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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STATE OF WYOMING; and STATE OF MONTANA, Petitioners, v. UNITED STATES DEPARTMENT OF INTERIOR SECRETARY in his official capacity a/k/a Doug Burgum; UNITED STATES DEPARTMENT OF INTERIOR; UNITED STATES BUREAU OF LAND MANAGEMENT WYOMING STATE DIRECTOR in	No. 1:24-cv-00257-SWS **MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

his official capacity a/k/a Andrew Archuleta; UNITED STATES BUREAU OF LAND MANAGEMENT MONTANA-DAKOTAS STATE DIRECTOR in her official capacity a/k/a Sonya Germann; UNITED STATES BUREAU OF LAND MANAGEMENT DIRECTOR in her official capacity a/k/a Tracy Stone-Manning; UNITED STATES BUREAU OF LAND MANAGEMENT,

Respondents;

And,

NORTHERN CHEYENNE TRIBE; CENTER FOR BIOLOGICAL DIVERSITY; DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT; MONTANA ENVIRONMENTAL INFORMATION CENTER; NORTHERN PLAINS RESOURCE COUNCIL; SIERRA CLUB; TÓ NIZHÓNÍ ÁNÍ; WESTERN ORGANIZATION OF RESOURCE COUNCILS; and WILDEARTH GUARDIANS,

Proposed Intervenor-Respondents.

INTRODUCTION

The Northern Cheyenne Tribe, Center for Biological Diversity, Diné Citizens Against Ruining Our Environment, Montana Environmental Information Center, Northern Plains Resource Council, Sierra Club, Tó Nizhóní Ání, Western Organization of Resource Councils, and WildEarth Guardians (together, "Tribal and Conservation Groups") respectfully move to intervene in this action because Plaintiffs State of Wyoming and State of Montana seek relief that would harm the Groups' interests in protecting public lands, cultural resources, air, water, and the climate from the impacts of industrial strip-mining in the Wyoming and Montana portions of the Powder River Basin.

The Tribal and Conservation Groups seek intervention of right and, alternatively, permissive intervention. Fed. R. Civ. P. 24(a), (b). They satisfy the requirements for intervention of right because their members are harmed by federal coal leasing and mining, and the Tribal and Conservation Groups have individually and collectively worked for decades to protect the public land, water, and communities in the Powder River Basin and elsewhere from the impacts of coal mining. They dedicated years of advocacy to support the Department of Interior's decision to stop coal leasing in the basin. The relief the States seek would severely impair the Tribal and Conservation Groups' interests.

Undersigned counsel conferred with counsel for all parties about this motion. L.R. 7.1. Petitioner States oppose this motion. Federal Respondents do not oppose intervention.

BACKGROUND

I. THE POWDER RIVER BASIN

The Powder River Basin in eastern Montana and Wyoming contains one of the largest undeveloped reserves of coal on the planet. It is responsible for more than 40 percent of U.S.

coal production, as well as significant volumes of oil and gas. A large portion of these fossil fuels are within the federal land and mineral estate managed by the Department of the Interior's Bureau of Land Management (BLM), particularly the Miles City Field Office (MCFO) in Montana and the Buffalo Field Office (BFO) in Wyoming. The region contains more than a dozen active coal mines, however, recent trends "indicate[] an overall market decline with no new mines projected."[1]

II. THE 2015 AND 2019 POWDER RIVER BASIN RESOURCE MANAGEMENT PLANS

In 2015 BLM amended its land use plans for these two planning areas, enabling continued extraction of large quantities of fossil fuels. In so doing, BLM refused to consider any alternative other than the status quo of strip-mining and refused to consider any downstream impacts of fossil fuel production (including coal, oil, and gas). A coalition of groups—Center for Biological Diversity, Montana Environmental Information Center, Natural Resources Defense Council, Northern Plains Resource Council, Powder River Basin Resource Council, Sierra Club, and the Western Organization of Resource Councils—challenged the Resource Management Plans ("RMPs"). In a 2018 decision, the U.S. District Court for the District of Montana held that BLM violated the National Environmental Policy Act ("NEPA") by (1) failing to consider any alternatives to the status quo for coal development; (2) underestimating the global warming potential of methane emissions; and (3) failing to disclose the impacts of foreseeable downstream combustion of coal, oil, and gas. *W. Org. of Res. Councils v. BLM*, No. 16-CV-21,

[1] BLM, Miles City Field Office, Record of Decision and Approved Resource Management Plan Amendment, at 1-5 (Nov. 2024) ("MCFO Record of Decision"), https://eplanning.blm.gov/public_projects/2021155/200534253/20123920/251023900/2024_MCFO%20ROD_20241120_508.pdf.

