

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
BILLINGS DIV.

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PATRICK E. DUFFY, CLERK
BY *[Signature]*
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NORTHERN PLAINS RESOURCE COUNCIL,)

Plaintiff,)

vs.)

UNITED STATES BUREAU OF LAND MANAGEMENT; *et al.*,)

Defendants,)

and)

PINNACLE GAS RESOURCES; *et al.*,)

Intervenor Defendants.)

Cause No. CV 03-69-BLG-RWA

ORDER

NORTHERN CHEYENNE TRIBE, a federally recognized Indian tribe, and NATIVE ACTION, a Montana non-profit corporation,)

Plaintiffs,)

vs.)

GALE NORTON, *et al.*,)

Defendants.)

and)

FIDELITY EXPLORATION & PRODUCTION COMPANY, *et al.*,)

Intervenor defendants.)

Cause No. CV 03-78-BLG-RWA

ORDER

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On May 24, 2005, the Ninth Circuit issued an injunction pending appeal, forbidding the Bureau of Land Management (BLM) from approving coalbed methane (CBM) development projects in the Powder River Basin of Montana and prohibiting defendant intervenor Fidelity Exploration and Production Company from drilling additional CBM wells in its Coal Creek Project. The circuit court referred to this Court the matter of bond pending appeal.

Plaintiffs, Fidelity, and intervenor defendants Pinnacle Gas Corporation, Anadarko Petroleum Corporation, and Devon Energy Corporation (hereinafter referred to collectively as Pinnacle) have filed briefs and supporting affidavits on the bond issue. Plaintiffs request that the Court impose no bond or a nominal bond. Fidelity, on the other hand, contends that it will incur a financial loss of at least \$9.5 million as a result of the delay caused by the appeal and urges the Court to impose a bond in that amount. Pinnacle, which contends that it may lose up to \$7.1 million, does not name a specific figure, but asks the Court to impose a "substantial" bond. The United States takes no position on the subject.

Where, as here, private citizens bring an action under a public interest statute such as NEPA, the bond on appeal need not approximate actual damages that may be incurred by the adverse party. *Save our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005). Instead, the Court, in its discretion, may dispense altogether with the requirement of security or impose mere nominal

security. *Id.*; *Friends of the Earth, Inc. v. Brinegar*, 518 F.2d 322, 323 (9th Cir. 1975). Each case should be decided on its own facts. *Save our Sonoran*, 408 F.3d at 1126. However, the Court should ensure that the bond is not so high as to effectively thwart citizen actions. *Id.*

Here, the Court has reviewed the filings of the parties and concludes that plaintiffs do not have the financial wherewithal to post the \$9.5 million bond suggested by Fidelity, or even a substantial bond as suggested by Pinnacle.¹ Balancing the conflicting interests, the Court finds that a nominal bond in the amount of \$1,000 is appropriate. These cases are about the public interest. They deserve to be heard on the merits. A nominal bond facilitates this objective.

In accordance with the foregoing, **IT IS ORDERED** that plaintiffs collectively shall post a bond with the Clerk of Court in the total amount of \$1,000.

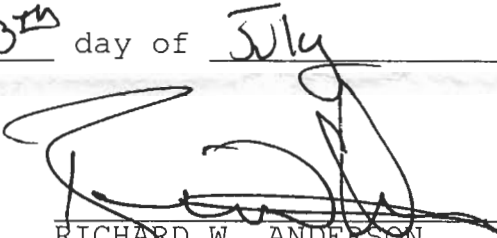
The Clerk of Court shall notify counsel of record of the making of this order.

Done and dated this 13th day of July, 2005.

CERTIFICATE OF MAILING
DATE: 7.13.05 BY: LHMM

I hereby certify that a copy
of this order was mailed to:

SEE ATTACHED LISTS


RICHARD W. ANDERSON
UNITED STATES MAGISTRATE JUDGE

¹The parties have filed extensive factual materials, making the record complete with no need for a hearing.