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

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| CITIZENS FOR CLEAN ENERGY, *et al.*,<br><br>Plaintiffs,<br>v.<br><br>U.S. DEPARTMENT OF THE INTERIOR, *et al.*,<br><br>Defendants.<br>_____<br>STATE OF CALIFORNIA, *et al.*,<br><br>Plaintiffs,<br>v.<br><br>U.S. DEPARTMENT OF THE INTERIOR, *et al.*,<br><br>Defendants. | Case No. 4:17-cv-00030-BMM (lead)<br>Case No. 4:17-cv-00042-BMM [Consolidated]<br><br>**INTERVENOR-DEFENDANT NATIONAL MINING ASSOCIATION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FOR MOOTNESS** |

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## INTRODUCTION

These consolidated cases are ineluctably moot. Plaintiffs' complaints, even as amended, challenge and seek to vacate only Department of the Interior ("DOI") Secretarial Order 3348 ("Zinke Order") issued on March 29, 2017. On April 16, 2021, Secretarial Order 3398 ("Haaland Order," attached as Exhibit 1) expressly revoked the Zinke Order: "The following Secretary's Orders (SO) have been found to be inconsistent with, or present obstacles to, the policy set forth in [Executive Order] 13990 and are hereby revoked: • SO 3348 – 'Concerning the Federal Coal Moratorium' (March 29, 2017)." Thus, the Zinke Order is no longer in effect. Because the Secretary has already vacated the Zinke Order, the Court cannot confer that same relief Plaintiffs request here. Likewise, the adequacy of National Environmental Policy Act ("NEPA") review for the annulled Zinke Order is not a live controversy. All of Plaintiffs' claims in these cases therefore are now moot, and the Court has no jurisdiction to adjudicate them.

Plaintiffs' insistence on nonetheless pressing forward with these cases reflects their second impermissible attempt to expand the scope of their own filed complaints and have this Court judicially legislate federal coal leasing policy. The Court properly rejected Plaintiffs' prior effort to summarily require a new or supplemental programmatic environmental impact statement ("PEIS") for the Zinke Order—which had ended a *discretionary* PEIS and an associated partial

"pause" (sometimes called a "moratorium") on leasing *only during that PEIS*—and directed that Plaintiffs file new complaints to allege new claims. ECF No. 170 at 24; ECF No. 171.[1] Now that the challenged Zinke Order is no more, Plaintiffs take issue with Secretary Haaland's inaction to impose a standalone moratorium on federal coal leasing or recommence a discretionary PEIS. In other words, Plaintiffs prefer that the Haaland Order mirror Secretarial Order 3338 issued by former Secretary Jewell ("Jewell Order") and revoked by the Zinke Order. *See, e.g.*, ECF No. 205 at 1 (purporting to now challenge "the coal-leasing policy embodied by the Zinke Order"); ECF No. 201 at 3 ("Secretary Haaland issued Secretarial Order 3398, which revoked Secretarial Order 3348, but did not otherwise place any restrictions on the federal coal leasing program or withdraw the Final EA and FONSI"); ECF No. 203 at 36 (Haaland Order "did not reinstate the moratorium or 'take any action on coal development'").

But this litigation is not a challenge to the Haaland Order. This litigation concerns the Zinke Order. If Plaintiffs are dissatisfied with the Haaland Order, they can try to challenge that Order. Or if Plaintiffs are dissatisfied with DOI's issuance of future federal coal leases, they can challenge those (as they already are doing).

[1] Unless indicated otherwise, all ECF citations are to the lead case docket, Case No. 17-30.

We feel compelled to presently file this separate motion to dismiss because, while Plaintiffs' claims are meritless (as Defendants will again explain in their summary judgment briefs), the Court lacks jurisdiction to reach their merits on the complaints before it. Plainly, Plaintiffs' goal in this litigation is to stop new federal coal leasing in one fell swoop. Specifically, they seek to manufacture a novel standalone moratorium on federal coal leasing, and to compel a PEIS under NEPA that courts uniformly have ruled DOI has no obligation to prepare absent newly proposed regulations. But to the extent that the Zinke Order ever provided Plaintiffs a proper jurisdictional foothold to launch such a facial programmatic challenge or demand such relief (which it did not), it is now indisputably gone.

