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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

CLOUD PEAK ENERGY INC.;
NATIONAL MINING ASSOCIATION;
and WYOMING MINING
ASSOCIATION, et al.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,

Respondents,

and

NATURAL RESOURCES DEFENSE
COUNCIL; NORTHERN PLAINS
RESOURCE COUNCIL; POWDER
RIVER BASIN RESOURCE COUNCIL;
THE WILDERNESS SOCIETY; and
WESTERN ORGANIZATION OF
RESOURCE COUNCILS,

Proposed Respondent-
Intervenors.

Consolidated Case No. 19-cv-120-SWS

**DECLARATION OF ROBERT
MCENANEY IN SUPPORT OF
MOTION TO INTERVENE BY
NATURAL RESOURCES
DEFENSE COUNCIL ET AL.**

I, Robert McEnaney, declare as follows:

1. I am Senior Director of the Dirty Energy Project at the Natural Resources Defense Council (NRDC). I have worked at NRDC for 14 years on a variety of energy and fossil fuel-related activities, including securing permanent federal protections for public lands and finding new ways of using public lands to transition away from fossil fuels and towards clean, renewable energy.

2. NRDC is a national, not-for-profit environmental and public-health group with more than three million members and online activists and a staff of over 600 lawyers, scientists, and other professionals. NRDC's mission is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. Consistent with this mission, NRDC works to enforce environmental laws, reduce air and water pollution, protect fish, wildlife, and their habitats, and conserve natural lands.

3. NRDC has members who live, work, and recreate on or near areas affected by the extraction of fossil fuels from federal leases. On behalf of these members, NRDC works to protect public lands from the harmful effects of coal mining and oil and gas exploration and drilling, including the harm to local air and water quality, public health, and ecosystems, and the negative climate impacts of extracting and burning these fossil fuels. On behalf of our members in states like Montana and Wyoming that are rich in federal fossil fuels, NRDC has fought to ensure that any mining and drilling on public lands is done responsibly and that a fair return is given to taxpayers for the use of these publicly-owned assets. However, previous regulations allowed industry to minimize the royalty payments owed on fossil fuels extracted from public lands, and failed to ensure that land, water, ecosystems, and recreational values are properly protected and maintained. Because of this,

NRDC has long fought for an overhaul of the federal coal leasing program, including the way in which federal assets such as coal are valued and proper royalties and fees are collected.

4. NRDC has spent years advocating for updated regulations governing the valuation of mineral resources extracted from public lands. NRDC commissioned the first audit of the federal coal leasing program in 30 years. The completed report by Tom Sanzillo, *The Great Giveaway*, led to investigations by the Interior Department Inspector General's office and Government Accountability Office. NRDC and its allies also held multiple meetings with Interior Department staff and members of Congress to call for proper royalty rate collection and a fair return to taxpayers. NRDC staff have also published numerous blogs and other communications on this topic to educate our members and the broader public about the need for updated valuation regulations. In 2015, NRDC submitted joint comments with several partnering organizations in support of ONRR's proposed valuation reform rule. In 2017, NRDC submitted joint comments opposing ONRR's proposal to repeal the valuation reform rule. And in 2018, NRDC, along with Northern Plains Resource Council, The Wilderness Society, and Western Organization of Resource Councils, successfully intervened in a lawsuit filed by California and New Mexico in the U.S. District Court for the Northern District of California to help challenge ONRR's decision to repeal the valuation rule.

5. ONRR's final valuation rule benefits NRDC and its members for many reasons. These include ensuring taxpayers get a fair return for publicly held assets and protecting our climate by creating a level playing field on which renewable energy and energy efficiency are not artificially disadvantaged by a royalty collection system that

effectively subsidizes the fossil fuel industry. Studies have shown that higher (effective) royalty rates enhance state and federal coffers while diminishing destructive fossil fuel extraction.¹ When industry is allowed to avoid paying proper royalties by selling to affiliate companies and claiming excessive deductions for things like transportation, it allows coal prices to decrease to the point where coal is more likely to be chosen as a power source by industry and electricity generating utilities. As the Headwaters report shows, appropriate royalty collection and enforcement policies—such as those established by ONRR’s final valuation rule—result in less land and ecosystem disruption, giving NRDC’s members and the general public access to safer, healthier living environments and more opportunity for recreation and tourism on undisturbed lands, among other benefits. Conversely, NRDC and its members will be harmed if the valuation rule is invalidated.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on July 24, 2019 in Washington, DC.



Robert McEnaney

¹ See, for example, Headwaters Econ., *The Impact of Federal Coal Royalty Reform on Prices, Production, and State Revenue* (2015), <https://headwaterseconomics.org/energy/coal/coal-royalty-reform-impacts/>.