

In this case, Plaintiffs, Montana Environmental Information Center (“MEIC”) and WildEarth Guardians (“WEG”), have no members that are actually injured by extending the life of the already existing Rosebud Mine. Plaintiffs’ members do not live or work near Colstrip, Montana. Rather, each Plaintiff has attempted to manufacture standing by dispatching a member who lives hundreds of miles away to “recreate” on undefined sections of public lands allegedly near the Mine, or to view the Rosebud Power Plant. Courts have rejected similar attempts to manufacture standing by groups with members in far flung places who intentionally visit an area solely for the purpose of challenging local decisions. This Court should do the same.

Here, Judge Cavan did not reach the factual question as to whether standing was intentionally manufactured. Instead, he accepted Plaintiffs’ assertion that facts do not matter in a “facial” challenge and deferred the standing question to the summary judgment phase. Yet, allegations proffered by Plaintiffs and rebutted by Westmoreland in the briefing make it abundantly clear that the Court is faced with a factual standing challenge.

Because the Court must assure itself of its jurisdiction, and because resolution of the factual dispute is essential to the jurisdictional decision, this Court should dismiss this case for lack of jurisdiction, or either (1) instruct Judge Cavan to provide for discovery and address the factual standing dispute, or (2) mandate

discovery on standing issues in the case management plan and instruct the parties to brief standing at summary judgment.¹ Given the importance of the dispositive jurisdictional question before the Court, Westmoreland Rosebud Mining LLC (“Westmoreland”) requests oral argument on this objection to Judge Cavan’s recommendations.

PROCEDURAL BACKGROUND

On February 11, 2020, Westmoreland moved to dismiss this case for lack of subject matter jurisdiction because Plaintiffs’ complaint failed to make sufficient allegations of particularized injury in support of standing (Doc. 32). After Plaintiffs submitted responsive declarations asserting additional facts outside the complaint, Westmoreland challenged those factual allegations in its reply brief (Doc. 46) and also sought limited discovery to test the veracity of Plaintiffs’ factual claims (Doc. 47).

On July 29, 2020, U.S. Magistrate Judge Timothy J. Cavan recommended that Westmoreland’s motion to dismiss be granted in part and denied in part. First, Judge Cavan found that Westmoreland’s motion to dismiss was limited to a facial

¹ Westmoreland’s briefs in support of its motion to dismiss and motion for leave to conduct limited discovery (Docs. 33, 46, 48, 50) are hereby incorporated by reference.

challenge of the standing allegations in Plaintiffs' complaint.² Thus, Judge Cavan did not consider the responsive standing declarations submitted by Plaintiffs and did not consider at all Westmoreland's arguments calling into question the factual bases for those declarations. Second, based solely on allegations in the Third Amended Complaint, Judge Cavan found that two of the five Plaintiffs (MEIC and WEG) had alleged sufficient injury to establish standing, but recommended dismissal of the other three Plaintiffs (Sierra Club, 350 Montana, and Indian People's Action) for failure to allege sufficient injury in fact. Finally, Judge Cavan recommended that Westmoreland's motion to conduct discovery be denied.

Without considering the bases for Westmoreland's request, he found as a threshold matter that "[i]n light of the fact that Westmoreland's motion is [a] facial attack on standing, and no additional factual issues have been raised or considered, the Court finds jurisdictional discovery is not necessary." Doc. 59, 10.

ARGUMENT

I. WESTMORELAND'S CHALLENGE TO STANDING RAISES FACTUAL ISSUES.

What started as a facial challenge to the complaint in the motion to dismiss was converted to a factual challenge when (1) Plaintiffs went beyond the pleadings to submit declarations in support of standing, and (2) Westmoreland submitted

² By the time Judge Cavan issued his recommendations, Plaintiffs had filed a Third-Amended Complaint (Doc. 55).

declarations, deposition testimony, and other evidence challenging the veracity of the standing declarations. As the Ninth Circuit explained, “In a facial attack, the challenger asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction,” which is precisely what was at issue in the *original* motion to dismiss. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Id.* And that is exactly what Westmoreland did in its reply when it submitted declarations, deposition testimony from other proceedings, and other evidence calling into question the factual claims in Plaintiffs’ standing declarations. Thus, to the extent Westmoreland’s motion began as a facial challenge, it ended as a substantive one that turns on critical issues of fact underlying the Plaintiffs’ injury allegations.

