

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

Civil Action No. 1:19-cv-1920

WILDEARTH GUARDIANS,  
HIGH COUNTRY CONSERVATION ADVOCATES,  
CENTER FOR BIOLOGICAL DIVERSITY,  
SIERRA CLUB, and  
WILDERNESS WORKSHOP,

Petitioners,

v.

DAVID L. BERNHARDT, in his official capacity as United States Secretary of the Interior;  
UNITED STATES OFFICE OF SURFACE MINING RECLAMATION AND  
ENFORCEMENT;  
JOSEPH BALASH, in his official capacity as Assistant Secretary of Land and Minerals  
Management, U.S. Department of the Interior,  
GLENDA OWENS, in her official capacity as Acting Director of U.S. Office of Surface Mining  
Reclamation and Enforcement;  
DAVID BERRY, in his official capacity as Regional Director of U.S. Office of Surface Mining,  
Western Region;

Federal Respondents.

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**PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION**

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Pursuant to Fed. R. Civ. P. 65(a), Petitioners WildEarth Guardians, High Country Conservation Advocates, Center for Biological Diversity, Sierra Club, and Wilderness Workshop (collectively "Conservation Groups") move for a Preliminary Injunction to enjoin Federal Defendants from allowing implementation of the West Elk Mining Plan. On June 28, 2019, counsel for Arch Coal indicated that as soon as this week the company could begin bulldozing roads, scraping well pads, and drilling methane drainage wells within the Sunset Roadless Area, a relatively-undisturbed area of the Gunnison National Forest east of Paonia, Colorado, and adjacent to a federally-designated Wilderness Area. These activities will pave the way for coal

mining in the Sunset Roadless Area that will lead to collapse of more than 1,000 acres of land, threaten the integrity of perennial springs and streams, and emit air pollutants with both local and global climate impacts. If a preliminary injunction is not granted, much, if not all of this harm is likely to occur before the merits of this litigation are resolved.

Conservation Groups are entitled to a preliminary injunction for the reasons set forth in the accompanying Memorandum in Support of Preliminary Injunction. Conservation Groups would be imminently and irreparably harmed by Arch Coal's plan to bulldoze, drill, and mine the Sunset Roadless Area, a relatively-undisturbed area of the Gunnison National Forest. Because the threatened injury to Conservations Groups outweighs any alleged harm to Federal Defendants or likely intervenor Arch Coal, the balance of harms weighs in favor of a preliminary injunction. There is also significant public interest in preserving the local environment of the Sunset Roadless Area and the stability of the global climate, outweighing any public interest in minerals development. Finally, Conservation Groups have demonstrated that they are likely to succeed on the merits because Federal Defendants violated the National Environmental Policy Act by failing to consider a reasonable methane mitigation alternative, despite this being the last opportunity in the mining permitting process to do so. Federal Defendants also failed to take a hard look at impacts to water resources, despite new evidence indicating that perennial springs and streams may be dried up as a result of mining activities – an impact never seriously considered.

Conservation Groups respectfully request that this Court grant an order for preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure maintaining the status quo and enjoining Defendant U.S. Office of Surface Mining Reclamation and Enforcement, and

any other necessary parties from authorizing, allowing, or implementing the West Elk Mining Plan, as well as any further relief the Court deems proper.

In support of this Motion, Conservation Groups are contemporaneously filing a Memorandum in Support of the Motion for Preliminary Injunction, along with the sworn declarations of Jeremy Nichols, Allison Melton, Peter Hart, and Matt Reed, as well as additional exhibits.

Pursuant to Local Rule 65.1(A), counsel for Conservation Groups furnished (or will furnish contemporaneous with this filing) true and complete copies of all pleadings and papers filed in this action to date, or those which will be presented to the Court at the hearing, to the counsel for Federal Defendants and for Arch Coal. As set forth in Conservation Groups' D.C.Colo.LCivR 65.1 Certification, undersigned counsel conferred with counsel for Federal Defendants and Arch Coal prior to filing this motion, and will provide opposing counsel with all relevant documents filed in the case in electronic format.

Pursuant to Local Rule 7.1, the undersigned certify that further conferral is unlikely to resolve this dispute.

Respectfully submitted on this 2nd day of July 2019,

s/ Daniel L. Timmons

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*Attorney for Petitioners High Country Conservation Advocates, Center for Biological Diversity, Sierra Club, and Wilderness Workshop*

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION was served on all counsel of record through the Court's ECF system on this 2nd day of July 2019.

/s/ Daniel Timmons