The Court thus should dismiss these cases as moot. At a minimum, the Court should require Plaintiffs to seek leave to supplement their complaints or file new complaints.

## BACKGROUND

Given the Court's familiarity with the background and its prior opinions, we will be succinct and focus on the facts most salient to this motion to dismiss.

The January 15, 2016, Jewell Order was entitled "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program." AR 5419-5428.[2] Plaintiffs disingenuously continue to ignore the key

[2] "AR" citations are to DOI's Adminstrative Record filed on December 1, 2020 (ECF No. 194).

term "Discretionary"; indeed, the State Plaintiffs' latest summary judgment brief merely mentions the title (ECF No. 201 at 11), and the Group Plaintiffs omit it completely. No law compelled the Jewell Order or any aspect thereof. Nor, contrary to Plaintiffs' repeated misrepresentations, did the Jewell Order announce any federal coal policy. Per its plain text, it did "not propos[e] any regulatory action at this time," and did not prejudge any existing lease terms "*that the PEIS may* ultimately determine to be less than optimal." AR 5425, 5426 (emphasis added). Nor did the Jewell Order mandate completion of the PEIS. It was effective only until "amended, superseded, or revoked, whichever occurs first." AR 5428. It also afforded no enforcement right or benefit, including in this Court. *Id.*

Critically, the Jewell Order did *not* create a standalone moratorium on federal coal leasing. It merely temporarily "pause[d]" the "process[ing]" of some coal leasing applications only "until the completion of the PEIS." AR 5426-5427. Thus, the *sole* function of the pause was to prepare a discretionary PEIS. Without the discretionary PEIS, there was no pause. Moreover, the Jewell Order excluded many federal coal applications and operations from its interim pause pending the PEIS. AR 5427-5428. It also expressly "does not apply to other BLM actions related to the Federal coal program," including "development and implementation

of resource management plans" specifying where federal coal leasing is appropriate. AR 5427.

The Jewell Order before its issuance was subject to no NEPA review or other statutory findings (e.g., under the Federal Land Policy and Management Act) that Plaintiffs allege the Zinke Order lacked. After the Jewell Order issued, the ensuing PEIS process produced a "scoping report." *See* 81 Fed. Reg. 17,720 (Mar. 30, 2016) (Notice of Intent and Scoping, that "begins the process of defining the scope of the [PEIS] . . . and identifying the issues that may be addressed"). The scoping report was just as it sounds—a compilation of received public comments to inform topics to address in the Draft PEIS. It carried no legal import and contained no regulatory proposal or findings. That is, the scoping report could not, and did not, predetermine the results of the subsequent PEIS, a result that would be fundamentally inconsistent with NEPA. *See, e.g.*, AR 56265 ("This report is intended to provide an educated starting point for the work on the PEIS . . . .").

The March 29, 2017, Zinke Order ended the PEIS process—and by necessity the limited leasing pause for which the PEIS process was a *condition precedent*. AR 4416-4417; *see* Environmental Assessment ("EA") at 5, AR 5 ("In the absence of any legal obligation, funding, or intent to move forward with completing the PEIS, the underlying purpose and rationale for the pause no longer exists."); AR 56638-56639 ("If the PEIS is discontinued, the reason for creating the moratorium

will be gone."). DOI prioritized other activities above preparation of a discretionary PEIS and also lacked Congressional appropriations for such a PEIS. Finding of No Significant Impact ("FONSI") at 3, AR 69; EA at 5, AR 5 ("Thus, at various times, all three branches of government separately weighed in against the completion of the PEIS."). The Zinke Order did not lease or authorize development of a single acre of federal land or a single ton of federal coal. Nor did it alter the criteria by which the Bureau of Land Management ("BLM") decides federal coal lease applications, and the requirement for each leasing action to undergo NEPA review. Indeed, Plaintiffs do not dispute that after the Zinke Order each federal coal lease, regardless if previously covered by the Jewell Order (of which there were only four since 2017), received a NEPA review. Like the Jewell Order, the Zinke Order created no legally enforceable right or benefit; rather, it was "intended to improve the internal management of the Department." AR 4417.