If the defective declarations are not sufficient to dismiss this case as to MEIC and WEG, this Court should decline Plaintiffs’ invitation simply to skip past this factual dispute. Rather, Defendants should be permitted to conduct discovery and the Court should resolve the factual questions necessary to determine Article III standing.

II. DECLARATIONS OFFERED BY MEIC AND WEG SEEK TO MANUFACTURE STANDING RATHER THAN DEMONSTRATE ARTICLE III INJURY.

The factual questions in this case are not theoretical; rather, both WEG's and MEIC's declarations implicate serious factual issues. WEG's standing declarant has submitted multiple declarations on behalf of WEG that, at the very least, suggest that WEG has charged him with seeking out pollution in order to support standing. MEIC's witness proffers a "drive-by" injury that even includes a trip with counsel in a transparent effort to manufacture an injury that might support standing.

A. Mr. Nichols' Search for Injury Cannot Support WEG's Standing.

WEG's member and employee, Jeremy Nichols, is a serial standing declarant. Since 2011, Jeremy Nichols has filed at least 31 standing declarations in federal cases across the Rocky Mountain West claiming that he visits oil and gas fields, coal mines, and pipelines in support of WEG's standing. *See* Exhibit A (a non-exhaustive list of Nichol's standing declarations in federal cases across the West). In every case, he alleges that he recreates regularly near the offending project (generally coal mines, oil and gas development, or pipelines), often annually, *and intends to return repeatedly*.

This pattern is strong evidence that Mr. Nichols' travel is not simply to enjoy the aesthetics of a coal mine or oil field. Rather, it demonstrates that the

organization has charged Mr. Nichols with traveling to industrial sites to seek out “pollution” in order to establish standing for a litigious organization.³

This case follows that pattern. Here, Mr. Nichols traveled 530 miles from his home in Golden, Colorado claiming he made the trip to recreate in the Colstrip area, which visit was timed to coincide with a WEG petition to the Office of Surface Mining to shut down mining at the Rosebud Mine. (Doc. 46, at 9). Curiously, in half a dozen other declarations filed in the District of Montana over the past several years, some of which detail lengthy sojourns throughout the state, Mr. Nichols never once mentions recreating near Colstrip (Doc 46, at 8-9), although he now claims that he has done so regularly since 2011.

³ One of Mr. Nichols’ serial standing declarations prompted the following exchange:

The Court: He’s kind of an unusual fellow isn’t he? Most of us don’t do all our recreation at coal mines.

Counsel: Jeremy Nichols does do recreation around coal mines, and OSM submitted some of Mr. Nichols’ declarations from previous mining cases, so there’s evidence in the record that Mr. Nichols regularly recreates on public lands around coal mines.

The Court: Too bad his wife isn’t here. I’d ask her if she maybe would like to go to Hawaii, just once.

Tr. of Hearing, *WildEarth Guardians v. OSMRE*, Civ. No. 13-cv-00518-RBJ, at 19 (D. Colo. Apr. 24, 2015) (Doc. 50-3, at 4). While the court ultimately determined Nichols’ declaration reflected sufficient interest for standing, that determination was made without the benefit of factual development through discovery given that no party challenged Nichols’ use of the area in the years prior to the challenged decision. *See WildEarth Guardians v. OSM*, 104 F. Supp. 3d 1208, 1220-21 (D. Colo. 2015), *vacated as moot*, 652 Fed. Appx. 717 (D. Colo. 2016).

In any event, Westmoreland questions whether Mr. Nichols' decision to visit the Colstrip area was prompted more by his desire to establish WEG's standing than to vacation in the Colstrip area. Thus, the veracity of Mr. Nichols' claim that he "recreates" near the Rosebud Mine is very much at issue in this litigation. Westmoreland believes that discovery would demonstrate Mr. Nichols' travel has been at WEG's behest, and possibly at WEG's expense, in order to manufacture standing. Indeed, Mr. Nichols appears to be a professional standing declarant whose job includes travel to the many places where his employer intends to bring suit. This perversion of the standing requirements undermines its very purpose to identify real people with concrete and particularize injuries. *Ctr. For Biological Diversity v. U.S. Env'tl. Prot. Agency*, 937 F.3d 533, 540 (5th Cir. 2019) ("[S]omeone who goes looking for pollution cannot claim an aesthetic injury in fact from seeing it.").

