment controls, avoid wet season, vehicle washing, maintained equipment, designated fueling areas, spill response plan, certified applicator to apply approved herbicide.

RESTORATION GOALS AND OBJECTIVES, SUCCESS CRITERIA, AND MONITORING

Goals and Objectives

The broad restoration goal is to restore specific areas of the Lamb Trust parcel to conditions existing before Gasco's natural gas operations. Undisturbed areas adjacent to the Restoration Site for LT 12-23-9-19 well pad and access road shown on Figure 2, (the "Reference Site") will be used to characterize pre-existing conditions.

The following three objectives are necessary to meet the restoration goal:

Objective 1: Remove fill to a depth necessary to expose native soil without over-excavating to create depressions.

Objective 2: Reseed with a suitable seed mix to obtain the desired plant cover and species composition found in the Reference Sites.

Objective 3: Facilitate water movement within the drainage swale at the access road to LT 24-14-9-19 well by removing unnecessary fill and existing culvert and installing a bottomless culvert.

Achievement of these objectives can be monitored and measured using performance standards and success criteria below.

Performance Standards

- Post-fill removal, exposed native soil and topography will be similar or identical to the Reference Sites.
- No noticeable depression with potential to trap fish will be created.
- Seed mix will contain appropriate species relative to reference areas and applied at a rate suitable for site conditions.
- Post-culvert installation water will pass unobstructed under the access road and no more than minor impacts will occur to aquatic life and wildlife passage. All unnecessary fill will be removed from wetlands.

