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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 **STATE OF CALIFORNIA, by and through**  
13 **XAVIER BECERRA, ATTORNEY**  
14 **GENERAL, and the CALIFORNIA AIR**  
15 **RESOURCES BOARD; and STATE OF**  
16 **NEW MEXICO, by and through HECTOR**  
17 **BALDERAS, ATTORNEY GENERAL,**

18 Plaintiffs,

19 v.

20 **UNITED STATES BUREAU OF LAND**  
21 **MANAGEMENT; KATHARINE S.**  
22 **MACGREGOR, Acting Assistant Secretary**  
23 **for Land and Minerals Management, United**  
24 **States Department of the Interior; and RYAN**  
25 **ZINKE, Secretary of the Interior,**

26 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

(Administrative Procedure Act,  
5 U.S.C. § 551 *et seq.*)

27 **INTRODUCTION**

28 1. Plaintiffs State of California, by and through Xavier Becerra, Attorney General, and the California Air Resources Board, and State of New Mexico, by and through Hector Balderas, Attorney General (“Plaintiffs”) bring this action to challenge the latest decision by the U.S. Bureau of Land Management, *et al.* (“BLM” or “Defendants”) to undermine the Waste

1 Prevention Rule—a commonsense measure that would reduce the enormous waste of natural gas  
2 on public lands that results from venting, flaring, and equipment leaks. Defendants have  
3 prioritized a negligible increase in oil and gas operators’ profits over the public interest in  
4 preventing the waste of a public resource that belongs to the American people. In doing so,  
5 Defendants dismiss out of hand the harmful impacts of the thousands of tons of toxic air  
6 pollutants and hundreds of thousands of tons of greenhouse gases emitted as a result of operators’  
7 inefficient, outdated, and wasteful practices. BLM’s current action—to suspend for one year the  
8 compliance dates for key requirements of the Waste Prevention Rule—lacks any reasoned  
9 analysis, contravenes BLM’s statutory mandates, and ignores significant environmental  
10 consequences. Thus, BLM has violated the Administrative Procedure Act (“APA”), several  
11 federal land management statutes, and the National Environmental Protection Act (“NEPA”).

12 2. BLM, a division of the U.S. Department of the Interior (“DOI”), finalized the Waste  
13 Prevention, Production Subject to Royalties and Resource Conservation rule (“Waste Prevention  
14 Rule” or “Rule”), on November 18, 2016, after conducting a multi-year stakeholder process and  
15 reviewing thousands of public comments. 81 Fed. Reg. 83,008 (Nov. 18, 2016). The Waste  
16 Prevention Rule provides a much-needed update to 38-year-old regulations governing the release  
17 of natural gas from new and existing oil and gas operations on federal and Indian lands, and  
18 clarifies when gas lost through venting, flaring, or leaks is subject to royalties. BLM estimated  
19 that the Rule would have substantial annual benefits, including producing up to 41 billion cubic  
20 feet of additional natural gas, eliminating 175,000–180,000 tons of methane emissions, cutting  
21 emissions of volatile organic compounds by 250,000–267,000 tons, reducing toxic air pollutants  
22 by 1,860 to 2,030 tons, and generating up to \$14 million in additional royalties. The Rule became  
23 effective on January 17, 2017.

24 3. On June 15, 2017, BLM published a notice in the Federal Register purporting “to  
25 postpone the compliance dates for certain sections of the Rule” pursuant to Section 705 of the  
26 APA, 5 U.S.C. § 705. 82 Fed. Reg. 27,430 (June 15, 2017). Following a legal challenge by  
27 Plaintiffs, on October 4, 2017, this district court enjoined BLM’s attempt to cut corners in its rush  
28 to effectively block the Rule—finding that its summary action purporting to postpone significant

1 compliance dates was not authorized under APA section 705 and was otherwise arbitrary and  
2 capricious. *State of California v. U.S. Bureau of Land Mgmt.*, --- F. Supp. 3d ---, 2017 WL  
3 4416409 (N.D. Cal. Oct. 4, 2017) (“*California v. BLM*”), *appeal docketed*, No. 17-17456 (9th  
4 Cir. Dec. 4, 2017).