B. Mr. Gilbert's Contradictory Efforts to Manufacture MEIC's Standing

Westmoreland has, at the least, raised factual questions regarding MEIC's declarant Mr. Gilbert's activity and intentions in visiting the area of the Mine (Doc. 46, 4-6). As Westmoreland explained in its briefing before Judge Cavan, Mr. Gilbert's declaration is inconsistent with prior declarations and deposition testimony given in the state proceedings challenging the Mine.

Mr. Gilbert lives 360 miles from the Rosebud Mine in Helena, Montana. (Doc. 46, 4). Mr. Gilbert admits visiting lands in the vicinity of Area F for the express purpose of manufacturing standing for MEIC, and MEIC counsel⁴ chaperoned Mr. Gilbert's most recent "drive through" of Area F in September 2019 when he traveled to the Rosebud Mine. (Doc. 46, 5-6). Tellingly, Mr. Gilbert's purported use and enjoyment of lands in the vicinity of the Rosebud Mine has closely followed the expansion of the Rosebud Mine, and, for the first time, Mr. Gilbert attests to having longstanding interests in lands near Area F, an assertion inconsistent with prior declarations and deposition testimony. (Doc. 48, 9-11). Mr. Gilbert's newfound aesthetic and recreational interests are inconsistent and irreconcilable with prior sworn statement and discovery responses, and many factual questions remain regarding Mr. Gilbert's past and future use of lands in the vicinity of Area F, and whether such use (to the extent any use exists) will be affected by Area F. (Doc. 48, 4-11).

Whether his standing is based on drive-by injury to his aesthetic sensibilities or walks to enjoy the Colstrip scenery, Mr. Gilbert's testimony strongly suggests that his 360-mile journeys to Colstrip are prompted by a desire to manufacture standing for the Helena organization. Thus, at the very least, his testimony raises

⁴ The participants included outside counsel, MEIC's in-house counsel, MEIC's executive director, and Mr. Gilbert. (Doc. 46, 6).

the question as to whether he traveled to the mine “looking for pollution” and whether he can now “claim an aesthetic injury in fact from seeing it.” *Ctr. For Biological Diversity v. U.S. Env'tl. Prot. Agency*, 937 F.3d at 540.

III. IF THE COURT CANNOT DISMISS MEIC AND WEG, WESTMORELAND IS ENTITLED TO JURISDICTIONAL DISCOVERY.

A. The Proffered Declarations are Sufficient to Support Dismissal of the MEIC and WEG Actions.

Here, submissions from Plaintiffs demonstrate that any injury is self-inflicted. Messrs. Nichols and Gilbert have traveled from Golden, Colorado and from Helena in what very apparently is an attempt to suffer an injury that might be cognizable for Article III standing. For Mr. Nichols, his declaration is consistent with his pattern of efforts to claim an aesthetic injury occasioned by his trips to sites of industrial development. Similarly, Mr. Gilbert’s contradictory claims arising from trips to the Colstrip area, including his most recent trip in the company of counsel, demonstrate that Plaintiffs do not have legitimate standing; rather, the claimed aesthetic injury from viewing a coal mine is self-inflicted.

Courts have rejected comparable standing claims without the necessity of further fact-finding. *E.g.*, *Ctr. for Biodiversity v. U.S. Env'tl. Prot. Agency*, 937 F.3d 533, 540-41 (5th Cir. 2019). In *New England Anti-Vivisection Soc’y v. U.S. Fish & Wildlife Serv.*, 208 F. Supp. 3d 142, 175 (D.D.C. 2016), the Court held that any aesthetic injury is self-inflicted if the person’s “presence at the place that he

says will injure him aesthetically is not compelled (e.g., someone who does not live or work in the vicinity, nor has any history of traveling there, and is not otherwise required to be there).” Similarly, where a plaintiff visits an area “to obtain evidence to support” environmental litigation, “[a]ny aesthetic injury experienced as a result of these visits is therefore simply a byproduct of [the] lawsuit and cannot satisfy even the minimal showing of injury-in-fact needed to meet the standing requirement.” *Mancuso v. Consol. Edison Co. of N.Y.*, 25 F. App’x 12, 13 (2d Cir. 2002); *see also Ohio Valley Env’tl. Coal. V. Maple Coal Co.*, 808 F.Supp.2d 868, 880 (S.D. W.Va. 2011) (same). Accordingly, the Court is well-within its authority to dismiss both MEIC and WEG’s cases.

