

Bryan Hurlbutt (ISB # 8501)
Laurence (“Laird”) J. Lucas (ISB # 4733)
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)
bhurlbutt@advocateswest.org
llucas@advocateswest.org

Roger Flynn (*pro hac vice*) (Colo. Bar # 21078)
WESTERN MINING ACTION PROJECT
P.O. Box 349
Lyons, CO 80540
(303) 823-5738
(303) 823-5732 (fax)
wmap@igc.org

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IDAHO CONSERVATION LEAGUE and)	No. 1:18-cv-504-BLW
GREATER YELLOWSTONE COALITION,)	
)	
<i>Plaintiffs,</i>)	ICL’s RULE 59 MOTION
)	TO ALTER OR AMEND
v.)	JUDGMENT
)	
U.S. FOREST SERVICE,)	
)	
<i>Defendant,</i>)	
)	
and)	
)	
OTIS CAPITAL USA CORP.)	
)	
<u><i>Defendant-Intervenor.</i></u>)	

Plaintiffs Idaho Conservation League and Greater Yellowstone Coalition (ICL) move, pursuant to Fed. R. Civ. P. 59(e), to alter or amend the Judgment entered on January 16, 2020, ECF No. 48. Specifically, ICL respectfully moves that the Court alter or amend the Judgment to

vacate the August 20, 2018 Decision Notice and Finding of No Significant Impact (DN/FONSI), and the Environmental Assessment (EA), issued by Defendant U.S. Forest Service approving the Kilgore Project.

On December 18, 2019, this Court issued its Memorandum Decision and Order, granting ICL's motion for summary judgment in part and ruling that the DN/FONSI and EA "violate NEPA, NFMA and the Organic Act for failing to adequately consider two issues: (1) the groundwater of Dog Bone Ridge, and (2) how that groundwater from Dog Bone Ridge will impact the Yellowstone cutthroat trout in Corral Creek." ECF No. 47, p. 22. The Decision and Order remanded the action to the Forest Service to take a hard look at these two issues. *Id.* at 23. Likewise, the Court's final Judgment directed that the "case be remanded to the Forest Service as set forth in the Memorandum Decision and Order." ECF No. 48.

For reasons explained in the accompanying brief, ICL respectfully requests that the Court alter or amend the Judgment to vacate the DN/FONSI and EA, as required by the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), and/or clarify that no exploration activities can proceed under the unlawful DN/FONSI and EA.

This motion is supported by the accompanying brief and Second Declaration of Joshua Johnson and by the record before the Court. ICL conferred with counsel for Defendant Forest Service and Defendant-Intervenor Otis Gold, and both parties oppose this motion.

Dated this 24th day of January, 2020.

Respectfully submitted,

/s/ Bryan Hurlbutt
Bryan Hurlbutt (ISB # 8501)
Laurence ("Laird") J. Lucas (ISB # 4733)
ADVOCATES FOR THE WEST

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 24, 2020, I filed the foregoing ICL's RULE 59 MOTION TO ALTER OR AMEND JUDGMENT and the accompanying ICL's BRIEF IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT and SECOND DECLARATION OF JOSHUA JOHNSON electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Shaun M. Pettigrew
shaun.pettigrew@usdoj.gov

Erika Eaton Malmen
emalmen@perkinscoie.com

Robert A. Maynard
rmaynard@perkinscoie.com

/s/ Bryan Hurlbutt
Bryan Hurlbutt