

No. 22-5010  
(also filed in No. 21-5265, 22-5022)

---

UNITED STATES COURT OF APPEALS  
FOR THE D.C. CIRCUIT

---

MONTERRA MF, LLC, et al.,  
*Plaintiffs-Appellees,*

v.

DEBRA HAALAND, in her official capacity as Secretary of the United States  
Department of the Interior, et al.,  
*Defendants-Appellants.*

---

Appeal from the United States District Court  
for the District of Columbia  
No. 1:21-cv-02513 (Hon. Dabney L. Friedrich)

---

**RESPONSE TO SHOW-CAUSE ORDER  
AND MOTION FOR VOLUNTARY DISMISSAL**

---

On March 10, 2022, this Court issued an order to show cause why this appeal, No. 22-5010, should not be dismissed for lack of jurisdiction. The federal government subsequently sought the district court's indicative ruling on a motion to clarify that court's final order in the underlying case, *Monterra MF, LLC v. Haaland*, D.D.C. No. 1:21-cv-02513. As the federal government explained, whether it has standing to appeal from the final order in *Monterra* turns on whether the order below is adverse to the federal government, and the order is potentially

subject to multiple interpretations. *See generally* ECF No. 1940141. Although the district court denied the federal government’s motion for indicative ruling, it did so in a minute order stating that “this Court previously dismissed the plaintiffs’ claims as moot” and that “there is no judgment adverse to the defendants.” Dist. Ct. Minute Order (Mar. 23, 2022). That order thus dispelled any ambiguity in the earlier order and made explicit that the district court did not enter any judgment adverse to the federal government in *Monterra*.

In light of the district court’s minute order, the federal government recognizes that its appeal from the final order in *Monterra* should be dismissed. The federal government therefore respectfully asks that this Court dismiss this appeal, No. 22-5010, on the federal government’s own motion, consistent with Federal Rule of Appellate Procedure 42(b) (“[a]n appeal may be dismissed on the appellant’s motion on terms agreed to by the parties or fixed by the court.”). The federal government further requests that its motion to consolidate this appeal, No. 22-5010, with related appeals No. 21-5265 and 22-5022, be withdrawn as moot. Plaintiffs-Appellees in No. 22-5010 represent that they oppose both requests. No other party to the related appeals opposes either request.

To be clear, dismissal of this appeal, No. 22-5010, does not otherwise impact the related appeals, Nos. 21-5265 and 22-5022. The latter appeals arise out of *Monterra*’s companion case, *West Flagler Associates, Ltd. v. Haaland*, D.D.C.

No. 1:21-cv-02192, which does explicitly grant judgment against the federal government. *See* D.D.C. No. 1:21-cv-02192, ECF No. 42.

Respectfully submitted,

s/ Rachel Heron

RACHEL HERON

Attorney

United States Dep't of Justice

Environment & Natural Resources Div.

P.O. Box 7415

Washington, DC 20044

(202) 514-0916

rachel.heron@usdoj.gov

April 8, 2022

## CERTIFICATE OF COMPLIANCE

1. This document complies with this Court's order of March 10, 2022, and with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 347 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

*/s/ Rachel Heron*

\_\_\_\_\_  
RACHEL HERON

Counsel for Defendants/Appellants