B. Alternatively, The Court Should Permit Jurisdictional Discovery and Require Resolution of the Factual Issues Necessary for a Jurisdictional Determination.

In this fact-based challenge to subject matter jurisdiction, Westmoreland has already disputed the bases for standing in its reply and request for discovery. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). Whether now or later, the Court will have to consider these important factual questions. Thus, Westmoreland requests that the Court remand to Judge Cavan to allow discovery and to resolve the factual issues raised by the parties.

If the Court cannot reject Plaintiffs’ challenge based upon the defective and inconsistent declarations, Westmoreland submits that factual questions regarding

Plaintiffs' standing allegations⁵ necessitate jurisdictional discovery through written interrogatories and depositions of Plaintiffs' standing declarants. To be at all effective, discovery must occur prior to the briefing on and the Court's decision on the factual standing challenge. Thus, Westmoreland asks that the District Court either (1) remand to Judge Cavan with direction to permit jurisdictional discovery and supplemental briefing; or (2) rule that Westmoreland may conduct discovery regarding the factual standing question prior to any summary judgment motion practice.

CONCLUSION

For the foregoing reasons, Westmoreland objects to Judge Cavan's recommendations and asks that the court dismiss the case for lack of standing. In the alternative, the factual standing question should be remanded with direction for reconsideration after discovery and supplemental briefing, or jurisdictional discovery should be permitted prior to briefing the standing issue on summary judgment. Westmoreland requests that the Court hold oral argument on its objection to Judge Cavan's recommendations.

⁵ See Westmoreland's Brief in Support of Motion for Leave to Conduct Limited Discovery Regarding Plaintiffs' Standing (Doc. 48). Of course, if this Court cannot resolve the factual issues in summary judgment, the matter should be resolved in an evidentiary hearing.

Dated this 12th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, I filed the foregoing document electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

s/ Hadassah M. Reimer

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**Jeremy Nichols Past Participation on Behalf of WildEarth Guardians as
Standing Declarant in Federal District Court**

Case	Subject of Challenge	Date	Claims for Standing
<i>Montana Environmental Information Center et al. v. Bernhardt et al.</i> , No. 1:19-cv-00130-SPW-TJC (D. Mont.) Exhibit 2 to Response to Motion to Dismiss, filed March 3, 2020	Rosebud Mine expansion near Colstrip, MT.	2020	Visits annually from Golden, CO to hike on isolated public lands near Colstrip, MT and “view wildlife and scenery.”
<i>Wildearth Guardians v. Jewell et al.</i> , No. 1:16-cv-01724-RC (D.D.C.) Exhibit 1 to Motion for Summary Judgment After Remand, filed January 6, 2020	2015 and 2016 BLM oil and gas leases in Wyoming.	2020	Visits regularly to “recreate on its public lands” –which he describes as “industrialized zones” – and “enjoy[s] its unique natural beauty.” The areas visited are between Casper and Glenrock, and in the Red Desert.
<i>Rocky Mountain Wild et al. v. Bernhardt et al.</i> , No. 2:19-cv-00929-DBB-CMR (D. Utah), Exhibit 4 to Plaintiffs’ Opening Brief, filed October 25, 2019	Oil and gas leases in northeastern Utah’s Uinta Basin.	2019	Regularly visits the area of oil and gas development in the Uinta Basin for recreational and aesthetic enjoyment.
<i>Rocky Mountain Wild et al. v. Bernhardt et al.</i> , No. 1:19-cv-01608-MSK (D. Colo.), Exhibit 4 to Plaintiffs’ Opening Brief, filed October 25, 2019	Oil and gas leases in Uinta Basin (spanning Utah and CO).	2019	Regularly visits the area of oil and gas development in the Uinta Basin for recreational and aesthetic enjoyment.
<i>Wildearth Guardians et al. v. Bernhardt et al.</i> , No. 1:19-cv-01920-RBJ (D. Colo.), Exhibit 1 to Plaintiffs’ Opening Brief, filed August 19, 2019	Expansion of the West Elk Coal Mine in Gunnison County, Colorado.	2019	Visits the West Elk Wilderness “for recreational purposes,” including in the area of the West Elk Coal Mine.
<i>Dine Citizens Against Ruining Our Environment et al. v. Bernhardt et al.</i> , No. 1:19-cv-00703-WJ-JFR (D.N.M.), Exhibit 45 to Plaintiffs’ Motion for TRO and Preliminary Injunction, filed August 1, 2019	Horizontal oil and gas drilling and hydraulic fracturing in northwestern New Mexico.	2019	Regularly visits and plans future visits to area of oil and gas development in northwestern New Mexico from Golden, CO.
<i>Wildearth Guardians et al. v. Suckow et al.</i> , No. 1:17-cv-00891-RM (D. Colo.), Exhibit 3 to Plaintiff’s Opening Brief, filed June 28, 2019	Colorado Parks and Wildlife’s Piceance Basin and Upper Arkansas River Predator Management Plans.	2019	Lives in Golden, CO and regularly recreates on public lands in the American West.
<i>Wildearth Guardians v. Wheeler</i> , No. 1:19-cv-00897-JLK (D. Colo.), Exhibit 1 to Partial	EPA Administrator’s alleged delay in making a finding that Colorado failed to attain the 2008 ozone	2019	Lives and recreates near in Golden, CO, and is affected by climate change in the downtown Denver metro area.

