

Nos. 16-8068, 16-8069

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF WYOMING; STATE OF COLORADO; INDEPENDENT
PETROLEUM ASSOCIATION; and WESTERN ENERGY ALLIANCE,

Petitioners-Appellees

and

STATE OF NORTH DAKOTA; STATE OF UTAH; and UTE INDIAN TRIBE,

Intervenors-Appellees

v.

RYAN ZINKE; KRISTIN BAIL; U.S. DEPARTMENT OF THE INTERIOR; and
U.S. BUREAU OF LAND MANAGEMENT,

Respondents-Appellants

and

SIERRA CLUB; EARTH WORKS; WESTERN RESOURCE ADVOCATES;
WILDERNESS SOCIETY; CONSERVATION COLORADO EDUCATION
FUND; and SOUTHERN UTAH WILDERNESS ALLIANCE,

Intervenors-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF WYOMING, NOS. 15-CV-41/43 (HON. SCOTT W. SKAVDAHL)

**FEDERAL APPELLANTS' MOTION TO CONTINUE ARGUMENT AND
HOLD CASE IN ABEYANCE PENDING ADMINISTRATIVE ACTION**

On March 9, 2017, this Court ordered BLM to confirm whether its position in these appeals has changed due to the recent change of Administration. For the reasons stated below, BLM respectfully requests this Court to continue the oral argument and hold these appeals in abeyance pending a new rulemaking by BLM. *See*

Fed. R. App. P. 2, 27. Petitioners-Appellees do not oppose this motion. The Citizen Group Intervenors-Appellants oppose this motion. For the following reasons, good cause exists to grant the motion:

1. On March 26, 2015, BLM published a rule governing hydraulic fracturing on federal and Indian lands. “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” 80 Fed. Reg. 16,128 (Mar. 26, 2015) (“2015 Final Rule”).

Petitioners challenged the 2015 Final Rule in the district court, and the district court set the rule aside. As a result, the 2015 Final Rule is not currently in effect. BLM and the Citizen Group Intervenors appealed to this Court, which ordered briefing and scheduled oral argument for March 22, 2017.

2. As the Court is aware, a new Administration took office on January 20, 2017, and a new Secretary of the Interior was sworn in on March 1, 2017.

3. Consistent with the President’s January 30, 2017, Executive Order on *Reducing Regulation and Controlling Regulatory Costs*, the Department of the Interior has been reviewing existing regulations to determine whether revisions or rescissions are appropriate to streamline the regulatory process and eliminate duplicative regulations. As part of this process, the Department has begun reviewing the 2015 Final Rule (and all guidance issued pursuant thereto) for consistency with the policies and priorities of the new Administration. This initial review has revealed that the 2015 Final Rule does not reflect those policies and priorities. Accordingly, the Department through the BLM has begun the process to prepare a notice of proposed rulemaking for

publication in the Federal Register to rescind the 2015 Rule. The Department intends to publish that notice as soon as it and any necessary supporting documents are completed, and to conduct the rulemaking expeditiously and in compliance with applicable law. The BLM expects to issue the notice within 90 days of the date of filing of this motion. *See* Declar. of Richard Cardinale (attached).

4. To conserve the Court's and the parties' resources, and in light of the proposed rulemaking process outlined above, BLM respectfully requests that the Court continue the oral argument and hold these appeals in abeyance pending the outcome of the proposed rulemaking process. *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012) (explaining that the Court may "hold the case in abeyance pending resolution of [a] proposed rulemaking, subject to regular reports from [the agency] on its status").

5. BLM proposes to file a status report 90 days from the date of the Court's order abating these appeals.

Respectfully submitted,

JEFFREY WOOD

Acting Assistant Attorney General

s/ Nicholas A. DiMascio

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MARCH 15, 2017

90-5-1-4-20425

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)**

I hereby certify that this motion complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 475 words, excluding the parts of the brief exempted under Rule 32(f), according to the count of Microsoft Word.

s/ Nicholas A. DiMascio

NICHOLAS A. DIMASCIO

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF WYOMING, et al.,)	
)	
Petitioners-Appellees)	
)	
v.)	Nos. 16-8068, 16-8069
)	
RYAN ZINKE, Secretary of the Interior, et al.,)	
)	
Respondents-Appellants.)	

DECLARATION OF RICHARD CARDINALE

1. My name is Richard T. Cardinale. I am over 21 years of age and am fully competent and duly authorized to make this declaration. The facts contained in this declaration are based on my personal knowledge, and are true and correct.

2. I have been employed by the U.S. Department of Interior (Department) for over 19 years, the last 10.5 years as chief of staff to the Assistant Secretary for Land and Minerals Management. I am presently Acting Assistant Secretary for Land and Minerals Management at Departmental headquarters (Udall Building) located at 1849 C St, N.W., Washington, DC 20240. As Acting Assistant Secretary, I oversee the policies and activities of the Bureau of Land Management and three other bureaus within the Department.

3. I am familiar with BLM's statutory authorities, its oil and gas operating regulations, and its processes and procedures. I am familiar with the final hydraulic fracturing rule, which was signed by the Assistant Secretary for Land and Minerals Management, and published on March 26, 2015. 80 Fed. Reg. 16128 (2015) [2015 Rule]. I am also familiar with the substantive issues

raised in the litigation concerning the 2015 Rule in the United States District Court for the District of Wyoming, and in this Court.

4. I also understand the current Administration's policies and priorities concerning the regulation of hydraulic fracturing on Federal and Indian lands. Pursuant to the President's January 30, 2017, Executive Order on *Reducing Regulation and Controlling Regulatory Costs*, the Department has been reviewing existing regulations to determine whether changes are appropriate to streamline the regulatory process and eliminate duplicative regulations. As part of that process, the Department is reviewing the 2015 Rule (and all guidance issued to implement that rule) for consistency with the policies and priorities of the new Administration. The initial review has revealed that the 2015 Rule does not reflect those policies and priorities.

5. Accordingly, the Department, through the BLM, is preparing a notice of proposed rulemaking for publication in the Federal Register to rescind the 2015 Rule. The Department intends to publish that notice as soon as it and any necessary supporting documents are completed, and to conduct the rulemaking expeditiously and in compliance with applicable law. The BLM expects to issue the notice within 90 days.

I submit this Declaration under penalty of perjury.



Richard T. Cardinale

Date: March 15, 2017

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing documents:

- (1) all required privacy redactions have been made;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Microsoft Forefront Client Security, and according to the program are free of viruses.

s/ Nicholas A. DiMascio
NICHOLAS A. DIMASCIO

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2017, I electronically filed the foregoing documents with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Nicholas A. DiMascio

NICHOLAS A. DIMASCIO