2018 WL 1475470 (D. Mont. Mar. 26, 2018).

On remand, BLM failed to remedy these errors. In October 2019, BLM issued final supplemental EISs (SEISs) and amended RMPs for both the Miles City and the Buffalo Field Offices. The conservation organizations[2] again challenged BLM's actions, which, as the court found, "failed to address the Court's conclusions regarding the inadequacy of BLM's prior NEPA review." *W. Org. of Res. Councils v. BLM*, No. 20-CV-76, 2022 WL 3082475, at *4 (D. Mont. Aug. 3, 2022). The Court held that BLM violated NEPA by failing to consider reasonable alternatives that would decrease the amount of coal available for leasing, *id.* at *4–6, and failing to analyze downstream public health impacts from non-greenhouse gas emissions that would foreseeably result from fossil fuel combustion, *id.* at *7–8. Regarding alternatives, the Court noted that BLM's multiple-use directives under the Federal and Land Policy and Management Act ("FLPMA") to consider the needs of "future generations" must guide BLM's determination of objectives. *Id.* at *4 (quoting 43 U.S.C. § 1702(c)). And further, BLM is authorized to eliminate coal deposits from leasing eligibility to protect important natural resources. *Id.* (citing 43 C.F.R. § 3420.1-4(e)(3). Considering these authorities, the Court rejected BLM's alternatives analysis, including its rationale that any reduction of mine expansions through new leasing would conflict with "the agency's desire to support existing mining operations." *Id.* at *7. The Court again remanded the RMPs to BLM for further analysis. *Id.* at *8.

III. THE 2024 AMENDED POWDER RIVER BASIN RMPS

As directed by the Court's 2022 order, BLM reconsidered amendments to the Miles City and Buffalo RMPs. In May 2023, BLM issued a draft SEIS for each planning area, in which it

[2] WildEarth Guardians joined the second round of litigation.

considered no-leasing and limited leasing alternatives and disclosed the public health impacts of burning fossil fuels from the decision area. In May 2024, BLM issued the final SEIS and proposed RMP amendments for each field office, in which it selected Alternative A, the no-leasing alternative. BLM noted that, while "BLM would not accept new coal lease applications, … existing coal leases could be developed, which would continue through their associated lease terms."[3] In reaching its final decision, BLM "determined that th[e] Approved RMP Amendment is consistent with the purposes, policies, and programs associated with implementing its legal mandates."[4] After resolving protests of its final decisions by Wyoming, Montana, and coal-industry parties, the BLM finalized its decisions on November 20, 2024.

Wyoming and Montana challenged both the Miles City and Buffalo RMP decisions on December 12, 2024.[5] In their petition for review, the states request that both RMPs be remanded and vacated. Pet. for Review at 53. If successful, the States' litigation would restore the previous RMPs that the federal district court in Montana found to have been unlawful.

ARGUMENT

I. THE TRIBAL AND CONSERVATION GROUPS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

The Tribal and Conservation Groups satisfy the criteria for intervention as a matter of

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[3] BLM, Buffalo Field Office, Record of Decision and Approved Resource Management Plan Amendment, at 1-1 (Nov. 2024) ("BFO Record of Decision"), https://eplanning.blm.gov/public_projects/36597/200045647/20124307/251024287/BFO%20RODRMPA_508.pdf; *see also* MCFO Record of Decision, at 1-4.

[4] BFO Record of Decision, at 1-1.

[5] Two other petitions for review challenging the 2024 RMPs have been filed before this court. *See Navajo Transitional Energy Co. and Nat'l Mining Assn. v. BLM, et al.*, No. 24-cv-264 (filed Dec. 16, 2024); *Westmoreland Mining Holdings LLC, et al. v. Dep't of the Interior, et al.*, No. 25-cv-33 (filed Jan. 31, 2025). The Tribal and Conservation Groups intend to move this Court to consolidate these substantially related cases.

right. A movant is entitled to intervene as of right if: (1) the motion is timely; (2) the movant claims an interest relating to the subject of the action; (3) the movant's interest may "as a practical matter" be impaired or impeded by disposition of the case; and (4) the movant's interests are not adequately represented by existing parties. Fed. R. Civ. P. 24(a)(2). The Tenth Circuit follows "a 'liberal' approach to intervention and thus favors the granting of motions to intervene." *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017) (citation omitted). "Federal courts should allow intervention where no one would be hurt and greater justice could be attained." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (internal quotation and citation omitted). Further, where, as here, litigation raises an issue involving significant public interest, intervention requirements are "relaxed," and prospective intervenors' burden to show that Federal defendants may not adequately represent their interests is "minimal*." Kane Cnty., Utah v. United States*, 928 F.3d 877, 896–97 (10th Cir. 2019) (internal citations omitted). Conservation Groups satisfy each of the Rule 24(a) requirements and are thus entitled to intervene as a matter of right.

