

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

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

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**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.**

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

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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 an additional 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. EPA previously sought and was granted an initial 45-day extension of this deadline. 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. EPA previously sought and was granted a 45-day extension of time to file any petition for rehearing, including rehearing en banc. Order (Mar. 16, 2017) (ECF Doc. 01019780548). Under the Court's March 16, 2017, Order, the current deadline for filing any petition for rehearing, including rehearing en banc, is May 25, 2017. *Id.* If this motion is granted, the new deadline would be Monday, July 10, 2017.

4. The United States is currently considering whether to seek rehearing in these cases and its internal deliberations are taking longer than we originally anticipated when we requested the first 45-day extension. In particular, due to the change in

administrations, it took longer than we had originally anticipated to obtain the necessary formal recommendations from the relevant agencies. Thus, the United States is not as far along in its deliberations at this point in time as it initially anticipated it would be when we filed the first extension request. Therefore, as with our first extension request, 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 a petition for rehearing. The requested extension will ensure that a fully considered and coordinated determination can be made as to whether the United States will seek rehearing. 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. No party opposes this motion. The Wyoming Farm Bureau Federation has authorized EPA to state that the Federation consents to the extension of time but submits that no further extensions should be granted.

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 July 10, 2017.

Respectfully submitted,

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Date: May 1, 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 May 1, 2017, and, according to the program, is free of viruses.

*/s/ David A. Carson*

**CERTIFICATE OF SERVICE**

It is hereby certified that on May 1, 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