Case	Subject of Challenge	Date	Claims for Standing
Motion for Summary Judgment, filed June 20, 2019	standards in the Denver Metro area.		
<i>Wildearth Guardians et al. v. U.S. Bureau of Land Management et al.</i> , No. 4:18-cv-00073-BMM (D. Mont.), Exhibit 7 to Motion for Summary Judgment, filed February 22, 2019	BLM's sale of federal oil and gas leases in Montana in December 2017 and March 2018.	2019	Claims that the lands underlying the oil and gas lease parcels in Montana are "on or near lands that I regularly visit and observe, and enjoy for outdoor recreation."
<i>Rocky Mountain Wild et al. v. Bernhardt et al.</i> , No. 1:18-cv-02468-MSK (D. Colo.), Exhibit 4 to Response to Motion to Transfer Case, filed February 11, 2019	Oil and gas leases in Uinta Basin (which covers Utah and CO).	2019	Regularly visits the area of oil and gas development in the Uinta Basin for recreational and aesthetic enjoyment.
<i>Wildearth Guardians v. Chao et al.</i> , No. 4:18-cv-00110-BMM (D. Mont.), Exhibit 1 to Response to Motion to Dismiss for Lack of Jurisdiction, filed December 20, 2018	Department of Transportation inspection of various oil and gas pipelines.	2018	Visits regularly and is planning recreational visits to areas near both underground and above-ground oil and gas pipelines.
<i>Center For Biological Diversity et al. v. Walsh et al.</i> , No. 1:18-cv-00558-MSK (D. Colo.), Exhibit 9 to Plaintiffs' Opening Brief, filed October 1, 2018	USFWS's NEPA analysis of oil and gas development in the Roan Plateau.	2018	Visits for recreational and aesthetic enjoyment areas near oil and gas development in the Roan Plateau area.
<i>Citizens For Clean Energy et al. v. U.S. Department of the Interior et al.</i> , No. 4:17-cv-00030-BMM (D. Mont.), Exhibit 3 to Motion for Summary Judgment, filed July 27, 2018	Secretarial Order 3348 and lifting of the moratorium on federal coal leasing.	2018	Visits Montana, Wyoming, Colorado, New Mexico, and Utah for recreational and aesthetic enjoyment.
<i>Citizens for a Healthy Community et al. v. U.S. Bureau of Land Management et al.</i> , No. 1:17-cv-02519-LTB-GPG (D. Colo.), Exhibit 4 to Plaintiff's Opening Brief, filed July 13, 2018	BLM's approval of the Bull Mountain Master Development Plan, which authorizes oil and gas company, SG Interests, to develop up to 146 new natural gas wells on 33 new well pads, as well as four new water disposal wells.	2018	Visits for "enormous recreational opportunities" and "amazing scenery" the Bull Mountain Master Development Plan area, including near existing oil and gas development.
<i>Wildearth Guardians et al. v. Zinke et al.</i> , No. 1:17-cv-00080-SPW (D. Mont.), Exhibit 1 to Memorandum ISO Motion for Summary Judgment, filed April 6, 2018	U.S. Office of Surface Mining Reclamation and Enforcement's and the Interior Secretary's 2016 decision to approve a mining plan modification for the Spring Creek coal mine in southeastern Montana.	2018	Visits from Golden, Colorado the area "next to and near the mine" for "recreational enjoyment," including hiking and viewing wildlife "near the mine area."

