

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WESTERN ORGANIZATION OF  
RESOURCE COUNCILS and FRIENDS  
OF THE EARTH,

*Plaintiffs-Appellants,*

v.

RYAN ZINKE, in his capacity as Secretary  
of the Interior, DEPARTMENT OF THE  
INTERIOR, MIKE NEDD, in his capacity  
as Acting Director, Bureau of Land  
Management, BUREAU OF LAND  
MANAGEMENT,

*Defendants-Appellees,*

STATE OF NORTH DAKOTA, STATE  
OF WYOMING, WYOMING MINING  
ASSOCIATION,

*Intervenors.*

**No. 15-5294**

**UNOPPOSED MOTION TO END ABEYANCE  
AND ESTABLISH BRIEFING SCHEDULE**

This matter concerns whether Appellees have violated the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, by failing to conduct an adequate analysis of the environmental effects, including climate change-related effects, of the

federal coal leasing program. In August 2015, the district court (Walton, J.) dismissed the Complaint, which sought to enjoin the grant or modification of leases under the program until Appellees performed the required analysis. This appeal was noticed on October 26, 2015. Thereafter, in January 2016, Secretary of the Interior Sally Jewell issued a Secretarial Order directing the Bureau of Land Management (BLM) to prepare and issue a Programmatic Environmental Impact Statement (PEIS) analyzing, *inter alia*, the climate change-related effects of the coal leasing program, and ordering a “pause” in the issuance of new federal thermal coal leases until completion of the PEIS. This Secretarial Order essentially provided Appellants with all the relief sought in their Complaint.

Accordingly, after this Court set a briefing schedule, the Appellants and Federal Defendants-Appellees jointly moved this Court to hold the briefing in abeyance pending the completion of the PEIS. ECF No. 1616977 (June 6, 2016). This Court then ordered the matter be held in abeyance pending further order of the Court, and directed the parties to file motions governing future proceedings “within 60 days of the issuance of the final programmatic environmental impact statement.” ECF No. 1619174 (June 14, 2016).

On March 29, 2017, Secretary of the Interior Ryan Zinke issued a Secretarial Order revoking the January 2016 Secretarial Order, immediately ending the pause on new leasing, directing BLM to expeditiously process coal lease applications and

modifications, and ordering an immediate halt to “all activities associated with preparation” of the PEIS.

In light of the March 29, 2017 Secretarial Order, Appellants request that the Court lift the abeyance, establish a briefing schedule, and calendar the case for oral argument. Appellants are authorized to state that Federal Defendants-Appellees, Intervenor State of North Dakota, Intervenor State of Wyoming, and Intervenor Wyoming Mining Association do not oppose the motion.

In support of this motion, Appellants state the following:

### **Background**

1. Appellants appeal the District Court’s Memorandum Opinion and Order, each filed August 27, 2015, granting Federal Defendant[s] Corrected Motion to Dismiss, denying as moot Intervenor State of Wyoming’s Motion to Dismiss, denying as moot Intervenor State of North Dakota’s Motion to Dismiss, denying as moot Intervenor Wyoming Mining Association’s Motion to Dismiss, and dismissing the Complaint.

2. In their Complaint, Appellants sought an order declaring that Appellees are obligated by the National Environmental Policy Act (NEPA) to issue a supplemental PEIS for the federal coal program in light of new information related to climate change that has developed since the last PEIS on the program was issued in 1979 and supplemented in 1985. Appellants sought an injunction ordering Appellees

not to take any action with regard to any new lease or modify an existing lease, unless and until Appellees comply with NEPA. Compl. at 65-66 (Nov. 24, 2014).

3. On January 15, 2016, Secretary Jewell directed the BLM “to prepare a discretionary [PEIS] that analyzes potential leasing and management reforms to the current Federal coal program.” Secretarial Order No. 3338 (Jan. 15, 2016) at 1.<sup>1</sup> The Secretary identified a number of topics that the PEIS should address, including the effects of the program on climate. *Id.* at 7-8. The Secretary also announced a “pause” on the issuance of most new leases and modifications of existing leases, with certain exclusions.

4. On March 30, 2016, BLM published a “Notice of Intent to Prepare a [PEIS] to Review the Federal Coal Program and to Conduct Public Scoping Meetings.” 81 Fed. Reg. 17,720. The Notice “begins the process of defining the scope of the [PEIS] by providing background on the Federal coal program and identifying the issues that may be addressed in the [PEIS].” 81 Fed. Reg. at 17,720.

5. On June 6, 2016, Appellants and Federal Defendants-Appellees filed a Joint Unopposed Motion to Place this Matter in Abeyance. ECF No. 1616977. The parties noted that the January 2016 Secretarial Order “may obviate the need for briefing in this matter,” *id.* at 4, and requested an order, *inter alia*, “directing the parties to file either a dismissal motion or a motion to govern further proceedings no later

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<sup>1</sup> <http://elips.doi.gov/elips/0/doc/4270/Page1.aspx>

than 60 days after BLM issues the Final PEIS or terminates the PEIS process,” *id.* at 5.

6. On June 14, 2016, the Court granted the motion and (1) ordered that the case be “held in abeyance pending further order of the court”; (2) directed the parties to file periodic status reports; and (3) directed the parties “to file motions to govern future proceedings in this case within 60 days of the issuance of the final programmatic environmental impact statement.” ECF No. 1619174.

