

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

STATE OF MONTANA,

Plaintiff,

vs.

TALEN MONTANA, LLC, f/k/a PPL
Montana, LLC, and NORTHWESTERN
CORPORATION, d/b/a NorthWestern
Energy, a Delaware corporation, and
UNITED STATES OF AMERICA,
United States Forest Service, United
States Bureau of Reclamation, and United
States Bureau of Land Management,

Defendants.

CV 16–35–H–DLC

ORDER

On May 10, 2022, Defendant Talen Montana, LLC (“Talen”) filed a Notice of Suggestion of Bankruptcy, which informed the Court that Talen and its debtor affiliates filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) on May 9, 2022. (Doc. 398.) Pursuant to 11 U.S.C. § 362(a), the bankruptcy filing triggered an automatic stay of these proceedings against the debtor.

On May 13, 2022, Plaintiff State of Montana filed a Response to Defendants’ Post-Trial Briefs, which stated in a footnote that “Montana proceeds only against Talen’s co-defendants NorthWestern and the United States.” (Doc.

399 at 1 n.1.) In Montana’s Supplemental Amended Proposed Findings of Fact and Conclusions of Law, filed the same day, Montana provided citations to authorities permitting actions to go forward against non-debtor co-defendants. (Doc. 400 at 2.)

On May 24, 2022, Talen filed a Notice of Nonconsent to Severance. (Doc. 403.) This filing argues that Montana cannot grant itself a severance of its claims against Talen, but rather must file a motion. (*Id.* at 2–5.)

This Court “has jurisdiction to decide whether the automatic stay applies to a proceeding pending before it[.]” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107 (9th Cir. 2005). The Ninth Circuit has held that the automatic stay is violated where the court makes a decision that “first requires the court to consider other issues presented by or related to the underlying case” against the debtor. *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 756 (9th Cir. 1995). The stay is violated even if the decision is favorable to the debtor because “thinking about the issues violates the stay.” *Id.* Based on this precedent, the Court concludes that addressing whether Montana’s claims against NorthWestern and the United States can be severed from its claims against Talen would require the Court to consider issues presented by or related to the underlying case—namely, whether severance would cause prejudice to the parties and whether the claims arise out of the same transaction or occurrence or present common questions of law or fact, *see Montana*

Wildlife Fed'n v. Zinke, No. CV-18-69-GF-BMM, 2018 WL 5810502, at *2 (D. Mont. Nov. 6, 2018)—without Talen’s input, which would violate the automatic stay. The Court will not rule on the issue of severance or direct further briefing on the issue at this time.

IT IS ORDERED that the parties shall file a status report within five (5) days of any order by the Bankruptcy Court lifting the automatic stay or otherwise modifying the automatic stay in a manner relevant to this case.

DATED this 23rd day of June, 2022.



Dana L. Christensen, District Judge
United States District Court