5 4. On October 5, 2017, BLM issued a proposal to suspend major impending deadlines  
6 and requirements of the Waste Prevention Rule until January 17, 2019, which Plaintiffs opposed  
7 in public comments submitted on November 6, 2017. On December 8, 2017, BLM issued a final  
8 rule suspending key requirements of the Waste Prevention Rule. 82 Fed. Reg. 58,050 (Dec. 8,  
9 2017) (“Suspension”). To justify the Suspension, BLM stated it had “concerns regarding the  
10 statutory authority, cost, complexity, feasibility, and other implications” of the Rule, and  
11 therefore sought to suspend “requirements that may be rescinded or significantly revised in the  
12 near future.” *Id.*

13 5. Defendants’ Suspension of the Waste Prevention Rule’s requirements is arbitrary and  
14 capricious because the agency attempts to delay and effectively revoke key provisions of the Rule  
15 without supplying a reasoned basis for doing so. Defendants entirely failed to consider how the  
16 Suspension would fulfill the important statutory mandates that the Waste Prevention Rule was  
17 designed to address, failed to explain why it reversed course based on the same information that it  
18 considered when it formulated and promulgated the Rule just a year earlier, and offered a  
19 purported justification for the Suspension that runs counter to the evidence before the agency.  
20 The Suspension also violates Defendants’ statutory mandates to prevent waste and regulate  
21 royalties from oil and gas operations on federal and Indian lands, protect the interests of the  
22 United States, and to safeguard the public welfare. Furthermore, Defendants’ perfunctory  
23 conclusion that the Suspension would result in no significant environmental impacts violates the  
24 requirements of NEPA.

25 6. Accordingly, Plaintiffs seek a declaration that Defendants’ action violated the APA,  
26 NEPA, and multiple federal land management statutes, and an injunction requiring Defendants to  
27 vacate the Suspension or, in the alternative, vacate the Suspension and immediately reinstate all  
28 of the Rule’s provisions.

**JURISDICTION AND VENUE**

1  
2 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the  
3 laws of the United States), 28 U.S.C. § 1361 (action to compel officer or agency to perform duty  
4 owed to Plaintiffs), and 5 U.S.C. §§ 701–706 (Administrative Procedure Act). An actual  
5 controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court  
6 may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201–  
7 2202 and 5 U.S.C. §§ 705–706.

8 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this is the  
9 judicial district in which Plaintiff State of California resides, and this action seeks relief against  
10 federal agencies and officials acting in their official capacities.

**INTRADISTRICT ASSIGNMENT**

11  
12 9. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), there is no basis for assignment of  
13 this action to any particular location or division of this Court. However, this case is related to  
14 Case No. 3:17-cv-03804-EDL, which challenged BLM’s illegal attempt to delay the Waste  
15 Prevention Rule pursuant to APA Section 705, 5 U.S.C. § 705, and was recently decided in the  
16 San Francisco Division. Pursuant to Civil Local Rule 3-12(b), Plaintiffs intend to promptly file  
17 an Administrative Motion to Consider Whether Cases Should Be Related.

**PARTIES**

18  
19 10. Plaintiff, STATE OF CALIFORNIA, brings this action by and through Attorney  
20 General Xavier Becerra. The Attorney General is the chief law enforcement officer of the State  
21 and has the authority to file civil actions in order to protect public rights and interests, including  
22 actions to protect the natural resources of the State. Cal. Const., art. V, § 13; Cal. Gov. Code §§  
23 12600-12612. This challenge is brought in part pursuant to the Attorney General’s independent  
24 constitutional, statutory, and common law authority to represent the public interest.

25 11. The California Air Resources Board (“CARB”) is a public agency of the State of  
26 California within the California Environmental Protection Agency. The mission of CARB is to  
27 promote and protect public health, welfare, and ecological resources of California’s citizens  
28 through the monitoring and protection of air quality. CARB’s major goals include providing safe,

1 clean air to all Californians, reducing California's emission of greenhouse gases, and providing  
2 leadership and innovative approaches for implementing air pollution controls. In addition to  
3 developing statewide rules, CARB works with local California air districts, many of which  
4 regulate oil and gas pollution at the regional or county level. This action is thus brought, in part,  
5 by the Attorney General at the request of CARB and in the name of the State of California.

6 12. California contains millions of acres of federal and tribal lands that are managed by  
7 Defendants for energy production. These lands contain approximately 600 producing oil and gas  
8 leases covering more than 200,000 acres and 7,900 usable oil and gas wells. California is a  
9 leading state in terms of oil extraction on public lands—producing about 15 million barrels  
10 annually—and also produces approximately 7 billion cubic feet of natural gas annually.

