

Appendix E -

MEMORANDUM OF AGREEMENT

Between The

COLORADO DIVISION OF WILDLIFE

&

SHELL FRONTIER OIL and GAS, INC.

This Memorandum of Agreement (MOA), by and between the Colorado Division of Wildlife (DIVISION) and the Shell Frontier Oil and Gas Inc. (SHELL), collectively referred to as “the Parties,” serves the purpose of providing perpetual protection of certain identified resources on the Piceance Parcels (Figure 1) and noted in the Piceance Property Exchange (EXCHANGE) Environmental Assessment (02/2007). The proposed Exchange involves the transfer of property out of State and/or Federal ownership or control to private ownership by SHELL.

WHEREAS, the DIVISION has identified the following resources during field surveys to be significant and requiring perpetual protection following the exchange with SHELL of parcels originally purchased by DIVISION Federal Assistance funding:

- 1) **Cultural Site #5RB509** identified during the Piceance Exchange Cultural Resources Class III Inventory was determined by the U.S. Fish & Wildlife Service (FWS) and the State Historical Preservation Office (SHPO) as “eligible” for the National Register of Historic Places (NRHP). This site is located on the Stake Springs #2 parcel of the exchange (see map in Appendix A).
- 2) The Colorado Natural Heritage program (CNHP) confirmed (Figure 2) a known population of federally threatened **Dudley Bluffs bladderpod** (*Lesquerella congesta*) on the Duck Creek # 1 & 2 parcels included in the EXCHANGE (see map in Figure 3). This species only occurs on the slopes and toe of the slopes of the hillsides within these parcels. SHELL has reported that they do not plan to disturb the hillsides; their work will occur in the bottomlands. SHELL understands that, based on the determination by CNHP, actions for protecting this site is needed in order for this site to be included in the proposed EXCHANGE.

NOW, THEREFORE, in consideration of having the above parcels included in the proposed exchange, SHELL agrees to complete the following protection measures for the above mentioned resources following the acquisition of parcels where the above subject resources are known to occur:

- 1) SHELL agrees to protect Cultural Site #5RB509 by providing for future notifications, actions, and mitigation measures which will serve as a reasonable management alternative that will assure the long term protection of this site. SHELL understands that, based on the determination by SHPO and the FWS Region 6 Archaeologist, further mitigation action for protecting this site is needed in order for this site to be included in the proposed

EXCHANGE. SHELL, therefore, agrees to complete additional mitigation work and to fully describe and document the Site per SHPO and FWS Region 6 recommendations and approval. SHELL agrees to complete this additional work within one year from the execution of this agreement. Once the mitigation is completed and SHPO and FWS has favorably reviewed and approved the results SHELL will have no other further responsibility to protect this cultural site.

- 2) SHELL agrees to provide long term protection for the known occurrences and any suitable habitat on the two Duck Creek parcels for the Dudley Bluffs bladderpod in perpetuity. Shell, therefore, agrees to not develop the areas, allow any surface occupancy, create any ground disturbance or engage in any other activities where Dudley Bluffs bladderpod have been found to occur or any suitable habitat that occurs for this species on the Duck Creek parcels. SHELL agrees to put up sufficient “No Trespassing” signs at the bottom of the hillslopes on these parcels to attempt to restrict any access to the habitat of the bladderpod on these parcels, immediately following the exchange.

SHELL also agrees to complete and ensure implementation of a conservation management and monitoring plan with the guidance and approval from the other major stakeholders involved in the protection of this species in the immediate area of the parcels - U.S. Fish & Wildlife Service (FWS) Ecological Services Division and Colorado Natural Areas Program (CNAP). SHELL agrees to complete this plan within two years from the date of land transfer; the deadline may be extended if mutually agreed upon by Shell and the other stakeholders. SHELL agrees to ensure that the plan include permanent measures to avoid adverse effects to both occupied and suitable habitat for this species. SHELL also agrees to ensure that long-term monitoring occurs to determine effectiveness of measures implemented to avoid adverse effects to the bladderpod on the parcels. If it is determined through monitoring that the conservation measures are not effective then Shell will implement adaptive management measures to correct the problem, in consultation with the other stakeholders.