Case	Subject of Challenge	Date	Claims for Standing
<i>High Country Conservation Advocates et al. v. U.S. Forest Service et al.</i> , No. 1:17-cv-03025-PAB (D. Colo.), Exhibit 1 to Plaintiffs' Opening Brief, filed March 23, 2018	Expansion of West Elk Coal Mine in Gunnison County, Colorado.	2018	Visits from Golden, CO "for recreational purposes," including in the area of the West Elk Coal Mine.
<i>Wildearth Guardians v. U.S. Bureau of Land Management</i> , No. 1:16-cv-03141-WJM-STV (D. Colo.), Exhibit 1 to Plaintiff's Opening Brief, filed July 31, 2017	BLM's 2015 oil and gas leases within and near the Pawnee National Grassland and within the Denver Metropolitan and North Front Range ozone nonattainment area.	2017	Lives in Denver and regularly visits areas of oil and gas development within the Pawnee National Grassland for recreational purposes.
<i>Dine Citizens Against Ruining Our Environment et al. v. Jewell et al.</i> , No. 1:15-cv-00209-JB-LF (D.N.M.), Exhibit 1 to Reply to Response to Motion for Summary Judgment, filed July 28, 2017	Horizontal oil and gas drilling and hydraulic fracturing in the Greater Chaco region of northwestern New Mexico, including the development of new federal wells tapping the Mancos shale formation.	2017	Visits from Golden, CO to the area of Mancos shale oil development in northwestern New Mexico.
<i>Wildearth Guardians v. Jewell et al.</i> , U.S. No. 1:16-cv-01724-RC (D.D.C.), Exhibit 7 to Motion for Summary Judgment, filed June 30, 2017	2015 and 2016 BLM oil and gas leases in Wyoming.	2017	Visits regularly to "recreate on its public lands" –which he describes as having turned into "industrialized zones" – and "enjoy its unique natural beauty." The areas he described visiting are between Casper and Glenrock, and the Red Desert.
<i>Dine Citizens Against Ruining Our Environment et al. v. Jewell et al.</i> , No. 1:15-cv-00209-JB-LF (D.N.M.), Exhibit 2 to Motion for Summary Judgment, filed April 28, 2017	Horizontal oil and gas drilling and hydraulic fracturing in the Greater Chaco region of northwestern New Mexico.	2017	Visits annually and plans to return to the area of Mancos shale oil development in northwestern New Mexico.
<i>Wildearth Guardians v. Jewell et al.</i> , No. 2:16-cv-00167-ABJ (D. Wyo.), Exhibit 1 to Opening Brief, filed April 1, 2017	2015 Black Thunder Mining Plan Modification.	2017	From Golden, CO, regularly vacations to the Black Thunder Mining Plan area in northwestern Wyoming – from which he describes being able to observe the Black Thunder Mine – for its "outstanding recreational opportunities."
<i>Wildearth Guardians v. Jewell et al.</i> , No. 2:16-cv-00166-ABJ (D. Wyo.), Exhibit 1 to Opening Brief, filed January 27, 2017	Antelope Coal Mine, West Antelope II Amendment, Mining Plan Modification.	2017	From Golden, CO, regularly visits the Antelope Coal Mine in northwestern Wyoming