11 13. Plaintiff STATE OF NEW MEXICO brings this action by and through Attorney  
12 General Hector Balderas. The Attorney General of New Mexico is authorized to prosecute in any  
13 court or tribunal all actions and proceedings, civil or criminal, when, in his judgment, the interest  
14 of the state requires such action. N.M. Stat. Ann. § 8-5-2.

15 14. More than one-third of New Mexico's land is federally administered, and New  
16 Mexico is second-highest in the nation in the number of producing oil and natural gas leases on  
17 federal land. Annually, New Mexico produces approximately 1,220 billion cubic feet of natural  
18 gas (of which approximately 60 percent is from federal and Indian lands) and 85,200 million  
19 barrels of crude oil (of which approximately 45 percent is from federal and Indian lands). New  
20 Mexico has the third highest volume of flared oil-well gas among all states.

21 15. Plaintiffs have a clear monetary stake in Defendants' decision to suspend certain  
22 provisions of the Waste Prevention Rule. Since 2008, California has received an annual average  
23 of \$82.5 million in royalties from federal mineral extraction within the State. Royalties from  
24 federal oil and gas development in California are deposited into the State School Fund, which  
25 supports public education. New Mexico has received an annual average of \$470 million in  
26 federal mineral extraction royalties during this same time period. New Mexico, whose per-pupil  
27 education spending is below the national average, uses its federal mineral leasing royalty  
28 payments for educational purposes. One study estimates that New Mexico lost between \$39

1 million and \$46 million in royalties from venting and flaring between 2010 and 2015. This figure  
2 does not include lost royalties from leaks. Thus, minimizing waste of natural gas in order to  
3 maximize royalty recovery in California and New Mexico serves vital societal interests.

4 16. Plaintiffs further have a strong interest in preventing adverse air quality impacts from  
5 the production of fossil fuels in their States. More than 95 percent of federal drilling in California  
6 occurs in Kern County, parts of which are in nonattainment with the 2008 federal 8-hour ozone  
7 standard and federal fine particulate matter standards, as well as numerous state ambient air  
8 quality standards. Excess pollution in this part of California—including methane, particulate  
9 matter, volatile organic compounds (“VOCs”), and toxic air pollution from the oil and gas  
10 industry—significantly increases rates of asthma, heart disease, and lung disease, and raises  
11 cancer risk. While California has state regulations issued by CARB and local air districts, certain  
12 provisions of CARB’s oil and gas regulation do not require compliance until 2019. BLM’s  
13 Suspension of the Waste Prevention Rule will result in the emission, in California, of an  
14 estimated 150 tons of VOCs, 4.9 tons of toxic air contaminants, and 70,675 metric tons of carbon  
15 dioxide equivalent of methane between January 17, 2018 and January 17, 2019. The Waste  
16 Prevention Rule provides an additional federal layer of regulation and enforcement that addresses  
17 the air pollution issues related to oil and gas production on federal and tribal lands within  
18 California.

19 17. In New Mexico, the San Juan Basin in the Four Corners region is the home of the  
20 nation’s largest methane “cloud,” which has been linked to the extensive oil and gas development  
21 in that region. VOC emissions from oil and gas development have led to high ozone  
22 concentrations, resulting in an “F” grade for San Juan County from the American Lung  
23 Association in 2016. Because New Mexico represents a disproportionately large share of federal  
24 and tribal natural gas emissions, BLM’s Suspension of the Rule will result in thousands of  
25 additional tons of VOC being emitted in New Mexico. New Mexico does not have state  
26 regulations in place to adequately address venting, flaring, and leaks from oil and gas production.

27 18. Plaintiffs also have a strong interest in preventing and mitigating harms that climate  
28 change poses to human health and the environment, including increased heat-related deaths,

1 damaged coastal areas, disrupted ecosystems, more severe weather events, and longer and more  
2 frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007). Methane is an  
3 extremely potent greenhouse gas, with climate impacts roughly 86 times those of carbon dioxide  
4 if measured over a 20-year period, or 25 times if measured over a 100-year period.

5 19. California is already experiencing the adverse effects of climate change, including  
6 increased risk of wildfires, a decline in the average annual snowpack that provides approximately  
7 35 percent of the State's water supply, increased erosion of beaches and low-lying coastal  
8 properties from rising sea levels, and increased formation of ground-level ozone (or smog), which  
9 is linked to asthma, heart attacks, and pulmonary problems, especially in children and the elderly.  
10 California law establishes targets to reduce the State's greenhouse gas emissions to 1990 levels  
11 by 2020 and to 40 percent below 1990 levels by 2030. California has committed to reducing  
12 greenhouse gas emissions, including through the development of methane-curbing regulations for  
13 oil and gas operations and pipelines.

