



UNITED STATES DEPARTMENT OF THE  
INTERIOR *et al.*

Federal Defendants,

and

STATE OF WYOMING *et al.*,  
Intervenor-Defendants.

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Federal Defendants request a telephonic status conference to determine what, if anything, should happen next in these consolidated cases.

The complaints in these consolidated cases were focused on the failure to conduct analysis under the National Environmental Policy Act (“NEPA”) for the issuance of a Secretarial Order (No. 3348). While Federal Defendants argued that the Secretarial Order was not of the type that required analysis under NEPA, this Court held that the “Order constituted a major federal action triggering NEPA review.” ECF No. 141 at 31. While Plaintiffs’ complaints focused on a new or supplemental Programmatic Environmental Impact Statement (PEIS), the former having been contemplated under a previous Secretarial Order (No. 3338), this Court held that “[t]he Court lacks the authority to compel Federal Defendants to prepare a PEIS, or supplement to the [prior] PEIS, at this time.” *Id.* Accordingly, Federal Defendants prepared a NEPA analysis limited to Secretarial Order, No. 3348. See ECF No. 152.

There appears to be nothing left to do in these consolidated cases. Nor are there any pending deadlines in this case. The Order dated June 18, 2019 [ECF No. 146] required remedy briefs that were filed on July 22, 2019, before the NEPA analysis noted at ECF No. 152 was completed.<sup>1</sup>

With the completion of the ordered NEPA analysis, Federal Defendants believe this case is now complete, that the issue of remedy is now moot, and that any challenge Plaintiffs may wish to assert with respect to the new NEPA analysis and corresponding finding of no significant impact (“FONSI”) should be asserted in a new complaint. Plaintiffs, by contrast, filed a new remedy brief in this civil action to address perceived deficiencies in the NEPA analysis, see ECF No. 153.

As this Court recognized in its Order dated July 31, 2019 [ECF No. 150], “[t]he Court’s postponement of a remedies ruling does not foreclose Plaintiffs’ ability to challenge the adequacy of Federal Defendants’ NEPA review after its completion.” The Parties, however, disagree as to the most appropriate procedural mechanism for presenting such a challenge. Federal Defendants request a status conference to resolve this disagreement.

Consistent with Local Civil Rule 7.1(c)(1), counsel for Federal Defendants have conferred with Plaintiffs’ counsel on this request for a status conference.

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<sup>1</sup> The Order dated June 18, 2019 [ECF No. 146] also required notification of any coal lease sale, which has been provided for an upcoming lease sale in Colorado. Cf. Plaintiffs’ Substitute Brief on Remedy [ECF No. 153] at 9.

Counsel for Plaintiffs in Case No. CV 17-30-BMM take no position on this request other than to note that they would be unavailable the week of March 23. Counsel for Plaintiffs in Case No. CV 17-42-BMM also take no position on this request other than to note that if the Court is inclined to hold a status conference they would request to participate by phone. Counsel for Intervenor-Defendants do not oppose this request.

Respectfully submitted this 18th day of March, 2020.

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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 on March 18, 2020.

/s/ Joseph H. Kim  
JOSEPH H. KIM  
*Counsel for Federal Defendants*