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February 4, 2019

The Honorable Yvonne Gonzalez Rogers
United States District Court, Northern District of California
Oakland Courthouse, Courtroom 1, 4th Floor
1301 Clay Street
Oakland, CA 94612

RE: Intervenor-Defendant State of Wyoming's Letter Brief in Support of Cross-Motion for Summary Judgment, *State of California, et al. v. Zinke, et al.*, No. 4:18-cv-05712-YGR

Dear Judge Gonzalez Rogers:

In accordance with your order of January 16, 2019, Intervenor-Defendant State of Wyoming hereby submits this letter brief providing an executive summary identifying the issues it may address in a cross-motion for summary judgment and whether those issues require independent briefing. (Dkt. No. 81).

The States of California and New Mexico, along with the California Air Resources Board (State Plaintiffs) and, in a separate, consolidated action, eighteen citizen groups (Citizen Groups) challenge a rule promulgated by the Bureau of Land Management rescinding certain provisions of a rule adopted in 2016 to regulate methane emissions from the production of oil and gas on

federal and Indian lands. *See* 83 Fed. Reg. 49184 (Sept. 28, 2018) (Rescission Rule); 81 Fed. Reg. 83008 (Nov. 18, 2016) (2016 Rule). In accordance with the Court's order, they filed letter briefs on January 24, 2019, setting forth various issues they may raise in their summary judgment briefs.

Wyoming is an intervenor-defendant in this proceeding. Given that party status, the issues the Plaintiffs raise in their summary judgment briefs will dictate the issues that Wyoming would respond to in its cross-motion for summary judgment. Wyoming intends to respond to every issue raised in the Plaintiffs' motions. Wyoming will also review the State Plaintiffs' and the Citizen Groups' arguments and evidence in support of their standing, and if it determines that they have not met the requisite legal standard for standing, Wyoming may raise that issue as well. After the State Plaintiffs and the Citizen Groups file their initial briefs, Wyoming will consult with the Federal Defendants and the Industry Intervenor-Defendants to avoid duplicative briefing, and if appropriate, Wyoming will incorporate by reference portions of the other defendants' briefs to meet that goal.

The Court should allow Wyoming to submit its own briefs as it deems appropriate, because "states are not normal litigants for the purposes of invoking federal jurisdiction," and states have a special position in the federal system. *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 518-19 (2007). Some courts formally recognize this. *See, e.g.,* D.C. Cir. R. 28(d)(4); 10th Cir. R. 31.3(D). The State Plaintiffs and the Citizen Groups in this case recognize as much and have similarly requested independent briefing. (Dkt. No. 83 at 2; Dkt. No. 84 at 2). Wyoming's concerns in this matter are primarily sovereign in nature, and therefore, fundamentally different than the interests of the Industry Intervenor-Defendants. Like the Plaintiffs, Wyoming and the Industry Intervenor-Defendants will stress different arguments and harms that reflect their specific interests. (Dkt. No. 84 at 2). Furthermore, Wyoming has a substantial bureaucratic process that it must adhere to before it files any brief on an issue of significant state concern. The process includes multiple layers of review, including the Attorney General of Wyoming and, potentially, the Governor's office. This makes joint briefing with other parties difficult.

Moreover, independent briefing by Wyoming and the other intervenors will benefit the Court in making its decision. Briefing from the different perspectives the intervenors offer will fully inform the Court on the issues. While multiple briefs may ask for the same relief, and discuss some of the same facts and legal authorities, they will not be carbon copies of each other. Each brief will shed light on different aspects of the issues. The varied perspectives and arguments of the parties will be valuable to the Court. Accordingly, Wyoming respectfully requests the Court to order independent briefing.

The parties negotiated the Joint Case Management Statement which fairly allocates the form and page limits for briefs. (Dkt. No. 77 at 5-6). Therefore, Wyoming urges the Court to adopt the briefing framework, including the number of pages, as set forth in the Joint Case Management Statement.

Respectfully submitted,

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