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*Attorney for Proposed Intervenor – Defendant
State of North Dakota*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WESTERN ORGANIZATION OF)
RESOURCE COUNCILS and)
FRIENDS OF THE EARTH,)

Plaintiffs,)

v.)

SALLY JEWELL, in her capacity as)
Secretary of the Interior,)
DEPARTMENT OF THE INTERIOR,)
NEIL KORNZE, in his capacity as)
Director, Bureau of Land Management,)
BUREAU OF LAND MANAGEMENT,)

Defendants,)

Case No. 1:14-cv-01993-RBW

DECLARATION OF JAMES R. DEUTSCH

I, James R. Deutsch, state and declare as follows:

1. My name is James R. Deutsch. 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 am employed by the North Dakota Public Service Commission ("NDPSC") as the Director of the Reclamation Division. I have been employed by the NDPSC since 1974, and have continuously served as the Director of the Reclamation Division since January 1997.

3. The Reclamation Division is a State agency that administers North Dakota's surface coal mining and reclamation program, (the "ND Program"), approved by the U.S. Department of the Interior pursuant to the federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. §§ 1201, et seq. The Reclamation Division evaluates surface mining permit applications, permit revisions and renewal applications, makes recommendations to the NDPSC Commissioners regarding permit issuance, and carries out inspections of surface coal mines to ensure compliance with the ND Program's requirements.

4. Since 1980, North Dakota's regulatory program has been a partnership effort between the State and the United States Office of Surface Mining Reclamation and Enforcement. On December 15, 1980, the Secretary of the Interior approved North Dakota's Program, granting North Dakota primacy to

enforce SMCRA on North Dakota's non-federal and non-tribal lands. *See* 45 Fed. Reg. 82,214 (Dec. 15,1980); see also 30 C.F.R. § 934.10. The ND Program is set forth in statute at N.D. Cent. Code ch. 38-14.1-01. As authorized in N.D. Cent. Code § 38-14.1-03(11), the NDPSC may promulgate regulations as necessary to carry out the provisions of the ND Program and SMCRA. Those regulations promulgated by the NDPSC pursuant to N.D. Cent. Code § 38-14.1-03(11) are set forth at N.D. Admin. Code art. 69-05.2.

5. In my current position, I am familiar with the above-captioned litigation brought by Western Organization of Resource Councils and Friends of the Earth (collectively, “Plaintiffs”), where Plaintiffs argue that all federal coal leasing must cease until the Department of Interior and Bureau of Land Management supplement a 1979 programmatic evaluation of federal coal management with an analysis of alleged climate change impacts related to coal leasing.

6. North Dakota is the 9th largest coal producer in the United States, with an annual average production of approximately 27.5 million tons.

7. Most of the coal produced in North Dakota is sold to electric utility customers for use at electrical generation facilities and a synfuels plant located adjacent to or very close to the coal mines. No coal is sold in the open market and transported out of the State of North Dakota.

8. All of the federal coal in North Dakota that is being mined or that is included within the life-of-mine plans of the existing mines underlies surface that is State or privately-owned and not owned by the federal government.

9. Federal coal tracts in North Dakota are typically scattered and interspersed among tracts where the coal is either privately-owned or owned by the State of North Dakota. Federal coal tracts account for less than 15% of the total tracts located within mining permits. The vast majority of the coal tracts in North Dakota are privately-owned.

10. Mining companies typically lease all the private and State coal tracts within the mine prior to submitting a mining permit application to the NDPSC. As a result of the due diligence and continued operations requirements related to the leasing and mining of federal coal tracts, applications to lease the federal coal are filed several years before actual mining operations approach the federal coal tracts. All of the surface tracts within mining permits, including the surface overlying the federal coal, are also leased which allows the mining company to use the surface over the unleased federal coal for mine haul roads, soil stockpiles, sedimentation ponds and other associated disturbances.

11. Detailed mining and reclamation plans must be included in the mining permit application before the NDPSC will issue a permit to begin mining

operations. When a mining company obtains a federal coal lease after the mining permit is issued, the mining company has to revise its permit to add detailed plans for mining the federal coal which requires updates to many sections of the permit. Such a revision is considered a significant permit revision that requires providing public notices and additional work for the NDPSC.

12. If a mining company cannot obtain a lease for a federal coal tract in a timely manner, the mining company must mine around and bypass the federal coal tract. Surface disturbances will be conducted over the unleased federal coal tracts in order to maximize the recovery of coal on adjoining tracts where the coal is privately-owned or held by the State of North Dakota.

13. When a federal coal tract is bypassed in such a manner, the federal coal will most likely be lost and never mined in the future as it would not be economically feasible to go back and mine the coal from a single small tract. As a result, the federal government and State of North Dakota will not receive royalty payments or tax revenues for the lost coal.

14. Mining around unleased federal coal tracts also results in operational and economic inefficiencies in mining and reclamation activities and causes additional surface land areas to be disturbed by mining activities as the bypassed

federal coal tracts must be replaced with additional privately-owned or State coal tracts.

15. The federal regulations governing the leasing of federal coal recognized the potential bypass of federal coal if federal leases are not issued in a timely manner. 43 CFR Section 3425.1-4 was promulgated in 1979 and contains emergency leasing regulations that state in part “(ii) if the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future.”

16. Timely issuance of federal coal leases by the Bureau of Land Management also results in more efficient review of mining permit applications by the NDPSC. For example, if interspersed tracts of federal coal are leased when the surrounding lands are permitted, the permit will contain detailed mining and reclamation plans for the federal tracts as well as the non-federal tracts. On the other hand, if federal coal tracts are not leased until later, the initial permit must exclude mining and reclamation plans for the federal coal and a significant permit revision filed at a later date must be reviewed and processed to modify the detailed mining and reclamation plans to include plans for the federal coal tracts.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

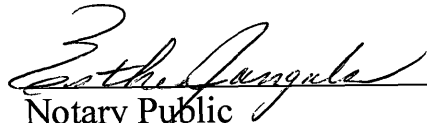
Executed on February 9, 2015.



James R. Deutsch

The foregoing Affidavit of James R. Deutsch was subscribed and sworn before me by James R. Deutsch on February 9, 2015.

Witness my hand and official seal.



Notary Public

My commission expires:

