

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,

Plaintiff,

v.

DAVID BERNHARDT, in his official
capacity as U.S. Secretary of the Interior, and
UNITED STATES BUREAU OF LAND
MANAGEMENT,

Federal Defendants,

and

AMERICAN PETROLEUM INSTITUTE,
and WESTERN ENERGY ALLIANCE,

Applicant Defendant-Intervenors.

Case No. 1:19-cv-505-RB-SCY

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR CLARIFICATION

Federal Defendants' Motion for Clarification seeks an order clarifying that the Court did not intend to issue an injunction against future leases not challenged in this case and therefore not within its jurisdiction, and instead only intended to set aside certain language in IM 2018-034. ECF No. 44. Plaintiff WildEarth Guardians "does not oppose Federal Defendants' request." Resp. to Federal Defendants' Mot. for Clarification 1 (ECF No. 45) ("Pl.'s Resp."). Defendants' Motion for Clarification should be granted for that reason, along with those stated in Defendants' opening motion.

Plaintiff goes further in their Response and includes an improper request for additional relief. Plaintiff asks that this Court amend its order to grant in part Plaintiff's request for declaratory relief as to IM 2018-034. Pl.'s Resp. 2. As an initial matter, a response stating Plaintiff's non-opposition to Defendants' motion is an inappropriate vehicle for Plaintiff's request for additional relief. "A request for a court order must be made by motion." Fed. R. Civ. P. 7(b)(1). If Plaintiff believes that amendment of the Court's Order is necessary, Plaintiff should file a motion to that effect.

But even putting that procedural defect aside, Plaintiff's requested relief should be denied. Plaintiff's requested relief is not a clarification of the order but rather a substantive amendment. Under the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court has discretion whether and to what extent to grant declaratory relief to a party. *Strawberry Water Users Ass'n v. United States*, 576 F.3d 1133, 1142 (10th Cir. 2009); *see also Franks v. Bowman Transp. Co.*, 424 U.S. 747, 770 (1976) (District courts have broad discretion to "fashion [] appropriate remedies."). Defendants' motion for clarification sought not to alter or amend the Court's judgment but rather to clarify an ambiguity in the Court's order regarding the extent of the Court's jurisdiction, an issue fundamental to the legality and scope of that order. In contrast, Plaintiff attempts to read into the Court's order ambiguity that does not exist in order to seek additional relief. The Court found that BLM's change of one word (from "shall" in IM 2010-117 to "may" in IM 2018-034) violated FLPMA. Mem. Op. 44-45 (ECF No. 43). The Court described this as a "minor language alteration." Mem. Op. 45. This is consistent with the Court's exercise of its discretion to deny Plaintiff's request to declare the entirety of IM 2018-034 unlawful.

Plaintiff has not established that the requested amendment is “necessary to prevent injustice,” *Overstreet v. SFTC, LLC*, No. 13-cv-0165 RB/LFG, 2013 WL 12415207, at *1 (D.N.M. Sept. 3, 2013), nor that it “reflect[s] the contemporaneous intent of the district court as evidenced by the record.” *Burton v. Johnson*, 975 F.2d 690, 694 (10th Cir. 1992). Granting Plaintiff’s request now would provide Plaintiff with additional relief that the Court could have granted, but chose not to, in the Court’s original order.

For the reasons stated in Defendants’ opening motion and Plaintiff’s response, the Court should grant Defendants’ Motion for Clarification. And, for the reasons stated herein, the Court should strike Plaintiff’s request to amend its order or, in the alternative, deny that relief.

Respectfully submitted this 14th day of October, 2020.

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/s/ Caitlin Cipicchio
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CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on October 14, 2020, I electronically filed the foregoing Reply in Support of Defendants' Motion for Clarification with the Clerk of the Court via the Court's CM/ECF system, which will send a notification of filing to all counsel of record.

/s/ Caitlin Cipicchio

Caitlin Cipicchio

United States Department of Justice