Case	Subject of Challenge	Date	Claims for Standing
			for recreational purposes, including hiking, enjoying the area's scenery, searching for rocks, and viewing wildlife and plants.
<i>Kane County et al. v. Jewell et al.</i> , No. 2:16-cv-01211-RJS (D. Utah), Exhibit 18 to Motion to Intervene, filed January 13, 2017	Intervened in support of Secretarial Order 3338 and in opposition to Kane County's allegation that DOI instituted the leasing pause and programmatic EIS "to appease litigious environmental groups," including Wildearth Guardians.	2017	Alleges involvement in previous litigation and commenting re Secretarial Order 3338. Also regularly visits areas across Montana, Wyoming, Colorado, New Mexico, and Utah for recreational and aesthetic enjoyment.
<i>State of Wyoming et al v. U.S. Department of the Interior et al.</i> , No. 2:16-cv-00285-SWS (D. Wyo.), Exhibit 21 to Motion to Intervene, filed December 2, 2016	Largely supporting BLM's 2016 methane waste prevention rule as an intervenor/respondent.	2016	Regularly visits Pawnee National Grassland and the Uinta Basin during which time he has witnessed flaring from oil and gas operations. Regularly recreates on public lands in other parts of Colorado, Montana, New Mexico, Utah, and Wyoming
<i>Western Energy Alliance et al. v. Secretary of the U.S. Department of the Interior et al.</i> , No. 2:16-cv-00280-SWS (D. Wyo.), Exhibit 21 to Motion to Intervene, filed December 2, 2016	Largely supporting BLM's 2016 methane waste prevention rule as an intervenor/respondent.	2016	Regularly visits Pawnee National Grassland and the Uinta Basin during which time he has witnessed flaring from oil and gas operations. Regularly recreates on public lands in other parts of Colorado, Montana, New Mexico, Utah, and Wyoming
<i>Western Energy Alliance v. Jewell et al.</i> , No. 1:16-cv-00912-WJ-KBM (D.N.M.), Exhibit 1 to Motion to Intervene, at page 43, filed October 19, 2016	WEG challenges the BLM's decision to cancel, postpone, delay, reschedule, or otherwise refrain from holding oil and gas lease sales every quarter in every state of the United States. Wildearth Guardians intervened.	2016	Describes Wildearth Guardian's extensive participation in oil and gas leasing issues and states that "[a] decision in favor of WEA could undermine WildEarth Guardians' efforts to secure relief, either administratively or through litigation, from the Bureau of Land Management's failure to adequately disclose and address the climate impacts of oil and gas leasing." Alleges personal impacts relating to climate change.
<i>Wildearth Guardians v. U.S. Bureau of Land Management et al.</i> , No. 1:14-cv-01452-REB (D. Colo.), Exhibit 2 to Plaintiffs' Opening Brief, filed February 27, 2015	Blue Mountain Energy Coal Lease to expand the Deserado Coal Mine, near Rangely, Colorado.	2015	Visits the area "adjacent to and above the Deserado Mine" for recreational purposes, including hiking and viewing wildlife, and intends to continue visiting this area.

Case	Subject of Challenge	Date	Claims for Standing
<i>Wildearth Guardians v. IRG Bayaud, LLC et al.</i> , No. 1:14-cv-01153-MSK-KLM (D. Colo.), Exhibit 9 to Motion for Partial Summary Judgment, filed April 17, 2015; Exhibit 20 to Joint Motion for Summary Judgment, filed September 3, 2015	Alleged groundwater contamination from a mining site.	2015	Regularly kayaks on the South Platte River downstream of the mining site for recreational purposes.
<i>WildEarth Guardians v. Office of Surface Mining Reclamation and Enforcement</i> , No. 14-cv-00013-BLG-SPW-CSO (D. Mont.), Exhibit 1 to Plaintiffs' Motion for Summary Judgment, filed December 8, 2014	OSMRE's decision to authorize a mine plan modification for the Spring Creek Mine in southeastern Montana.	2014	Regularly visits the area "next to and near" the coal mine for "recreational enjoyment," including hiking and viewing wildlife "near the mine area."
<i>Montana Environmental Information Center, et al. v. U.S. Bureau of Land Management, et al.</i> , No. 4:11-cv-00015-SHE (D. Mont.), Exhibit 2 to Plaintiffs' Opposition to Federal Defendants' and Intervenor Defendants' Motions for Summary Judgment and Reply to Federal Defendants' and Intervenor Defendants' Opposition to Plaintiffs' Motion for Summary Judgment, filed February 1, 2012	BLM's 2010 decisions to issue oil and gas leases in Montana.	2012	Focuses on climate change impacts from the leases, which he claims generally "adversely affect[] my ability to enjoy recreating outdoors [and] to enjoy viewing wildlife."
<i>Montana Environmental Information Center, et al. v. U.S. Bureau of Land Management, et al.</i> , No. 4:11-cv-00015-SHE (D. Mont.), Exhibit 6 to Memorandum in Support of Motion for Summary Judgment, filed October 20, 2011	BLM's 2010 decisions to issue oil and gas leases in Montana.	2011	Describes "living and recreating" in the American West, and states that he has seen "changes over the years that appear strongly related to global warming." Describes that an insect infestation has "deforested what were once my favorite hiking and camping areas."

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