

Jean E. Williams  
Acting Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

Joseph H. Kim, Trial Attorney  
Natural Resources Section  
P.O. Box 7611 Washington, D.C. 20044  
202-305-0207  
[joseph.kim@usdoj.gov](mailto:joseph.kim@usdoj.gov)

*Counsel for Federal Defendants*

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

CITIZENS FOR CLEAN ENERGY *et al.*

and

THE NORTHERN CHEYENNE TRIBE,

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF THE  
INTERIOR *et al.*

Federal Defendants,

and

STATE OF WYOMING *et al.*,

### Intervenor-Defendants.

STATE OF CALIFORNIA *et al.*

V.

Case No. 17-cv-30-BMM  
(lead consolidated case)

## JOINT MOTION FOR STAY OF PROCEEDINGS

17-cv-42-BMM  
(consolidated case)

UNITED STATES DEPARTMENT OF THE )  
INTERIOR *et al.* )  
 )  
Federal Defendants. )  
\_\_\_\_\_ )

Federal Defendants and Plaintiffs in these consolidated actions hereby move for a six-month stay of all proceedings. The motion is based on the following grounds:

1. The current scheduling order for these cases is at ECF No. 209 in the lead case’s docket. That Order establishes a schedule for briefing the Parties’ cross-motions for summary judgment. The next deadline under that schedule is for Federal Defendants’ Cross-Motion for Summary Judgment and Opposition Brief, due July 13, 2021. In addition, Defendant-Intervenors filed a motion to dismiss on July 6, 2021 (ECF Nos. 210, 211; corrected and filed separately in the consolidated case on July 7, 2021 (ECF No. 212; ECF Nos. 186, 187 (Case No. 4:17-cv-00042-BMM))), and responses to that motion are due July 27, by operation of D. Mont. L.R. 7.1(d)(1)(B)(i). Federal Defendants and Plaintiffs seek a stay of all proceedings, including the deadlines pertaining to each of these pending motions.

2. Federal Defendants previously moved to stay proceedings for 90 days following the Department of the Interior’s revocation of Secretarial Order 3348 (the “Zinke Order”). Plaintiffs opposed the motion and this Court denied it. *See*

ECF No. 206.

3. Following additional conferral, Federal Defendants and Plaintiffs in both actions have agreed that a six-month stay of proceedings would facilitate the orderly course of justice without prejudicing Plaintiffs' interests, due to progress Federal Defendants have made in reviewing the federal coal leasing program and the significant amount of advance notice Federal Defendants have agreed to give plaintiffs of any impending decision to approve a coal lease sale or coal lease modification.

4. Secretary Debra Haaland issued Secretarial Order 3398 (the "Haaland Order") on April 16, 2021. Among other things, the Haaland Order revoked the Zinke Order and directed "[t]he Department [to] review and revise as necessary all policies and instructions that implemented the . . . revoked SOs . . . ." That review process is ongoing.

5. Interior has inherent authority to reconsider and to revise, replace, or repeal the Zinke Order, and to revisit the policies articulated therein. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (discussing agency's inherent ability to change position). The Federal Defendants believe that where, as here, an agency has already begun the process of reconsidering its own action by revoking it and taking concrete steps to develop replacement policy, proceeding with litigation risks wasting both the parties' and the court's resources.

6. It is the Federal Defendants' position that continuing to litigate these cases would interfere with Interior's ongoing administrative process by forcing it to redirect resources from its reconsideration process to litigation and to structure its administrative process around pending litigation, rather than the agency's priorities and expertise. *See Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 558 (9th Cir. 1989) ("The Supreme Court has warned courts not to intrude on administrative functions.").

7. Plaintiffs agree that a stay is warranted at this time given the Federal Defendants' progress toward developing a replacement for the challenged coal-leasing policy. However, Plaintiffs reserve their right to seek an end to the abeyance or to oppose any request to extend the abeyance in the event additional progress is significantly delayed.

8. Federal Defendants and Plaintiffs agree that a six-month stay would not prejudice Plaintiffs' interests. Federal Defendants have committed to notify Plaintiffs well in advance in the event BLM intends to issue a decision, supported by a National Environmental Policy Act analysis, authorizing a coal lease sale or coal lease modification. Following any such notice, Federal Defendants would agree not to oppose any request by Plaintiffs to end the stay, and Federal Defendants would further agree to file their summary judgment response brief no later than 14 days after the stay is lifted (unless otherwise ordered by the court or

agreed to by the Plaintiffs and Federal Defendants).