7. In January 2017, BLM published a “Federal Coal Program Programmatic EIS Scoping Report.”<sup>2</sup> The Scoping Report summarizes public involvement in the scoping process, describes the purpose and need for the PEIS, and describes alternatives to be addressed in the forthcoming PEIS.

8. On March 29, 2017, Secretary Zinke revoked the January 2016 Secretarial Order, ordered an immediate halt to “all activities associated with preparation” of the PEIS, immediately ended the pause on new leasing, and directed BLM to expeditiously process coal lease applications and modifications. Secretarial Order 3348 (attached as Exhibit 1).<sup>3</sup>

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<sup>2</sup> <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=93180>

<sup>3</sup> [https://www.doi.gov/sites/doi.gov/files/uploads/so\\_3348\\_coal\\_moratorium.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/so_3348_coal_moratorium.pdf)

**Relief Requested**

9. Appellants request that the Court issue an order ending the abeyance, establishing a briefing schedule, and calendaring the case for oral argument.

10. The March 2017 Secretarial Order had the effect of revoking the action that formed the basis for the parties' joint request to place the matter in abeyance. In fact, the joint motion for abeyance contemplated the need for action like this from the Court if BLM "terminate[d] the PEIS process." Following this Secretarial Order, the federal coal leasing program has, for relevant purposes, been restored to the operating procedures in place at the time the district court issued its decision and this appeal was noticed. Accordingly, the basis for the abeyance has been eliminated, and the issues presented by this matter are now properly before this Court.

11. Appellants respectfully request that the Court adhere to the briefing format it ordered on March 29, 2016, resetting the operative dates as appropriate.

**Conclusion**

For the foregoing reasons, Appellants seek an order removing this case from abeyance, establishing a briefing schedule, and calendaring the case for oral argument. Appellants respectfully request that the Court adhere to the briefing format it ordered on March 29, 2016, resetting the operative dates as appropriate.

Respectfully submitted,

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*Counsel for Appellants Western Organization of  
Resource Councils and Friends of the Earth*

Dated: May 26, 2017

# EXHIBIT 1





THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3348

Subject: Concerning the Federal Coal Moratorium

**Sec. 1 Purpose.** The Federal coal leasing program is of critical importance to the economy of the United States, supplying approximately 40 percent of the coal produced in the Nation. On January 15, 2016, Secretary's Order 3338, "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program," was signed and placed a moratorium on the coal leasing program with limited exceptions. Given the critical importance of the Federal coal leasing program to energy security, job creation, and proper conservation stewardship, this Order directs efforts to enhance and improve the Federal coal leasing program.

**Sec. 2 Authorities.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Other statutory authorities for this Order include but are not limited to the following statutes:

- a. Mineral Leasing Act, 30 U.S.C. §1181 *et seq.*
- b. Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 *et seq.*
- c. Federal Land Policy and Management Act, 43 U.S.C. 1701-1785.
- d. Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201-1328.

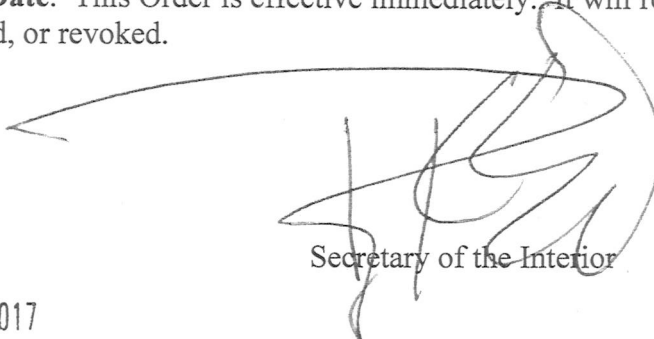
**Sec. 3 Background.** Secretary's Order 3338 directs the Bureau of Land Management (BLM) to analyze and "consider potential leasing and management reforms to the current Federal coal program." Secretary's Order 3338 ordered the preparation of a discretionary Programmatic Environmental Impact Statement (PEIS) to analyze potential reforms and ordered a "pause on leasing, with limited exceptions" pending completion of the discretionary Federal Coal Program PEIS. The PEIS is estimated to cost many millions of dollars and would be completed no sooner than 2019, even with robust funding.

**Sec. 4 Revocation of Secretary's Order 3338.** Based upon the Department's review of Secretary's Order 3338, the scoping report for the discretionary Federal Coal Program PEIS issued in January 2017, and other information provided by BLM, I find that the public interest is not served by halting the Federal coal program for an extended time, nor is a PEIS required to consider potential improvements to the program. Accordingly, consistent with the principles of responsible public stewardship entrusted to this office, I revoke Secretary's Order 3338, "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program."

Sec. 5 **Implementation.** With the revocation of Secretary's Order 3338, BLM is directed to process coal lease applications and modifications expeditiously in accordance with regulations and guidance existing before the issuance of Secretary's Order 3338. All activities associated with the preparation of the Federal Coal Program PEIS shall cease. The Deputy Secretary, Assistant Secretaries, and heads of bureaus and offices are hereby directed to make changes in their policy and guidance documents that are consistent with the revocation of Secretary's Order 3338.

Sec. 6 **Effect of the Order.** This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 **Expiration Date.** This Order is effective immediately. It will remain in effect until it is amended, superseded, or revoked.



Secretary of the Interior

Date: MAR 29 2017

**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing was printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word 2016, it contains 1,108 words.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been served through the Court's CM/ECF system on all registered counsel this 26th day of May, 2017.

/s/ Jessica Olson  
Counsel for Appellants