The plan should also address additional surveying of the two Duck Creek parcels to assess all potential habitats for this species, as well as fencing of the known populations and any suitable habitat as part of the agreed upon long-term protection of this species. SHELL agrees to seek professional guidance from the listed stakeholders for placement of any fences on these parcels. The effectiveness of any fencing constructed to protect this species and its habitat will need to be regularly assessed based on monitoring results. Any access to these fenced-in areas will need to be approved by SHELL and other stakeholders listed above.

- 3) If in the future SHELL conveys any interest in one or both of these parcels by sale, right-of-way, lease, license, easement, or otherwise, SHELL agrees to assign this agreement with the parcel(s) to invoke permanent and continuous protection of the Duck Creek parcels and the subject threatened plant species population unless said species is no longer federally listed or a Colorado Species of Concern.

IN WITNESS HEREOF, the Parties have executed this agreement:

Colorado Division of Wildlife:

Director

Date

Shell Frontier Oil and Gas Inc.

Date

Figure E-1

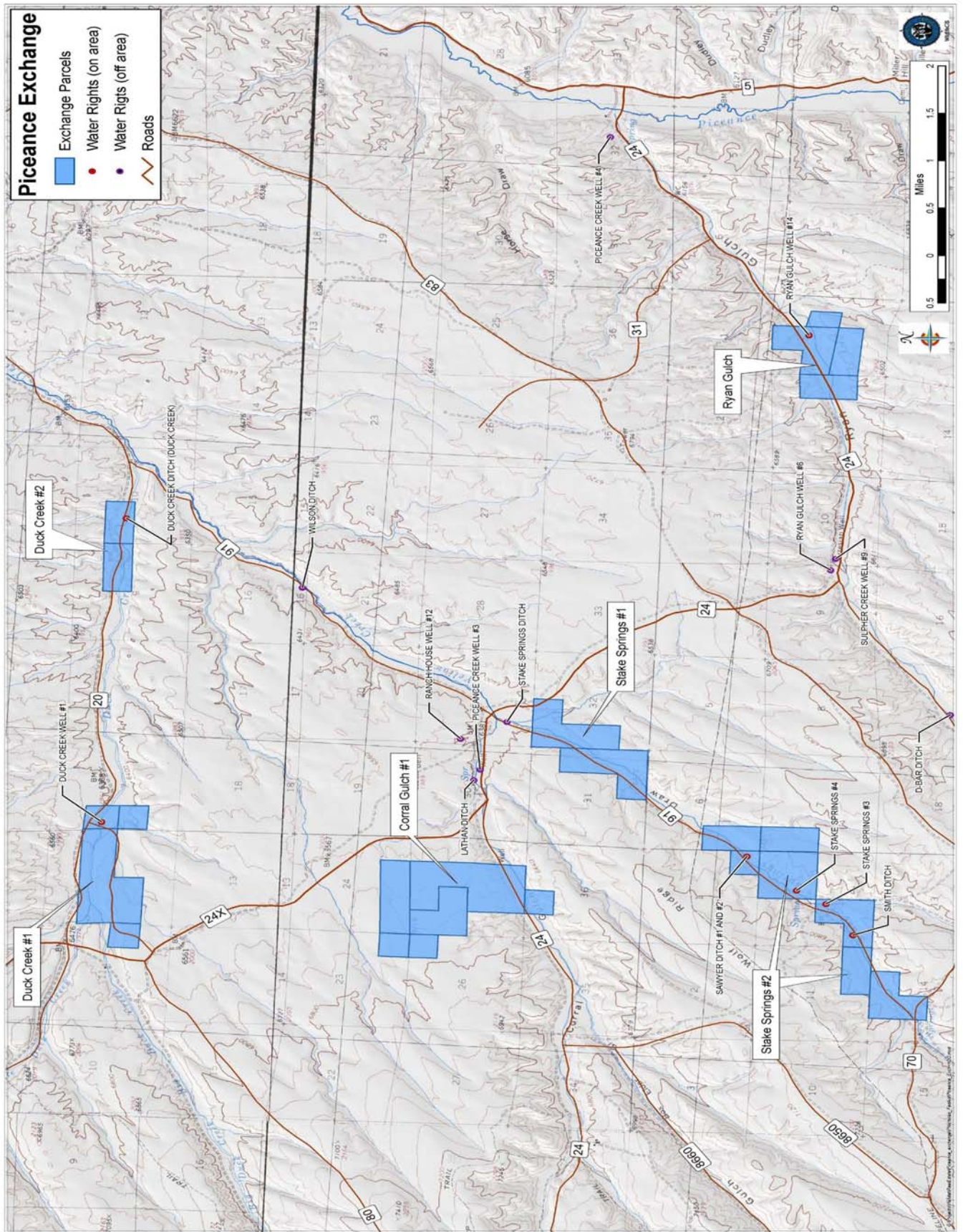


Figure E-2

August 15, 2006

Paula Nicholas
Colorado Division of Wildlife
6060 Broadway Street
Denver, CO 80216

Dear Paula;

The Colorado Natural Heritage Program (CNHP) was contracted by the Division of Wildlife (DOW) to survey select parcels in Rio Blanco County for Federally Listed Plants. In particular, the field survey efforts focused on the two Listed Threatened species; Dudley Bluffs bladderpod (*Lesquerella congesta*) and Piceance twinpod (*Physaria obcordata*). Both plants are Colorado endemics that occur only on barren, shale outcrops of the Green River Formation.

The following parcels were surveyed from July 25-26, 2006:

General Description	Legal Description	Results	Comments
CR20/Duck Creek	T1S R98W Sec 9, 10	<i>Lesquerella congesta</i> documented	
CR20/Duck Creek	T1S R98W Sec 7; T1S R99W Sec 11, 12	<i>Lesquerella congesta</i> documented	