The Zinke Order remained in effect until April 16, 2021. On that date, it was revoked by the Haaland Order. Unlike the Jewell Order, the Haaland Order did not direct a PEIS or an associated leasing pause. It directed DOI to "review and revise as necessary all policies and instructions that implemented" the revoked Zinke Order and other simultaneously revoked prior Secretarial Orders. Specifically, it called for a report within 60 days outlining potential policy or rule changes to be consistent with the Haaland Order, including a "plan and timeline."

## ARGUMENT

### I. PLAINTIFFS' CLAIMS ARE MOOT.

"The inability of the federal judiciary 'to review moot cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy." *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (citations omitted). "[T]he question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction." *Id.* (emphasis added). The same is true to *retain* jurisdiction, thereby ensuring adjudication of only "actual, ongoing controversies between litigants." *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). "It is not enough that a controversy existed at the time the complaint was filed . . . ." *Id.*; *see also Preiser v. Newkirk*, 422 U.S. 395, 401-02 (1975) ("The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.") (citation omitted). Like any jurisdictional inquiry, the Court must determine mootness of the claims actually before it; Plaintiffs cannot avoid mootness based on claims "beyond the complaint in this case." *See Chem. Producers & Distribs. Ass'n v. Helliker*, 463 F.3d 871, 877 (9th Cir. 2006).

Because mootness is a jurisdictional issue, it is properly raised via this Fed. R. Civ. P. 12(b)(1) motion to dismiss. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Such a motion may be made at any time. Fed. R. Civ. P. 12(h)(3) ("Lack

of Subject-Matter Jurisdiction. If the court determines *at any time* that it lacks subject-matter jurisdiction, the court must dismiss the action.") (emphasis added). Here, because this litigation is moot, the Court should not even adjudicate Plaintiffs' claims (which are also baseless).

**A. DOI Already Vacated the Zinke Order at Issue in This Litigation.**

Plaintiffs' complaints plainly challenge the Zinke Order. *See, e.g.*, ECF No. 176 ¶ 3 ("This case challenges Federal Defendants' decision to issue Secretarial Order 3348 (the 'Zinke Order') issued on March 29, 2017. . . ."); ECF No. 156 (Case No. 17-42) ¶ 8 (alleging "Defendants' issuance of Secretarial Order 3348 on March 29, 2017" and "Defendants' issuance of a Final EA and FONSI on February 26, 2020" constitute the requisite "final agency action" for jurisdiction). Plaintiffs' first supplemental complaints mirror their respective (and largely similar) original complaints against the Zinke Order, except that they now also challenge the sufficiency of the Zinke Order's NEPA analysis (EA and FONSI) prepared in response to the Court's previous summary judgment Order, ECF No. 141. *See, e.g.*, ECF No. 176 ¶ 1 (Group Plaintiffs "file this supplemental complaint as a continuation of their challenge to . . . Federal Defendants' 2017 decision . . ."). Both complaints are titled as seeking "declaratory and injunctive relief," tied to vacating the Zinke Order and associated EA. *See, e.g.*, ECF No. 176 at 27 ("Set aside and vacate the Zinke Order;"); ECF No. 156 (Case No. 17-42) at 37 ("Issue

an order requiring Defendants to vacate and set aside Secretarial Order 3348 . . . ;"); *see also* ECF No. 203 at 2 (Group Plaintiffs' summary judgment brief stating that "Plaintiffs request that this Court vacate the EA and the Zinke Order . . . .") Thus, the subject of this litigation and basis for the Court's prior found jurisdiction is the Zinke Order, nothing more.

