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State of North Dakota*

**UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

SIERRA CLUB, et. al;

Plaintiffs,

CALIFORNIA, et. al.;

Plaintiffs,

v.

U.S. BUREAU OF LAND MANAGEMENT,
et al.,

Defendants.

Case No. 3:17-cv-03804-EDL

Consolidated with 3:17-cv-03885-EDL

**PROPOSED-INTERVENOR THE STATE
OF NORTH DAKOTA'S OPPOSITION
TO PLAINTIFFS' MOTIONS FOR
SUMMARY JUDGMENT**

Date: September 25, 2017
Time: 10:00 a.m.

Courtroom E, 15th Floor
450 Golden Gate Ave., San Francisco, CA

[The Hon. Magistrate Judge Elizabeth D.
Laporte]

Trial Date: None Set

1 Prospective Intervenor-Defendant the State of North Dakota (“North Dakota”)
2 respectfully joins and supports Defendant’s Opposition to Plaintiffs’ Motions for Summary
3 Judgment. North Dakota has stipulated that it will not delay the briefing schedule if it is granted
4 intervention, and thus it will not have the opportunity to file a detailed response to the Motion for
5 Summary Judgment if and when its Motion to Intervene is granted.

6 However, North Dakota agrees with the U.S. Bureau of Land Management (“BLM”) that
7 the Motion for Summary Judgment is premature, since it has been filed before the Defendant has
8 a filed a responsive pleading and without the benefit of an administrative record but raises
9 important factual questions that should be addressed on a full record. If Plaintiffs seek
10 preliminary relief, they should do so through a motion for preliminary injunction in accordance
11 with Federal Rule of Civil Procedure 65.

12 Following the appropriate procedure laid out in the Federal Rules would also provide
13 time for the court to consider the pending motions to intervene and for North Dakota and other
14 proposed-intervenors to participate in briefing on the Motion for Summary Judgment.

15 In addition, North Dakota agrees that BLM that it acted within its authority under Section
16 705 of the Administrative Procedure Act to postpone future compliance dates for the “Waste
17 Prevention, Production Subject to Royalties, and Resource Conservation: Final Rule” (81 Fed.
18 Reg. 83,008 (Nov. 18, 2016) (“Flaring Rule”)) that are not scheduled to go into effect until
19 January 2018, while leaving unaffected all provisions of the Rule currently in effect. 82 Fed.
20 Reg. 27430 (June 15, 2017).

21 Respectfully submitted this 25th day of August, 2017.

22
23 /s/ Paul Seby
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