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

WILDEARTH GUARDIANS,)
)
Petitioner,)
)
v.)
)
RYAN ZINKE,)
U.S. OFFICE OF SURFACE MINING)
RECLAMATION AND ENFORCEMENT,)
and U.S. DEPARTMENT OF THE INTERIOR,))
)
Respondents,)
)
and)
)
STATE OF WYOMING and)
ANTELOPE COAL LLC,)
)
Intervenor-Respondents.)

Case No. 2:16-CV-00166-ABJ

**PETITIONER’S NOTICE
OF SUPPLEMENTAL
AUTHORITY**



Petitioner WildEarth Guardians (“Guardians”) submits this notice of supplemental authority to alert the Court to two recent decisions bearing on positions set forth in Guardians’ Opening and Reply Briefs. Dkt. 85, Dkt. 100.

A. *MEIC*

On August 14, 2017, the U.S. District Court for the District of Montana issued *Montana Env'tl. Information Center v. U.S. Office of Surface Mining*, Case No. 15-cv-106, F.Supp.3d--, 2017 WL 3480262 (“*MEIC*” attached as Exhibit A). There, as here, MEIC brought National Environmental Policy Act (“NEPA”) challenges to an Office of Surface Mining (“OSM”) mining plan approval, alleging OSM violated NEPA when it *inter alia* failed to analyze the environmental impacts of coal combustion. *MEIC* at 5, 33-35; Dkt. 85 at 41-42, Dkt. 100 at 22-24. *MEIC* held that coal combustion emissions were “reasonably foreseeable” given that “coal extracted form the mine will be combusted” and, therefore, OSM’s failure to analyze coal combustion impacts violated NEPA. *MEIC* at 34-35. *MEIC* also rejected as arbitrary OSM’s decision not to use the Social Cost of Carbon (“SCC”) to analyze the impacts of mining’s greenhouse gas (“GHG”) emissions where OSM quantified the economic benefits of coal mining, but failed to quantify mining’s social costs “even though such analysis was possible” using SCC. *Id.* at 40, 45; Dkt. 85 at 38-41, Dkt. 100 at 18-22 (Guardians’ argument), Dkt. 94 at 28, Dkt. 97 at 52 (Intervenors’ defense).

B. FERC

On August 22, 2017, the U.S. Court of Appeals for the D.C. Circuit issued *Sierra Club v. FERC*, Case No. 16-1329 (“*FERC*” attached as Exhibit B). There, petitioner challenged FERC’s approval of natural gas pipelines, alleging FERC violated NEPA when it *inter alia* failed to analyze the GHG impacts “from burning the gas that the pipelines will carry.” *FERC* at 2. Similar to *MEIC*, *FERC* determined that it was “reasonably foreseeable” that the transported gas would be burned at power plants and that combustion would generate GHG emissions, the effects of which the agency was required to analyze under NEPA. *FERC* at 19. Guardians made this same argument in its Opening Brief, Dkt. 85 at 41-42.

Respectfully submitted on this 22nd day of August 2017,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF SUPPLEMENTAL AUTHORITY and two exhibits are being filed with the Clerk of the Court using the CM/ECF system, thereby serving it on all parties of record, this 22nd day of August, 2017.

/s/ Samantha Ruscavage-Barz