As explained above, the Court must determine jurisdiction based on the complaints actually before it. Plaintiffs here wholly relied upon the Zinke Order, or the EA and FONSI prepared for the Zinke Order, as the "final agency action" under the Administrative Procedure Act ("APA") to establish jurisdiction in this Court, and also as the "major federal action" under NEPA. This Court previously agreed with Plaintiffs that jurisdiction existed while the Zinke Order was in effect. ECF No. 141 at 31. The Court found that "the Zinke Order triggered NEPA." *Id.* at 29. The Court then "required Federal Defendants to initiate a NEPA process." ECF No. 170 at 24. DOI subsequently conducted that NEPA analysis stemming solely from the Zinke Order and the Court's summary judgment Order. *See, e.g.*, FONSI at 2 ("As defined by the district court's order, the March 29, 2017, Zinke Order is the Proposed Action.").

The Zinke Order, however, is now indisputably revoked following the Haaland Order. With no extant underlying Zinke Order, its associated EA and FONSI likewise are of no effect. Whether Defendants had a NEPA obligation in

connection with the Zinke Order, and how Defendants discharged that purported obligation in the EA and FONSI, are not live controversies. Thus, any ruling on Plaintiffs' challenges to the Zinke Order or its NEPA review would solely constitute an impermissible advisory opinion. *See Golden v. Zwickler*, 394 U.S. 103, 108 (1969) ("[T]he federal courts established pursuant to Article III of the Constitution do not render advisory opinions.") (citation omitted). The current circumstance is textbook mootness. Because the Court cannot vacate what DOI has already vacated, the Court should dismiss Plaintiffs' claims.

**B. The Court Cannot Grant Plaintiffs Any Effective Relief.**

The Supreme Court has stated that a controversy becomes moot "when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation omitted). Under this formulation, too, this litigation is moot because DOI itself has already conferred all relief Plaintiffs have requested and could obtain in this litigation. Plaintiffs' repeated demands to "reinstate" the Jewell Order or a novel detached "moratorium" do not entitle them to such relief, or more fundamentally for present purposes of mootness, even a Court adjudication of the propriety of such relief. For the Court to rule on the legal effects of DOI's own vacatur of the Zinke Order would be the essence of advisory.

In any event, Plaintiffs misconstrue the consequence of vacating the Zinke Order as automatically reinstating the earlier Jewell Order. That is not the law. To be sure, the Secretary may elect to reinstate a previously-revoked Secretarial Order. For example, Secretarial Order 3289 addressing climate change considerations on federal lands stated that "This Order replaces Secretarial Order No. 3226, Amendment No. 1, issued on January 16, 2009, and reinstates the provisions of Secretarial Order No. 3226, issued on January 19, 2001." But the Haaland Order did no such thing. It instead left it to the subordinate DOI bureaus to propose next steps.

Moreover, as a legal matter, this Court has recognized that a Secretarial Order is not an "*agency rule*" that would be reinstated after vacatur of a subsequent *rule*. ECF No. 170 at 18 (emphasis in original); *see also* DOI Departmental Manual, 12 DM 1 ("Secretary's Orders are limited to temporary delegations of authority, emergency directives, special assignments of functions, and initial policy and functional statements on the establishment of new units.") (emphasis in original). Plaintiffs have cited no case judicially reinstating a Secretarial Order, let alone one commencing a discretionary PEIS and an associated pause on certain agency actions during that PEIS. For example, in *Western Watersheds Project v. Zinke* cited by Group Plaintiffs (and currently on appeal to the Ninth Circuit), the District of Idaho partially reinstated a decade-old BLM Instruction Memorandum

for *processing* federal oil and gas leases, and found that a court "decision that would install a nationwide directive . . . is not justified." 441 F. Supp. 3d 1042, 1085 (D. Idaho 2020). By contrast, Plaintiffs here ask the Court to issue a *nationwide ban* on *any processing* of federal coal lease applications. It is not Plaintiffs' or the Court's prerogative to reinstate the prior Jewell Order or to ban new leasing when DOI itself has not done so. But again, the Court need not decide the issue to dismiss the complaints here.