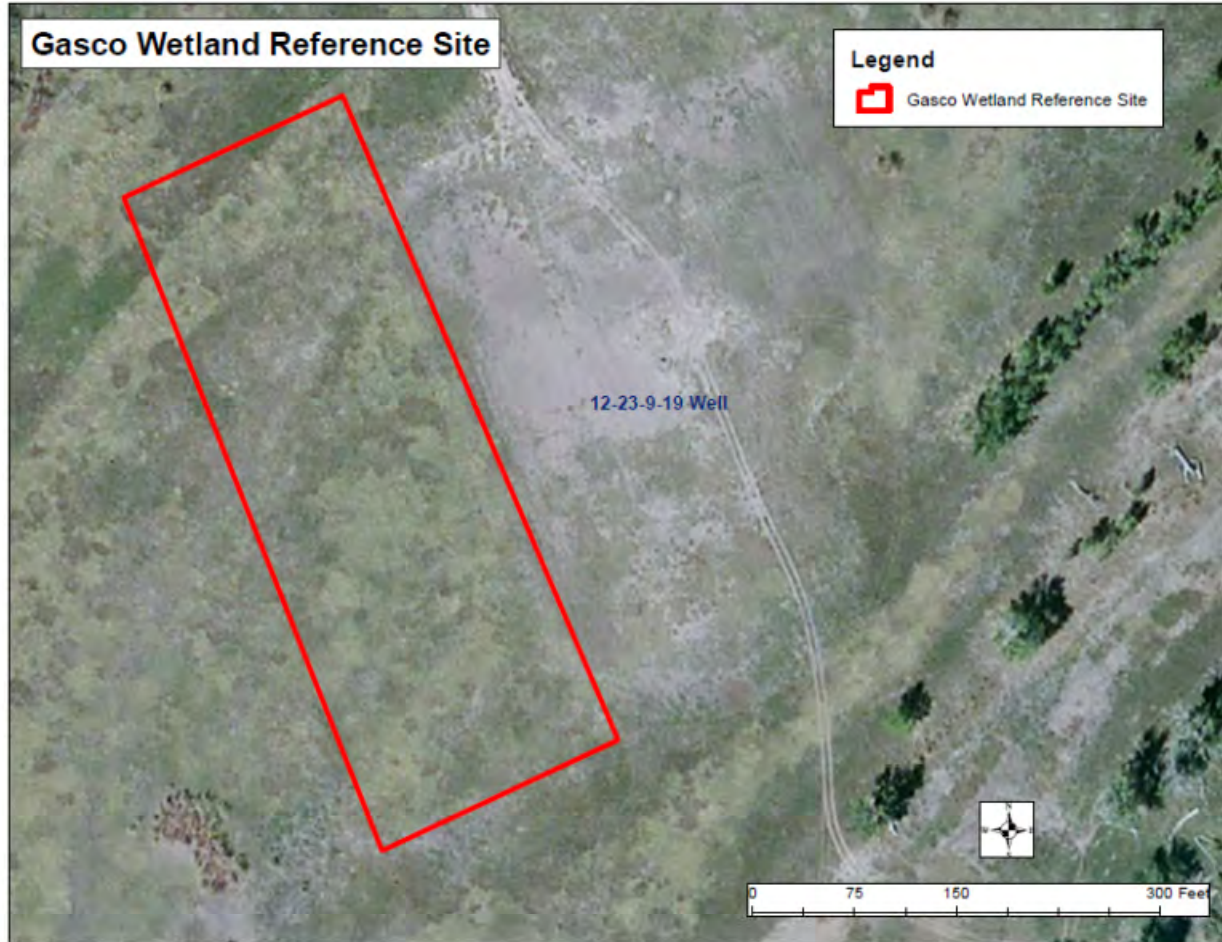


Figure 2. Reference Site map.

Success Criteria

Success criteria are used to quantify objectives and to determine if the restoration goal is achieved. Gasco shall demonstrate success in restoration of the wetland areas by the presence of hydrophytic vegetation that meets the dominance test set forth in the United States Army Corps of Engineers (“USACE”) *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (2008 (“Arid West Manual”))*. The following criteria will be used to determine wetland restoration success:

- The LT 12-23-9-19 well will be plugged and abandoned.
- All fill will be excavated to the original soil surface at the Restoration Sites;
- Vegetation of the Restoration Sites shall be similar in species, composition, and cover to vegetation of the Reference Site;
- No bare areas exceeding 50 square feet will occur within the Restoration Sites;

- Invasive and noxious species shall be limited to 10% or less of the total cover in the third, fourth, and fifth years of the monitoring period;
- Restoration Sites must have a total vegetative cover of 25% the first year, 50% the second year, 75% for the third and fourth years, and a minimum of the lesser of 80% or cover at least equal to the Reference Site the fifth year of the monitoring period, but in no event less than 75%;
- More than 50% of the dominant plant species across all strata in the Restoration Area are rated FAC, FACW, or OBL by the end of the monitoring period, as assessed using the dominance test set forth in the *Arid West Manual*.

As-Built Conditions

An as-built report will be submitted to EPA within 90 after entry of the consent decree. The as-built report must include topographic mapping of all Restoration Sites. The as-built report shall also include sufficient photographs taken both before and after the work at permanent photo points established before site preparation that will adequately document the work. The date, compass heading, GPS location, and direction of each photograph must be recorded. These photo points also will be used during the monitoring period.

Monitoring

A monitoring period will be implemented to measure successful completion of restoration measures. Vegetation monitoring will be conducted using a transect point-intercept sampling method (Elzinga et al. 1998) that is designed to provide a statistically rigorous and repeatable measure of vegetation and weed cover. The transect sampling method measures the frequency and cover of each plant species present and is used to accurately estimate vegetation and weed cover to determine if the Restoration Sites have met the success criteria. The transect method will be used for annual vegetation monitoring for the entire monitoring period. It can be used to compare the Restoration Sites with the Reference Site.

Sample transects will be 25 meters (m) long, and have 50 point-intercept locations. These transects will be used to maximize sampling efficiency while maintaining high accuracy (50 sample points per 25-m transect provide a cover resolution of +/-5%) (Elzinga et al. 1998). Transect locations will be randomly generated using geographic information systems (GIS). The transect starting and ending points will be recorded using a handheld Trimble XT global positioning system (GPS). Each transect will be assigned a unique number, which is recorded in the GPS and on a data sheet (Attachment B). Transect orientation from each starting point will be determined by randomly selecting a compass direction, or the transect will be oriented so that it does not cover more than one defined habitat type in very small or narrow portions of the mitigation areas. Photographs will be taken of habitat conditions. Transect locations will not be permanently marked.

To record plant species cover along each transect, the observer will identify all plant species “hit” by a metal pin lowered perpendicular to the ground every 0.5 m along the 25-m transect. Each species hit at each point-intercept location will be recorded on a data sheet. Because the total cover at a given point-intercept location or in a given sampling unit can be greater than 100%, this method is appropriate for assessing cover for a single species or cover type but not for estimating cover for multiple layers of vegetation (Elzinga et al. 1998). For this reason, each plant species hit at each point-intercept location will be identified by species and recorded and also classified as belonging to one of the following three vegetation cover classes: 1) noxious weed, 2) non-native, or 3) native species. Non-vegetated point-intercept hits will be classified as “bare.”