A. The Tribal and Conservation Groups' Motion is Timely.

This motion is timely. Timeliness focuses on "prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." *Utah Ass'n of Cntys.*, 255 F.3d at 1250 (quoting *Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)). Where no prejudice would result, granting intervention is favored. *See id.* at 1250–51. A motion to intervene is timely if the motion is filed when "the case is far from ready for final disposition." *Id.* The Tribal and Conservation Groups' intervention motion readily meets the timeliness criterion where the have been no substantive developments in the case and, as of the filing of this motion, Federal Respondents have not yet filed the requisite administrative record. *See* Wyo.

Local R. 83.6(b)(2) (requiring filing of administrative record within 90 days following service of the petition for review). Accordingly, the parties would not be prejudiced by the requested intervention.

B. The Tribal and Conservation Groups Claim an Interest in Upholding the Department of Interior's Planning Decisions.

The Tribal and Conservation Groups are also entitled to intervene as of right because they properly "claim[] an interest relating to the property or transaction." Fed. R. Civ. P. 24(a)(2). To satisfy this intervention criterion, a movant's claimed interest must be "direct, substantial, and legally protectable." *Coal. of Arizona/New Mexico Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996) (citations omitted). There is no "rigid formula" or "mechanical rule" for determining whether an interest is sufficient to justify intervention. *San Juan Cnty. v. United States*, 503 F.3d 1163, 1199 (10th Cir. 2007). Rather, courts apply "practical judgment" to determine "whether the strength of the interest and the potential risk of injury to that interest justify intervention." *Id.*

It is "indisputable" that a prospective intervenor's environmental concern constitutes a legally protectable interest. *W. Energy All.*, 877 F.3d at 1165 (quoting *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010)). That is particularly true where, as here, a prospective intervenor has a "'record of advocacy' for the protection of public lands" and interest in preserving the reforms they have worked to implement. *Id.* at 1165–66. This "alone" satisfies the interest requirement. *Id.* at 1165; *see also Utah Ass'n of Cntys.*, 255 F.3d at 1256; *N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 880 (10th Cir. 2013).

The Tribal and Conservation Groups all have environmental and organizational concerns that constitute legally protectable interests in this matter. First, their members' health,

environmental, and aesthetic interests may be harmed by expanded coal mining in the Miles City and Buffalo planning areas. President Small Decl. ¶¶ 14-17, 24-25 (Northern Cheyenne Tribe); Johnson Decl. ¶¶ 12-14 (MEIC, WildEarth Guardians, and Sierra Club); Kendall Decl. ¶¶ 3-4 (Western Organization of Resource Councils); Nichols Decl. ¶¶ 6-16 (Center for Biological Diversity); Punt Decl. ¶¶ 6-12 (Northern Plains Resource Council); Sikorski Decl. ¶¶ 7-9, 14-17 (Montana Environmental Information Center, the Northern Plains Resource Council, and Western Organization of Resource Councils). In addition to these interests of its members, the Northern Cheyenne Tribe has sovereignty and cultural interests in protecting the integrity of its air and waters, in addition to Tribal cultural resources and ancestral lands, against future coal mining. President Small Decl. ¶¶ 14-16, 18. And members of Diné Citizens Against Ruining Our Environment and Tó Nizhóní Áni are concerned that mining in the Powder River Basin, including by the Navajo Transitional Energy Corporation that purports to represent interests of the Navajo Nation of which their members belong, harms their interests in clean air, a healthy climate, and planning for an equitable clean-energy transition. Jackson Decl. ¶¶ 11, 13 (Diné Citizens Against Ruining Our Environment); Horseherder Decl. ¶ 12 (Tó Nizhóní Áni). To protect these interests, proposed intervenors have long sought an end to new coal leasing in the Powder River Basin, including through the adoption of a no-leasing alternative in the RMPs at issue in this litigation. President Small Decl. ¶ 21 (describing litigation to defend federal coal-leasing moratorium); Johnson, Kendall Nichols, Punt, and Sikorski Decls.; *see also* BFO Final SEIS, App. H (describing conservation organizations' [collectively labeled Center for Biological Diversity] public comments supporting a no-leasing alternative in the draft SEIS). These interests warrant intervention as of right in the States' petition for review. *W. Energy All.*, 877 F.3d at 1165-66.