Even if this Court had the ability to order reinstatement of the Jewell Order, its plain terms do not align with the relief Plaintiffs seek, as detailed in prior remedy briefing and Court rulings. *See generally* ECF No. 163. The Court already correctly declined to read into the Jewell Order any legal obligation to prepare a new or supplemental PEIS for the current federal coal leasing program. *See* ECF No. 170 at 15-16 ("The Court's Order here simply proves less expansive than Plaintiffs' interpretation, or as the orders in the cases cited by Plaintiffs. Plaintiffs essentially repeat their request for the Court to order a programmatic review and preparation of a PEIS. . . . This Court already considered and declined to impose this request on Federal Defendants."). Nor can the Court "reinstate" a "moratorium" that has never existed, i.e., apart from a discretionary PEIS. In fact, the Zinke Order was unnecessary to end the Jewell Order's temporary pause,

because BLM at any time could have just ended the concomitant PEIS. The same would be true following any reinstatement of the Jewell Order.

Without the Zinke Order, Plaintiffs' suit is even more transparently a programmatic challenge. Plaintiffs now take issue with the Haaland Order for not mimicking the Jewell Order, and complain of DOI's refusal to make Plaintiffs' desired "policy changes" for federal coal leasing—namely completely ending it via a permanent "moratorium." But Plaintiffs cannot maintain such a programmatic challenge. As the Supreme Court held in *Lujan v. National Wildlife Federation* involving another asserted BLM "program" for managing federal lands, "the flaws in the entire 'program'—consisting principally of the many individual actions referenced in the complaint and presumably actions yet to be taken as well—cannot be laid before the courts for wholesale correction under the APA." 497 U.S. 871, 890-93 (1990); *see also id.* at 891 ("But respondent cannot seek *wholesale* improvement of this program by court decree, rather than in the offices of the Department or the halls of Congress, where programmatic improvements are normally made.") (emphasis in original); *Wyoming v. United States Dep't of the Interior*, 366 F. Supp. 3d 1284, 1290 (D. Wyo. 2018), *order vacated, appeal dismissed sub nom. Wyoming v. United States Dep't of Interior*, 768 F. App'x 790 (10th Cir. 2019) ("Wish as they might, neither the States, industry members, nor environmental groups are granted authority to dictate oil and gas policy on federal

public lands."). The present cases are now indistinguishable from the D.C. Circuit's unanimous rejection of similar claims against the federal coal leasing program in *Western Organization of Resource Councils (WORC) v. Zinke*, 892 F.3d 1234 (D.C. Cir. 2018); *see also ONRC Action v. Bureau of Land Mgmt.*, 150 F.3d 1132, 1135-37 (9th Cir. 1998) (even during EIS preparation, "BLM's failure to implement a moratorium was not a final agency action"); 43 C.F.R. § 46.160 (during a programmatic NEPA review, DOI agencies may undertake an individual action under the current program so long as that action has adequate NEPA review).

Beyond duplicating DOI's own vacatur of the Zinke Order, this Court cannot grant Plaintiffs their requested relief. Thus, this litigation is now moot.

## II. NO EXCEPTION TO MOOTNESS APPLIES.

Predictably, Plaintiffs oppose this motion to dismiss, and likely will contend that this litigation is subject to a mootness exception. However, none applies here.

For example, this litigation is not "capable of repetition while evading review." *See, e.g., Pub. Utilities Comm'n of State of Cal. v. FERC*, 100 F.3d 1451, 1459-60 (9th Cir. 1996). This exception is applicable "only 'in exceptional circumstances'" and requires Plaintiffs to establish *both* that "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining

party would be subjected to the same action again." *Id.* at 1459. Plaintiffs cannot satisfy either criterion here because BLM federal coal leasing actions "generally do not evade review"—indeed Plaintiffs routinely litigate them—and actions surrounding the discretionary PEIS and its temporary leasing pause were "facts that are unique or unlikely to be repeated." *See id.* at 1459-60. Dismissal of this litigation will not prejudice Plaintiffs' ability to challenge any future issuance of federal coal leases, including on NEPA grounds.