For data analysis purposes, each vegetation cover class will be analyzed separately. As such, each class will have a frequency of no greater than 1 for any given point-intercept location and cover of no greater than 100% for any given transect location. Noxious and invasive weed cover (State of Utah and Uintah County noxious and invasive weed species) will also be treated as a single target for which there could be a frequency of no greater than 1 for any given point-intercept location on a transect.

The foundation for this monitoring protocol is ecologically based and is consistent with federal guidance as documented in the *Arid West Manual*. In addition to vegetation monitoring, Gasco will also provide the following photographic documentation:

- Annual photographic documentation of the development of the Restoration Sites during vegetation sampling from permanent photograph stations located in the mitigation areas.
- Annual photographic documentation of the areas depicted in the photographs submitted with the as-built report.
- One-time photographic documentation before and during the restoration process.

Photographs will be labeled with the location, date photographed, compass heading, and GPS location recorded.

The monitoring period will terminate on the earlier of (i) the completion of the fifth growing season after the Restoration Sites have been seeded if EPA determines that the success criteria are met at that time; or (ii) upon EPA's determination that success criteria are met, if the success criteria are not met following completion of the fifth growing season.

ADAPTIVE MANAGEMENT

Restoration specialists make the best use of available data while planning, but they must adapt to the realities of local site conditions. For this reason, it is expected that the activities described above could change to take advantage of a better understanding of soils, hydrology, and vegetation. Minor changes would occur at the discretion of the restoration monitor and the contractor in charge of implementation, and will be documented in the first annual report. The restoration monitor will coordinate major changes with EPA to ensure project compliance.

MAINTENANCE ACTIVITIES DURING MONITORING PERIOD

During the monitoring period, findings from these monitoring activities will drive the maintenance requirements. For example, noxious plant infestation may necessitate periodic weed management. After restoration and during the monitoring period, maintenance will occur on a seasonal basis, especially if chemical herbicides are used, because herbicides typically have a varying level of effectiveness depending on the weed species and time of year the herbicide is applied.

MONITORING REPORTS

Monitoring will occur mid (July 2015) and late (September 2015) growing season for the first year, and would then occur once a year in the late summer thereafter. Findings will be incorporated into annual reports, which will include a statement describing the monitoring protocol, data tables, photographs from each permanent photo point, an analysis of findings, and implications for management. These reports will include all data collected during the monitoring event and a written summary of any problem areas that have been identified as not meeting success criteria. Potential corrective measures to address problem areas shall be submitted for EPA approval. Monitoring reports will be submitted to EPA annually. In

addition to these annual reports, Gasco may approach EPA for concurrence on proposed corrective work at any time.

Due Dates

Table 2 outlines the time at which various reports (deliverables) will be delivered to EPA. Monitoring Reports will be submitted annually on or before November 1.

Table 2. Deliverables Timeline

Timeline	Product
Project Year 1	As-Built Report , submitted within 90 days of entry of the consent decree, or within 30 days of fill removal (as per contingency schedule)
Project Year 1	Restoration, reseeding, monitoring, and annual report
Project Year 2	Monitoring and annual report
Project Year 3	Monitoring and annual report
Project Year 4	Monitoring and annual report
Project Year 5	Monitoring and annual report
Project Year 6+	Monitoring and annual report if success criteria not yet met

CONTINGENCY MEASURES

Initiating Procedures

The LT 12-23-9-19 well pad is within the floodplain of the Green River. It is possible that this location could flood during the restoration and monitoring period. In the event that the location is inundated after re-seeding occurs and seedlings are lost, Gasco will reseed at least one time in the spring or early summer as soon as flood waters have subsided. Soil moisture content after the flood event should ensure plant survival.

If vegetation is not meeting success criteria due to grazing activities, Gasco shall install fencing around the Restoration Sites.

COMPLETION OF RESTORATION

Notification

Gasco or its agent will notify EPA in advance of and at the completion of plugging and abandoning the LT 12-23-9-19 well, fill removal, reseeding, culvert removal, and culvert installation, at which time EPA, the Corps, or the United States Fish & Wildlife Service, at their discretion, may visit the property for inspection. Gasco will facilitate access to the site with the land owner. Annual reports will inform EPA of restoration progress. When Gasco believes it has completed all the work required under this Restoration and Monitoring Plan and met all success criteria, it shall submit a completion report. The completion report shall be submitted as part of the appropriate monitoring and annual report.

EPA Confirmation

Gasco will receive written confirmation from EPA after all success criteria have been met and EPA has determined that the restoration is successful. Upon receipt of such confirmation, no more monitoring or maintenance will be required.

REFERENCES CITED

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