

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. )

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-Appellees,* )

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

*Intervenors-Appellees.* )

**No. 15-5294**

**JOINT PROPOSED BRIEFING FORMAT AND SCHEDULE**

Pursuant to the Court’s order of February 18, 2016, (ECF No. 1599403) directing the parties to submit briefing format proposals, the undersigned parties have conferred and agreed upon the proposed briefing format and schedule set forth in paragraph 6 below. In support of the joint proposal, the parties offer the following:

## **Background**

1. Plaintiffs-appellants seek review of the District Court's August 27, 2015 Memorandum Opinion and August 27, 2015 Order granting Federal Defendant[s'] Corrected Motion to Dismiss, denying as moot the State of Wyoming's Motion to Dismiss, denying as moot the State of North Dakota's Motion to Dismiss, denying as moot the Wyoming Mining Association's Motion to Dismiss, dismissing the complaint, and ordering that the case be closed.

2. The State of North Dakota, the State of Wyoming, and the Wyoming Mining Association intervened in the case below and have appeared as intervenors in this appeal in support of Appellees.

## **Proposed Briefing Format and Schedule**

3. The table below describes the word limits and schedule agreed to by all the parties in this matter. The proposed word limits are consistent with the limits set forth in Federal Rule of Appellate Procedure 32 and D.C. Circuit Rule 32, which provide for 14,000 words each for the appellant's and appellee's principal briefs, half that amount for the reply brief, and 8,750 words for an intervenor's brief. In response to the Court's February 18 order, the intervenors have agreed to submit one joint brief not to exceed 8,750 words. The defendant parties further propose to reduce the risk of excessive or duplicative briefing by staggering their briefing, so that later filers can avoid redundancy. The parties request that each principal brief be allotted the standard 14,000-word limit.

4. The Federal Defendants seek to file a separate brief from the Defendant-Intervenors because joint briefing is not feasible. In this case, Plaintiffs asked the district court to enjoin federal coal leasing until the Department of the Interior prepares a supplement to an environmental impact statement issued in 1979. The United States Attorney General is charged by statute with responsibility for conducting litigation on behalf of the United States. The Federal Defendants' brief must be approved by the Assistant Attorney General for the Environment and Natural Resources Division, a process that involves substantial coordination and review time within the Department of Justice and with the Department of the Interior. Draft briefs generally may not be shared with other litigants until the brief has been approved by the Assistant Attorney General, which is usually the day of filing.

5. This Court's rules and handbook of practice recognize the unique situation of governmental entities when it comes to joining other litigants in briefs as an intervenor or *amicus curiae*. See D.C. Cir. R. 28(d)(4) (requirement that intervenors on the same side join in a single brief to the extent practicable "does not apply to a governmental entity," including "the United States or an officer or agency thereof"); Handbook of Practice and Internal Procedures of the United States Court of Appeals for the District of Columbia, Part IX.A.4 ("When a governmental entity is an *amicus curiae* or an intervenor, it is not required to file a joint brief with other *amici* or intervenors"). The policies underlying those rules allowing governmental entities to

file separate briefs apply with even greater force where, as here, the United States is the defendant.

6. Thus, the parties respectfully request that the Court establish the following briefing schedule and format:

Document	Due Date	Word Limits
Appellants' Opening Brief	40 days after the Court's order establishing a briefing schedule	14,000 words total
Appellees' Brief	52 days after Appellants' Opening Brief is filed	14,000 words total
Joint Brief of Appellee-Intervenors	28 days after Appellees' Brief is filed	8,750 words total
Appellants' Reply Brief	14 days after Joint Brief of Appellee-Intervenors' brief is filed	7,000 words total
Deferred Joint Appendix	7 days after Reply Brief is filed	N/A
Final Briefs	7 days after Joint Appendix is filed	N/A

Dated: March 17, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Joint Proposed Briefing Format and Schedule have been served through the Court's CM/ECF system on all registered counsel this 17th day of March, 2016.

/s/ John Bernetich  
Counsel for Appellants