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*Counsel for Proposed Amicus Curiae Institute for Policy Integrity*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

CITIZENS FOR CLEAN ENERGY, et al.,

and

THE NORTHERN CHEYENNE TRIBE,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR, et al.,

Defendants,

and

STATE OF WYOMING, et al.,

Defendant-Intervenors.

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR, et al.,

Case No. 4:17-cv-30-BMM

**THE INSTITUTE FOR  
POLICY INTEGRITY'S  
MOTION FOR LEAVE TO  
FILE *AMICUS CURIAE*  
BRIEF IN SUPPORT OF  
PLAINTIFFS' MOTION  
FOR SUMMARY  
JUDGMENT**

Case No. 4:17-cv-42-BMM  
(consolidated case)

Defendants,  
and  
STATE OF WYOMING, et al.,  
Defendant-Intervenors.

## INTRODUCTION

Pursuant to Local Rule 7.5, the Institute for Policy Integrity at New York University School of Law (“Policy Integrity”) respectfully moves for permission to file a brief as *amicus curiae* in support of Plaintiffs’ Motion for Summary Judgment in order to assist the Court in determining whether the United States Department of the Interior (Interior) violated federal law by failing to complete a programmatic environmental impact statement or supplemental environmental impact statement that evaluates the environmental impacts of the federal coal program before lifting the federal coal leasing moratorium and ending the programmatic environmental review.

Pursuant to Local Rules 7.5(b)(2)(A) and 7.1(c)(1), Policy Integrity has sought consent to file an amicus brief from all parties to the litigation. All Plaintiffs have consented. Defendant-Intervenors Montana and Wyoming take no position. After some discussion, federal Defendants have stated that they do not consent to this motion.

## **I. POLICY INTEGRITY'S INTEREST IN THIS MATTER**

Policy Integrity is a nonpartisan, not-for-profit think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and environmental policy.<sup>1</sup> Policy Integrity focuses on advancing the use of balanced cost-benefit analysis and comprehensive National Environmental Policy Act (NEPA) analysis by federal agencies, and in particular, has worked to promote appropriate consideration of the social cost of greenhouse gases in regulatory and resource management decisions.

Policy Integrity has produced extensive scholarship on the use of economic analysis in regulatory decisionmaking and resource management. An area of special concern for Policy Integrity is the proper assessment and valuation of climate impacts from mineral leasing and production on federal land. Policy Integrity's economists and legal scholars are among the nation's leading experts on the economic analysis underlying federal natural resources leasing and management, having published numerous papers, reports, scholarly articles, and comments on this topic. Policy Integrity has, for example, produced scholarship on

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<sup>1</sup> No publicly held entity owns an interest of more than ten percent in Policy Integrity. Policy Integrity does not have any members who have issued shares or debt securities to the public.

federal coal, oil, and natural gas leasing, federal coal royalty rates, earning “fair market value” for federal coal leasing, and on the appropriate monetization of climate impacts in environmental impact analyses and agency rulemakings.<sup>2</sup> Our director, Richard L. Revesz, has published more than fifty articles and books on environmental and administrative law, including pieces discussing the policy underpinnings of calculating costs and benefits under environmental statutes.

Policy Integrity has previously filed *amicus curiae* briefs addressing NEPA analysis of the impact of federal coal leases. For example, Policy Integrity filed a brief in the U.S. Court of Appeals for the Tenth Circuit addressing the economic assumptions underlying the Department of the Interior’s (Interior) environmental impact statement for federal coal lease modifications. Br. of the Institute for Policy

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<sup>2</sup> E.g., Richard Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 Science 655 (2017) (arguing for the continued use of the social cost of greenhouse gases in all government climate analyses); Jayni Foley Hein and Peter Howard, Institute for Policy Integrity, *Reconsidering Coal’s Fair Market Value* (2015), available at [http://policyintegrity.org/files/publications/Coal\\_fair\\_market\\_value.pdf](http://policyintegrity.org/files/publications/Coal_fair_market_value.pdf); Jayni Foley Hein, Institute for Policy Integrity, *Harmonizing Preservation and Production: How Modernizing the Department of the Interior’s Fiscal Terms for Oil, Gas, and Coal Leases Can Ensure a Fair Return to the American Public* (2015), available at [http://policyintegrity.org/files/publications/DOI\\_LeasingReport.pdf](http://policyintegrity.org/files/publications/DOI_LeasingReport.pdf); Jayni Foley Hein, Institute for Policy Integrity, *Priorities for Federal Coal Reform* (2016), available at [http://policyintegrity.org/files/publications/Priorities\\_for\\_Coal\\_Reform.pdf](http://policyintegrity.org/files/publications/Priorities_for_Coal_Reform.pdf).

Integrity, *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222 (10th Cir. 2017) (No. 15-8109). In addition, Policy Integrity has submitted numerous comments to federal agencies addressing how to monetize the cost of carbon dioxide and methane emissions when making decisions under NEPA and other federal statutes, and has participated as *amicus curiae* in federal cases concerning monetization of climate impacts. Br. of the Institute for Policy Integrity, *Zero Zone, Inc. v. Dep't of Energy*, 832 F.3d 654 (7th Cir. 2016) (Nos. 14□2147, 14□2159, & 14□2334). Policy Integrity also submitted detailed comments to the Department of the Interior concerning the federal coal programmatic environmental review, which is at issue in this case.<sup>3</sup>

For these reasons, Policy Integrity has a significant interest in ensuring that Interior complies with NEPA's requirements in managing the federal coal program. Policy Integrity has a significant interest in federal agencies properly quantifying and monetizing climate impacts in their NEPA analysis, including for the federal coal program, as well as in future resource management decisions. Policy Integrity also has a significant interest in ensuring that the public earns "fair

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<sup>3</sup> See, e.g., Jayni Foley Hein, Institute for Policy Integrity, *Priorities for Federal Coal Reform* (2016), available at [http://policyintegrity.org/files/publications/Priorities\\_for\\_Coal\\_Reform.pdf](http://policyintegrity.org/files/publications/Priorities_for_Coal_Reform.pdf) (submitted to the Department of the Interior as comments in the programmatic environmental review scoping process).

market value” for the production of federal coal resources and that Interior balances production with environmental protection, both of which are required by the Federal Land Policy and Management Act (FLPMA) and are directly at issue in this case.

## **II. PARTICIPATION BY POLICY INTEGRITY IS DESIRABLE AND RELEVANT**

An amicus brief is typically allowed when (1) the party is “not represented,” (2) “the amicus has an interest in some other case that may be affected by the decision in the present case,” or (3) “when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *In re Heath*, 331 B.R. 424, 430 (9th Cir. BAP 2005), quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (J. Posner); *Katelnikoff v. U.S. Dep’t of Interior*, 657 F. Supp. 659, 661, n. 2 (D. Alaska 1986) (granting motion to participate as *amicus curiae* because group would “provide a perspective sufficiently different from that of the named parties”); *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (granting motion to participate as *amicus curiae* and stating that, “District courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has ‘unique information or perspective’ that can help the

court beyond the help that the lawyers for the parties are able to provide.”), citing *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) and quoting *Ryan*, 125 F.3d at 1064.

Policy Integrity’s position is distinct from Plaintiffs’ position and is in opposition to Defendants’ and Defendant-Intervenors’ position; therefore, it is not adequately represented by any party. Policy Integrity has a broad interest in ensuring that the public receives fair market value for public lands and resources, that agencies quantify climate impacts in NEPA analysis, including by using the Social Cost of carbon, and that Interior upholds its mandate to balance development with protection of environmental and social values, as required by FLPMA and MLA. This interest extends beyond the present case to future decisions and analyses by Interior and other federal agencies.

Further, Policy Integrity's brief will “provide a perspective sufficiently different from that of the named parties” and should be allowed. *Katelnikoff*, 657 F. Supp. at 661, n.2; *NGV Gaming*, 355 F. Supp. 2d at 1067. Policy Integrity has expertise in the legal requirements for NEPA analysis of coal leasing decisions, as well as on the design and application of the social cost of greenhouse gas metrics in NEPA analysis and agency rulemakings. Policy Integrity has a unique perspective from which to evaluate Plaintiffs’ claim that Interior arbitrarily failed to complete a



programmatic EIS for the federal coal program before resuming coal leasing, having participated in the programmatic EIS process for the federal coal program, and written extensively on FLPMA, MLA, and NEPA issues. *See NGV Gaming*, 355 F. Supp. 2d at 1068 (stating, “While the Tribe has not been named a party in this action, the Court finds it appropriate to consider the Tribe's position because of its involvement in the events leading to this case and its interest in the Transaction Agreements at issue.”).

Policy Integrity will make two primary arguments in its brief. First, Policy Integrity’s brief will explain how, by failing to complete a programmatic EIS before resuming coal leasing using outdated fiscal terms, Interior violated both NEPA and its statutory mandate to earn fair market value for the use of public lands and resources. Whether Interior is receiving fair market value is called into question by its cessation of a programmatic EIS that would have analyzed feasible alternatives that would increase total revenue and decrease externality costs from coal leasing and production. Second, Policy Integrity’s brief will explain how, by failing to complete a programmatic EIS that conducted a robust alternatives analysis that identified more environmentally sound leasing options, Interior violated both NEPA and its statutory mandates under FLPMA and the Mineral



Leasing Act (MLA) to balance resource production with environmental and other social values, and to safeguard public welfare when managing natural resources.

Policy Integrity's brief will aid the court's review of Plaintiffs' and Defendants' positions on NEPA requirements, Interior's statutory mandates under FLPMA and MLA, and the proper use of the social cost of greenhouse gases in NEPA analysis. Finally, other courts have found our contributions as *amicus curiae* on both NEPA requirements and the social cost of greenhouse gases to be relevant and helpful to the disposition of their cases. *See, e.g., WildEarth Guardians*, 870 F.3d at 1230 (granting Policy Integrity's participation as *amicus curiae* in a case concerning federal coal leasing NEPA analysis); *Zero Zone*, 832 F.3d at 677 n.23 (referring to the arguments in Policy Integrity's *amicus* brief to uphold the reasonable use of the Social Cost of Carbon).

### CONCLUSION

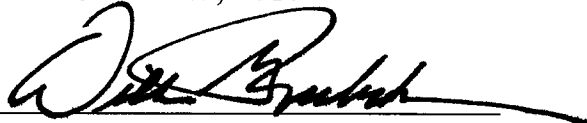
For the reasons articulated herein, Policy Integrity respectfully requests that the Court grant this motion for leave to file the proposed *amicus curiae* brief.

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RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of December, 2017.

ROSSBACH LAW, P.C.

By   
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### **CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2017, I caused the foregoing to be served via United States Postal Service Mail on counsel for all parties at the following addresses:

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Respectfully submitted,

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