9. Counsel for Federal Defendants and the Plaintiffs have conferred with counsel for Intervenor-Defendants in these consolidated cases. Intervenor-Defendants National Mining Association, the State of Wyoming, and the State of Montana have indicated that they take no position on this motion.

10. A proposed order accompanies this motion.

Respectfully submitted this 12th day of July, 2021.

/s/ Jenny K. Harbine (w/ permission)

Jenny K. Harbine  
Amanda D. Galvan  
Earthjustice  
313 East Main Street  
Bozeman, MT 59715  
jharbine@earthjustice.org  
agalvan@earthjustice.org  
(406) 586-9699

*Counsel for Plaintiffs  
in Case No. 4:17-cv-00030-BMM*

Wyatt F. Golding (*pro hac vice*)  
Ziontz Chestnut  
2101 Fourth Avenue, Suite 1230  
Seattle, WA 98121  
wgolding@ziontzchestnut.com  
(206) 448-1230

*Counsel for Plaintiff Northern  
Cheyenne Tribe*

Jean E. Williams  
Deputy Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division

/s/ Joseph H. Kim  
Joseph H. KIM, Trial Attorney  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044  
202-305-0207

*Counsel for Defendants*

Of Counsel:  
Kristen C. Guerriero  
John S. Most  
Office of the Solicitor  
U.S. Department of the Interior

Michael Saul (*pro hac vice*)  
Center for Biological Diversity  
1536 Wynkoop Street, Suite 421  
Denver, CO 80202  
MSaul@biologicaldiversity.org  
(303) 915-8308

Anchun Jean Su (*pro hac vice*)  
Center for Biological Diversity  
1411 K St. NW, Suite 1300  
Washington, D.C. 20005  
jsu@biologicaldiversity.org  
(202) 849-8401

*Counsel for Plaintiff*  
*Center for Biological Diversity*

Roger Sullivan  
Dustin Leftridge  
McGarvey, Heberling, Sullivan & Lacey, P.C.  
345 1st Ave. E.  
Kalispell, Montana 59901-5341  
(406) 752-5566  
RSullivan@McGarveyLaw.com

*Attorneys for Plaintiffs*  
*in Case No. 4:17-cv-00042-BMM*

Rob Bonta  
Attorney General of California  
David Zonana  
Supervising Deputy Attorney General  
/s/ George Torgun (w/ permission)  
George Torgun (*pro hac vice*)  
CA Bar No. 222085

Elizabeth B. Rumsey (*pro hac vice*)  
CA Bar No. 257908  
Deputy Attorneys General  
1515 Clay Street, 20th Floor  
Oakland, CA 94612-0550  
Telephone: (510) 879-1002  
E-mail: [George.Torgun@doj.ca.gov](mailto:George.Torgun@doj.ca.gov)

Attorneys for Plaintiff State of California

Hector Balderas  
Attorney General of New Mexico  
Bill Grantham (*pro hac vice*)  
Assistant Attorney General  
201 Third St. NW, Suite 300  
Albuquerque, NM 87102  
(505) 717-3520  
[wgrantham@nmag.gov](mailto:wgrantham@nmag.gov)

Attorneys for Plaintiff State of New Mexico

Letitia James  
Attorney General of New York  
Andrew G. Frank (*pro hac vice*)  
Assistant Attorney General  
New York Attorney General's Office  
28 Liberty Street  
New York, NY 10005  
212-416-8271  
[andrew.frank@ag.ny.gov](mailto:andrew.frank@ag.ny.gov)

Attorneys for Plaintiff State of New York

Robert W. Ferguson  
Attorney General of Washington  
William R. Sherman (*pro hac vice*)

Assistant Attorney General  
Aurora Janke, MT Bar No. 39522610  
Assistant Attorney General  
800 5th Ave Suite 2000, TB-14  
Seattle, WA 98104-3188  
(206) 442-4485  
bill.sherman@atg.wa.gov  
aurora.janke@atg.wa.gov

Attorneys for Plaintiff State of Washington



**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.

/s/ Joseph H. Kim  
Joseph H. Kim  
*Counsel for Defendants*