C. A Ruling in Favor of the States May Impair the Tribal and Conservation Groups' Interests.

The Tribal and Conservation Groups also satisfy the third requirement for intervention as of right, which necessitates a showing that an adverse ruling may "as a practical matter" impair or impede their ability to protect their claimed interests. Fed. R. Civ. P. 24(a)(2). This is a "minimal" burden and only requires the movant to show "that impairment of [their] substantial legal interest is *possible* if intervention is denied." *Utah Ass'n of Cntys.*, 255 F.3d at 1253 (quotation and citation omitted; emphasis added); *WildEarth Guardians*, 604 F.3d at 1199 (quotation and citation omitted; emphasis added).

There can be no question that the relief Wyoming and Montana seek in this litigation—vacatur of the 2024 RMPs and a return to the prior RMPs the conservation organizations successfully challenged—would impair the Tribal and Conservation Groups' Interests. In their petition for review, the States request that both RMPs be remanded and vacated. Pet. for Review at 53. If successful, the States' litigation would restore the previous RMPs that the federal district court in Montana found to have been unlawful, and which impair the Tribal and Conservation Groups' health and environmental interests. *See* Small Decl. ¶¶ 24-25; Horseherder Decl. ¶¶ 3-6, 11-13; Jackson Decl. ¶¶ 6-11; Johnson Decl. ¶¶ 19-20; Kendall Decl. ¶¶ 7-8; Nichols Decl. ¶¶ 13-16; Punt Decl. ¶¶ 11-12; Sikorski Decl. ¶¶ 7-9, 14-17.

D. Existing Parties Do Not Adequately Represent the Tribal and Conservation Groups' Interests.

Finally, it cannot be said that the Federal Respondents adequately represent the demonstrated interests of the Tribal and Conservation Groups in maintaining the Powder River Basin RMPs. To demonstrate that existing parties do not adequately represent their interests, movants "need only show the *possibility* of inadequate representation." *WildEarth Guardians v.*

U.S. Forest Serv., 573 F.3d 992, 996 (10th Cir. 2009) (emphasis original) (quoting *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002)). This is a "minimal" burden, particularly, where, as here, the movant seeks to intervene to support the government. *WildEarth Guardians,* 604 F.3d at 1200.

Generally, "the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor." *Utah Ass'n of Cntys.*, 255 F.3d at 1256. The Tenth Circuit "ha[s] repeatedly recognized that it is 'on its face impossible' for a government agency to carry the task of protecting the public's interests and the private interests of a prospective intervenor." *WildEarth Guardians,* 604 F.3d at 1200 (quoting *Utahns for Better Transp.,* 295 F.3d at 1117). Thus, "[w]here a government agency may be placed in the position of defending both public and private interests, the burden of showing inadequacy of representation is satisfied." *Id.*

The inadequacy of Federal Respondents' representation of the Tribal and Conservation Groups' interests in this matter is manifest. First, Federal Respondents adopted the challenged RMPs only after they were successfully sued by the conservation organizations *twice* for their prior, inadequate actions. *See supra,* Background Pt. II. Second, the Secretary of the Interior recently issued Secretarial Order 3418, "Unleashing American Energy," which directed (among other things) the Assistant Secretaries to submit an "action plan" that describes "actions to review and, as appropriate, revise" the challenged RMPs.[6] Thus, it is far from clear that Federal Respondents intend to vigorously defend their own actions at issue in this litigation. Under these

[6] Secretarial Order 3418, "Unleashing American Energy," at 6 (Feb. 3, 2025), https://www.doi.gov/sites/default/files/document_secretarys_orders/so-3418-signed.pdf

circumstances, the Tribal and Conservation Groups are entitled to intervene to defend their own interests in sustaining the challenged RMPs.

II. ALTERNATIVELY, THE COURT SHOULD GRANT THE CONSERVATION GROUPS PERMISSIVE INTERVENTION.

While the Tribal Conservation Groups have demonstrated their entitlement to intervene under Rule 24(a), they should at a minimum be granted permissive intervention. Permissive intervention is appropriate when (1) a movant files a timely motion; (2) the prospective intervenor has a claim or defense that shares a common question of law or fact with the main action; and (3) intervention will not unduly delay or prejudice existing parties. Fed. R. Civ. P. 24(b). Courts consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), and "whether the interveners will significantly contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Utah ex rel. Utah State Dep't of Health v. Kennecott Corp.*, 232 F.R.D. 392, 398 (D. Utah 2005). For the same reasons described above that the Tribal and Conservation Groups satisfy the test for intervention as of right, they also satisfy the criteria for permissive intervention.

CONCLUSION

Because the Tribal and Conservation Groups satisfy the tests for both intervention as of right, Fed. R. Civ. P. 24(a), and permissive intervention, Fed. R. Civ. P. 24(b), their motion to intervene should be granted.

Dated this 20th day of February, 2025.

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