

CITIZENS FOR CLEAN ENERGY et al.	)
	)
and	)
	)
THE NORTHERN CHEYENNE TRIBE,	)
	)
Plaintiffs,	)
v.	)
	)
UNITED STATES DEPARTMENT OF THE INTERIOR et al.,	) )
Federal Defendants,	)
	)
and	)
	)
THE STATE OF WYOMING,	)
	)
Defendant-Intervenor	)
	)
	)

CV 17-30-BMM

**JOINT MOTION TO  
CONSOLIDATE ACTIONS  
AND SET CASE SCHEDULE**

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Pursuant to Federal Rules of Civil Procedure 24 and 42(a), and in the interests of judicial economy, the parties to this action hereby jointly move for an order procedurally consolidating a related case, captioned *State of California et al. v. Zinke et al.* (“*California*”), No. CV 17-42-BMM (D. Mont., filed May 9, 2011), with this case, No. CV 17-30-BMM (D. Mont., filed Mar. 29, 2017). Movants further request that the proposed case schedule set out below, including revised word limits for summary judgment briefing, be adopted by the court. A similar and corresponding motion, seeking the same result, will be filed tomorrow in the *California* action. Movants request that this, the first filed case, be designated the lead case, to which future filings relevant to either case would be made.

Counsel for Plaintiffs in both actions consent to consolidation for purposes of briefing, hearing, and decision, on the condition that the plaintiff group in this case and the plaintiff group in *California* each be permitted to file their own motions and briefing and have separate time for argument at any hearings. Undersigned counsel for Federal Defendants has conferred with counsel for the Defendant-Intervenor State of Wyoming who states that Wyoming also consents to consolidation and to the schedule and word limits set out below.

In addition, counsel for Federal Defendants has conferred with counsel for two prospective intervenor-movants, the State of Montana and the National Mining Association, who have indicated their intent to intervene and their consent to

consolidation, as well as to the schedule and word limits set out below, in the event that the Court grants the expected intervention motions. In addition, movants note that Wyoming and Montana have indicated their willingness to file consolidated summary judgment briefs, in the event Montana is granted intervention. Thus no more than four intervenor briefs would be expected, two in the opening round (National Mining Association and a consolidated Wyoming/Montana brief) and two in the reply round (same), should intervention be granted.

All parties in both actions agree, and ask the Court to authorize, that the cases proceed in accordance with the schedule and agreed word limits set out below. Movants note that, despite the moderate increases in local rule 7.1(d) word limits for each brief, the total number of words sought is still well below the total word limits that would apply if the cases were separately heard and not consolidated.

Further, the parties agree that if either plaintiff group amends its complaint, whether by consent of the parties or leave of Court, no party is precluded from seeking adjustments to the schedule and word limits sought herein. Nor is any party precluded from seeking such adjustments for good cause. Finally, all parties in both actions agree and ask the Court to dispense with the requirement of filing a Statement of Undisputed Facts or a Statement of Disputed Facts under local rule 56.1(a) and (b).

**Preliminary Matters**

Deadline for filing Answers to the Complaints in both actions	July 18, 2017
Deadline for Federal Defendants to serve the administrative record on the parties	August 11, 2017
Deadline for any motions to supplement or complete the record	September 22, 2017
Deadline for Federal Defendants to lodge the administrative record with the Court and, if it has been revised, to serve the revised record on the parties	September 29, 2017

**Summary Judgment Briefing**

Opening Brief of Plaintiffs in CV-17-30 (9,000 words) <sup>1</sup>	October 20, 2017
Opening Brief of Plaintiffs in CV-17-42 (9,000 words)	October 20, 2017
Federal Defendants' Cross-Motion and Opposition Brief (12,000 words)	November 17, 2017

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<sup>1</sup> Word limits set out herein are exclusive of the case caption, table of contents, and table of authorities. References to briefs filed by Intervenor-Defendants are based on an assumption that Montana and the National Mining Association will be granted intervention.



Intervenor-Defendants' Cross-Motions  
and Opposition Briefs (7,000 words each,  
total of two briefs)

November 29, 2017

Opposition and Reply Brief of Plaintiff  
in CV-17-30 (8,000 words)

December 13, 2017

Opposition and Reply Brief of Plaintiffs  
in CV-17-42 (8,000 words)

December 13, 2017

Federal Defendants' Reply  
Brief (7,000 words)

January 12, 2018

Intervenor-Defendants' Reply  
Briefs (4,000 words each, total of  
two briefs)

January 19, 2018

In support of this motion, movants note that the Court has broad discretion to order consolidation, *see In re Adams Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987) (citations omitted), and should do so here because the cases challenge the same Secretarial Order, No. 3348 (Mar. 29, 2017), *see Bixler v. Jackson Nat. Life Ins. Co.*, 2012 WL 877025 (D. Mont. Mar. 14, 2012). The complaints in these two actions each assert two counts claiming similar violations of the National Environmental Policy Act, while the Plaintiff states in *California* bring additional claims under the Mineral Leasing Act of 1920 and the Federal Land Policy and Management Act. All of these claims are reviewed under the Administrative Procedure Act, based on the administrative record for the same action (i.e., Secretarial Order 3348).

For all these reasons, movants ask that the two actions be procedurally consolidated, and that the Court approve the schedule and word limits for summary judgment briefing set out above and reflected in the accompanying proposed order.

Respectfully submitted this 31st day of May, 2017,

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing is being filed with the Clerk of the Court using the CM/ECF system, thereby serving it on all parties of record this 31st day of May, 2017, and further that, on this same date, a PDF copy of the foregoing is being served by email on counsel for the State of Montana, Ms. Melissa Schlichting (MSchlichting@mt.gov), and counsel for the National Mining Association, Mr. James M. Auslander (JAuslander@bdlaw.com).

/s/ John S. Most

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