

Nos. 14-9512 and 14-9514 (Consolidated)

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

STATE OF WYOMING, and WYOMING FARM BUREAU FEDERATION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents,

**NORTHERN ARAPAHO TRIBE; EASTERN SHOSHONE TRIBE; CITY OF
RIVERTON, WYOMING; FREMONT COUNTY, WYOMING,**

Intervenors.

**EPA’S UNOPPOSED MOTION FOR A FORTY-FIVE-DAY EXTENSION OF
THE DEADLINE FOR FILING ANY PETITION FOR REHEARING**

Respondents United States Environmental Protection Agency (“EPA”), Scott Pruitt, EPA Administrator, and Debra H. Thomas, Acting Regional Administrator of EPA Region 8 (collectively “EPA”), respectfully request a 45-day extension of the deadline for filing any petition for rehearing, including rehearing en banc, of the Court’s February 22, 2017, Opinion and Judgment in these consolidated cases. This motion is unopposed. The reasons for this motion are as follows:

1. These consolidated cases challenge EPA’s decision to treat the Northern Arapaho Tribe and the Eastern Shoshone Tribe of the Wind River Reservation in a similar manner as a state (“TAS”) for certain non-regulatory provisions of the Clean Air

Act. EPA's TAS decision includes a determination that the Wind River Reservation boundary was not diminished by a 1905 Act of Congress.

2. On February 22, 2017, the Court issued its Opinion and Judgment in these cases. The panel majority, Chief Judge Tymkovich and Circuit Judge Kelly, found that Congress diminished the boundaries of the Wind River Reservation in the 1905 Act. Slip op. at 3-39 (panel majority opinion). Judge Lucero wrote a separate dissenting opinion in which he would have upheld EPA's Reservation boundary determination and hold that the 1905 Act did not diminish the Reservation boundaries. Slip op. at 1-14 (Lucero, J., dissenting). The Court's Opinion and Judgment vacates EPA's boundary determination and remands the matter to EPA for further proceedings consistent with the Court's Opinion.

3. The current deadline for filing any petition for rehearing, including rehearing en banc, is Monday, April 10, 2017, because the 45th day falls on Saturday, April 8, 2017. *See* Fed. R. App. P. 26(a)(1)(C), 35(c), 40(a)(1)(B). If this motion is granted, the new deadline would be Thursday, May 25, 2017.

4. The United States is currently considering whether to seek rehearing in these cases. The requested extension is necessary in order to allow the Solicitor General of the United States, in coordination with other branches of the Department of Justice, EPA, and the Department of the Interior, to complete consideration of whether to file such a petition. The requested extension will ensure that a fully considered and coordinated determination can be made as to whether the United States will seek rehearing. The additional time is especially necessary here due to the change in

Administrations. Additional time will also assist in the preparation of such a petition in the event the United States elects to seek rehearing.

5. Counsel for EPA has coordinated with counsel for all Petitioners and Intervenors in these consolidated cases and is authorized to state that this motion is unopposed.

For all these reasons, the Court should extend the deadline for filing any petition for rehearing in these cases for 45 days to and including May 25, 2017.

Respectfully submitted,

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Date: March 13, 2017

CERTIFICATION OF DIGITAL SUBMISSION

In accordance with the Court's CM/ECF User's Manual and Local Rules it is hereby certified that: (1) no privacy redactions were required for this document, (2) the electronic version of this document is an exact copy of the written document to be filed with the Clerk if such filing is required, (3) the digital copy of this document has been scanned for viruses with the most recent version of Microsoft Forefront Client Security, which was last updated on March 10, 2017, and, according to the program, is free of viruses.

/s/ David A. Carson

CERTIFICATE OF SERVICE

It is hereby certified that on March 13, 2017, the undersigned caused this document to be served by filing it through the Court's ECF system. Any counsel not registered with the Court's ECF system will be served by United States mail.

/s/ David A. Carson