CR24/Corral Creek	T1S R99W Sec 27, 26, 23, 24, 25, 36	No target plants documented	Did not encompass appropriate geologic formation
CR91/Stake Springs Draw	T2S R99W Sec 12, 13, 14 T2S R98W Sec 6, 7, 31, 32	No target plants documented	Did not encompass appropriate geologic formation
CR24/Ryan Gulch	T2S R 98W Sec 11, 12	No target plants documented	Did not encompass appropriate geologic formation
CR 22/Little Hills		No target plants documented	Did not encompass appropriate geologic formation

It should be noted that the occurrences located on the Duck Creek parcel are part of an Area of Critical Environmental Concern (ACEC) managed by the Bureau of Land Management. This site contains the world's largest known population of the globally critically imperiled (G1/S1) Dudley Bluffs bladderpod (*Lesquerella congesta*), including many occurrences with excellent (A-ranked) viability. The site also contains several occurrences of Piceance twinpod (*Physaria obcordata*), a globally imperiled (G2/S2) species known only from the Piceance Basin in Rio Blanco County. Both plants are federally listed as Threatened. As you are keenly aware of, this area is highly threatened by oil and gas development due to its location on this specific geologic formation. CNHP has designated this area as an area of outstanding biodiversity significance (B1) or in other words one

that is irreplaceable due to the rarity of the species it encompasses. As part of this project I have updated CNHP's database on these two species based on our observations.

It was really a pleasure to be in the field with you—hopefully I will see you at the Colorado Native Plant Society's annual meeting in September. If you have any questions, do not hesitate to call or email. I hope that CNHP can assist you with future projects. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Denise R. Culver". The script is cursive and fluid.

Denise R. Culver
(970) 491-2998
dculver@lamar.colostate.edu

Figure E-3

Overview of Lesquerella congesta Element Occurrence #5 with DOW Boundaries

