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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.	Case No. 17-cv-30-BMM (lead consolidated case) **FEDERAL DEFENDANTS' REPLY IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT**
STATE OF CALIFORNIA *et al.* v.	17-cv-42-BMM (consolidated case)

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

These cases are moot. The Secretary of the Interior has revoked the agency action that is at issue and that the Bureau of Land Management ("BLM") analyzed under the National Environmental Policy Act ("NEPA") pursuant to this Court's April 2019 direction. The Court accordingly can provide no effectual relief, and should dismiss these cases.

Plaintiffs' arguments against mootness continue to depend on a misunderstanding of the agency action at issue. For example, some Plaintiffs state that "Federal Defendants no longer defend their March 29, 2017 *decision to open the entire federal mineral estate to coal leasing*, nor their analysis of that decision under the National Environmental Policy Act ('NEPA')." Response and Reply Brief in Support of Plaintiffs' Motion for Summary Judgment on Supplemental Complaint [ECF No. 230] ("Conservation Plaintiffs' Response") at 1 (emphasis added). Similarly, other Plaintiffs premise their arguments on the misconception that the case is about an "analysis of the federal coal leasing program." State Plaintiffs' Brief on Opposition to Defendants' Cross-Motions for Summary Judgment and Reply in Support of Motion for Summary Judgment [ECF No. 229]

("State Plaintiffs' Response") at 2. These statements are incorrect in critical respects.

The only action of relevance here is the Zinke Order (alternatively, "SO 3348").[1] But the Zinke Order did not "open the entire federal mineral estate to coal leasing," as Plaintiffs erroneously insist. Conservation Plaintiffs' Response at 1. Instead, in relevant part, the Zinke Order lifted a temporary and partial leasing pause that had been imposed by the Jewell Order[2] approximately 2 years before that pause was originally intended to end. It was this aspect of the Zinke Order, and only this aspect, that BLM addressed in the environmental assessment ("EA") challenged in the supplemental complaints in this case.

But Secretary Haaland revoked the Zinke Order on April 16, 2021,[3] and this rendered moot any claims directed at the adequacy of the EA associated with the Zinke Order. And while the Zinke Order had also directed BLM "to process coal lease applications and modifications expeditiously in accordance with regulations and guidance existing before the issuance of [the Jewell Order]," Suppl. A.R.

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[1] "Concerning the Federal Coal Moratorium" (March 29, 2017). Suppl. A.R. 5419-28.

[2] "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program" (January 15, 2016). Suppl. A.R. 4416-17.

[3] "Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" (April 16, 2021) [the Haaland Order]. ECF No. 212-1.

4416-17, that aspect of the Zinke Order is also now moot. BLM is no longer expediting the consideration of coal lease applications, as was directed by the Zinke Order – indeed, no coal leasing has occurred since April 16, 2021.[4]

Plaintiffs admit that "vacatur of the Zinke Order is . . . sufficient to redress injury to Plaintiffs caused by Federal Defendants' NEPA violation." Conservation Plaintiffs' Response at 28 n.9. This admission reinforces Federal Defendants' contention that no justiciable controversy remains because Secretary Haaland has already revoked the Zinke Order.

Accordingly, Plaintiffs' motions for summary judgment should be denied as moot, Federal Defendants' cross-motion for summary judgment should be granted, and the consolidated actions should be dismissed.

Respectfully submitted this 22nd day of March 2022.

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/s/ *Joseph H. Kim*

[4] While Interior has discretion under the Mineral Leasing Act and its implementing regulations to hold a new lease sale, it could not do so without first preparing a new NEPA analysis. *See* 43 C.F.R. § 3425.3(a) ("Before a lease sale may be held . . . the authorized officer shall prepare an environmental assessment or environmental impact statement of the proposed lease area in accordance with [NEPA regulations].").

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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.

/s/ *Joseph H. Kim*
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