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Natural Resources Defense Council et al.*

**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 SARA
KENDALL IN SUPPORT OF
MOTION TO INTERVENE BY
NATURAL RESOURCES
DEFENSE COUNCIL ET AL.**

I, Sara Kendall, declare as follows:

1. I am the Program Director for the Western Organization of Resource Councils (WORC), a nonprofit organization that works to advance the vision of a democratic, sustainable, and just society through community action. WORC is committed to building sustainable communities that balance economic growth with the health of people and stewardship of their land, water, and air resources. WORC has 18,532 members, many of whom live in states where significant coal, oil, and gas development occurs. WORC's members farm and ranch on lands overlying and neighboring federal, state, and privately owned coal, oil, and gas deposits, and experience numerous impacts due to coal mining, oil and gas exploration and development, and associated transport and processing. These impacts include damage to water resources used for both agricultural and residential uses, deterioration of air quality and associated health effects, destruction of recreational areas by increased truck traffic, mishandled and illegally dumped radioactive oilfield waste, and spills and leaks of oil and contaminated wastewater from pipelines and other sources. WORC and its member groups, which together form a federation, have a longstanding interest in federal leasing, mining and drilling, and royalty policy as it pertains to coal, oil, and gas deposits, and for over 35 years have actively engaged in advocacy in this area.

2. WORC's Montana-based member group, Northern Plains Resource Council (Northern Plains) is a statewide grassroots conservation and family agriculture group of over 3,000 members that organizes citizens to protect Montana's water quality, family farms and ranches, and unique quality of life. It was founded in 1972 by coalfield and oilfield farmers, ranchers, and other water users concerned about the impacts that fossil fuel development would have on their homes, businesses, and livelihoods. Northern Plains has worked on

coal, oil, and gas issues since that time, participating in dozens of permitting processes, as well as state and federal resource management plans and rules. Northern Plains also works on a variety of other mining and energy issues—from hardrock mining to clean energy and beyond—as well as on building, diversifying, and sustaining Montana’s agricultural economy. In addition to participating directly in fossil fuel leasing, permitting, and rulemaking processes, Northern Plains has sought to ensure that companies that develop minerals on state and federal lands pay their fair share in order to support the communities in which they operate. Northern Plains was a major player in the establishment of Montana’s coal severance tax and trust fund in 1975, and has continued to work on fair and appropriate taxation issues around coal, oil, gas, and other minerals since.

3. WORC’s Wyoming-based member group, the Powder River Basin Resource Council (Powder River), has a long history of involvement working for responsible coal leasing and mining in the Powder River Basin. Powder River was formed in 1973 by ranchers and concerned citizens of Wyoming to address the impacts of strip mining on rural people and communities. Today, Powder River works for the preservation and enrichment of the region’s unique land, mineral, water, and clean air resources, consistent with the responsible use of those resources to sustain the livelihood of present and future generations; and the education and empowerment of local citizens to raise a coherent voice in the decisions that will impact their environment and lifestyle. Powder River’s members live, raise families, ranch, work, and travel throughout the Powder River Basin near the various coal mines of the area.

4. I have been employed by WORC since 1994. In this position, I have worked to address the damaging impacts of coal mining and drilling for oil and gas on WORC’s

members, their communities, and on land, air, water and climate resources, and to ensure that our members, as taxpayers, receive a fair return when federal coal, oil, and gas resources are leased and mined.

5. The Office of Natural Resource Revenue's (ONRR) final rule governing coal, oil, and gas royalty valuation represents a significant improvement over the agency's previous valuation regulations, particularly with regard to non-arm's-length transactions. It is important that the mechanisms in place to assess royalties on the public's coal, oil, and gas truly reflect those resources' full value.

6. WORC, Northern Plains, Powder River, and their members worked for several years to persuade ONRR to update its valuation regulations as part of a broader effort to reform the federal coal, oil, and gas leasing programs. Hundreds of members submitted comments in support of ONRR's proposed valuation rule during the 2015 public comment period. The organizations also submitted written comments on the proposed rule on May 8, 2015. On numerous separate occasions in 2014, 2015, and 2016, I represented WORC and its member groups in meetings with administration and Congressional officials in which I advocated for stronger valuation regulations. On several of these occasions, numerous of our members and staff from Colorado, Montana, and Wyoming traveled to Washington, DC to participate in the meetings. The organizations and their members have also emphasized the importance of the valuation rule in other forums, such as the Bureau of Land Management's federal coal program listening sessions in 2015, and in letters to the editor, blogs, and other forms of public engagement and media outreach.

7. WORC, Northern Plains, and Powder River have defended ONRR's new valuation rule subsequent to its adoption. Along with The Wilderness Society, they

intervened in the legal challenge to the rule filed by coal companies and trade associations in this Court in 2016. Hundreds of WORC members submitted comments in opposition to ONRR's proposed repeal of the valuation rule during the 2017 public comment period. The organizations also submitted comments on May 4, 2017 opposing the repeal. On March 28, 2018, after ONRR finalized the repeal, WORC and Northern Plains, along with The Wilderness Society and the Natural Resources Defense Council, intervened in the legal challenge to the repeal filed by California and New Mexico in the U.S. District Court for the Northern District of California.

8. The updated valuation rule better protects the interests of these organizations and their members. Because royalties from federal coal, oil, and gas production is the largest non-tax source of revenue, all taxpayers have an interest in ensuring that royalties are appropriately valued. Further, many of the organizations' members live in states where significant fossil fuel development occurs. They not only have an economic interest in ONRR's valuation rule as federal taxpayers, but also as taxpayers of states that receive half of the royalties paid on federal minerals produced in those states. Federal mineral royalty payments to states are variously allocated among, for example, public education, highways and roads, and other public works and infrastructure projects. Members living near fossil fuel development sites particularly depend on these funds, as fossil fuel projects often strain local infrastructure and create needs for significant new public investment in roads, policing, and more. If the valuation rule were to be invalidated, these benefits to members would be lost.

9. Further, WORC, Northern Plains, Powder River, and their members have long held that payment of an appropriate royalty is a standard cost of doing business, and

failure to assess appropriate royalties on federally owned coal, oil, and gas is a subsidy to fossil fuel companies at the expense of state and federal taxpayers, renewable energy producers, and the owners of private and state minerals and the companies that lease and produce those minerals.

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

Executed on July 23, 2019 in Washington, DC.



Sara Kendall