Similarly, this litigation does not implicate the "voluntary cessation" exception. *See Pub. Utilities Comm'n*, 100 F.3d at 1460. This Circuit has applied this exception where the defendant has "expressly announced its intention" that after a mootness ruling it will return to prior conduct alleged to be illegal in the mooted litigation. *See, e.g.*, *Barilla v. Ervin*, 886 F.2d 1514, 1521 (9th Cir. 1989), *overruled on other grounds*, *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996). Moreover, courts "treat the voluntary cessation of challenged conduct by government officials 'with more solicitude . . . than similar action by private parties.'" *Bd. of Trs. of Glazing Health and Welfare Tr. v. Chambers*, 941 F.3d 1195, 1198 (9th Cir. 2019) (citation omitted). Rather, courts "presume the government is acting in good faith." *Id.* (citation omitted). Finally, "the defendant's voluntary cessation must have arisen because of the litigation." *Pub. Utilities Comm'n*, 100 F.3d at 1460.

There is no record indication that the Haaland Order was issued to moot this litigation. It was promulgated to advance "the policy set forth in EO 13990," which is entitled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" (January 20, 2021). The Haaland Order simultaneously revoked multiple prior Secretarial Orders, not just the Zinke Order. Also, DOI did not cease any allegedly illegal activity. Plaintiffs in this litigation do not challenge the legality of federal coal leasing under existing regulations. And there cannot be improper voluntary cessation of a PEIS and pause that were themselves undisputedly voluntary. *See Ctr. for Biological Diversity v. Zinke*, 260 F. Supp. 3d 11, 24 (D.D.C. 2017) (case law did not support plaintiffs' assertion "that an agency can convert a voluntary task into a mandatory one simply by embarking on it."). Indeed, NEPA reviews frequently are withdrawn or never completed. *See id.* ("The bottom line is this: [plaintiffs] identified no authority suggesting that agencies have either a general, freestanding obligation to finish any and all tasks that they undertake, or a specific obligation to complete a review of their NEPA procedures and decide if revisions are warranted, and this Court is not aware of any."). It still is unclear what, if any, activities DOI or BLM will take or policies they will adopt to implement the Haaland Order for federal coal leasing. In any event, speculation about what the federal government may do in the future is insufficient to preserve jurisdiction in this litigation.

Mootness in this case comports with the Ninth Circuit's finding of mootness and rejection of voluntary cessation arguments in another case that originated in this Court. In *Indigenous Environmental Network v. Trump*, No. 18-36068, ECF No. 56 (9th Cir. June 6, 2019), the plaintiffs challenged a 2017 Presidential permit authorizing cross-border construction of the Keystone XL pipeline. After this Court granted partial summary judgment for plaintiffs and defendants appealed, the President in 2019 revoked the permit and issued a new permit authorizing the same cross-border construction. The Ninth Circuit granted appellants' motion to dismiss the appeals and the district court's ruling over the appellees' objections and claims that mootness exceptions applied. The plaintiffs instead had to challenge the new permit, which they did. Though this Court subsequently ruled that the President's January 20, 2021 revocation of the 2019 permit did not moot the new case, that ruling is distinguishable because there the Court found it could grant relief "by ordering the removal of the constructed border segment" and addressed "unilateral and unchecked activities of the President." *Indigenous Envtl. Network v. Trump*, No. 19-28, 2021 WL 2187286 at *3-4 (D. Mont. May 28, 2021). Here, by contrast, the Court cannot provide relief beyond DOI's vacatur of the Order, and any future federal coal leasing decisions will be subject to BLM approval, NEPA review, and judicial review if challenged. Dismissal of this litigation as moot also preserves

DOI's ability to consider future programmatic changes to federal coal leasing via proper notice and comment rulemaking.

## CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' complaints as moot.

Dated: July 6, 2021

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations pursuant to Local Rule 7.1(d)(2)(A) because this brief contains 4,093 words, excluding the parts of the brief exempted under the Local Rule.

*/s/ Mark L. Stermitz*
Mark L. Stermitz

## CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2021, I electronically filed the foregoing Intervenor-Defendant National Mining Association's Memorandum of Points and Authorities in Support of Motion to Dismiss for Mootness with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

*/s/ Mark L. Stermitz*
Mark L. Stermitz