14 20. As a state in the arid southwest, New Mexico is also experiencing the adverse effects  
15 of climate change and will suffer additional impacts in the future. Average temperatures in New  
16 Mexico have been increasing 50 percent faster than the global average over the past century,  
17 streamflow totals in the Rio Grande and other rivers in the Southwest are declining, and  
18 projections of further reduction of late-winter and spring snowpack pose increased risks to water  
19 supplies needed to maintain cities, agriculture, and ecosystems. Further, drought and increased  
20 temperatures due to climate change have contributed to extensive tree death across the Southwest.

21 21. By suspending several provisions of the Waste Prevention Rule, including  
22 requirements that operators capture a certain percentage of the gas they produce, measure  
23 volumes of flared gas, upgrade or replace equipment, and implement leak detection and repair  
24 programs, Defendants' action will adversely impact Plaintiffs by increasing emissions of  
25 hazardous air pollutants and greenhouse gases, reducing royalty collections, and wasting fossil  
26 fuel resources that belong to the public. Consequently, Plaintiffs have suffered a legal wrong as a  
27 result of Defendants' action and have standing to bring this suit.

28





1 rules and regulations promulgated by the Secretary”). As stated by BLM, the Waste Prevention  
2 Rule “helps to meet the Secretary’s statutory trust responsibilities with respect to the development  
3 of Indian oil and gas interests” because it “will help ensure that the extraction of natural gas from  
4 Indian lands results in the payment of royalties to Indian mineral owners, rather than the waste of  
5 owners’ mineral resources.” 81 Fed. Reg. at 83,020. The Rule also meets these responsibilities  
6 because “tribal members and individual Indian mineral owners who live near Indian oil and gas  
7 development will realize environmental benefits as a result of this rule’s reductions in flaring and  
8 air pollution from Indian oil and gas development.” 81 Fed. Reg. at 83,021.

9 27. BLM has authority to regulate royalty payments pursuant to the Federal Oil and Gas  
10 Royalty Management Act of 1982 (“FOGRMA”), 30 U.S.C. § 1701 *et seq.* In FOGRMA,  
11 Congress reiterated its concern about waste by providing that: “Any lessee is liable for royalty  
12 payments on oil or gas lost or wasted from a lease site when such loss or waste is due to  
13 negligence on the part of the operator of the lease, or due to the failure to comply with any rule or  
14 regulation, order or citation issued under this chapter or any mineral leasing law.” *Id.* § 1756.

15 28. The Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*,  
16 provides BLM with broad authority to regulate “the use, occupancy, and development of the  
17 public lands” under the principles of “multiple use and sustained yield.” *Id.* § 1732. Among  
18 other requirements, FLPMA mandates that BLM manage public lands “in a manner that will  
19 protect the quality of ... ecological, environmental, [and] air and atmospheric ... values,” *id.* §  
20 1701(a)(8), and provides that BLM “shall, by regulation or otherwise, take any action necessary  
21 to prevent unnecessary or undue degradation of the lands.” *Id.* § 1732(b).

## 22 **II. National Environmental Policy Act.**

23 29. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, is the “basic  
24 national charter for the protection of the environment.” 40 C.F.R. § 1500.1. The fundamental  
25 purposes of the statute are to ensure that “environmental information is available to public  
26 officials and citizens before decisions are made and before actions are taken,” and that “public  
27 officials make decisions that are based on understanding of environmental consequences, and take  
28 actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(b)-(c).

1           30. To achieve these purposes, NEPA requires the preparation of a detailed  
2 environmental impact statement (“EIS”) for any “major federal action significantly affecting the  
3 quality of the human environment.” 42 U.S.C. § 4332(2)(C). As a preliminary step, an agency  
4 may first prepare an environmental assessment (“EA”) to determine whether the effects of an  
5 action may be significant. 40 C.F.R. § 1508.9. If an agency decides not to prepare an EIS, it  
6 must supply a “convincing statement of reasons” to explain why a project’s impacts are  
7 insignificant. *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001).  
8 However, an EIS must be prepared if “substantial questions are raised as to whether a project ...  
9 may cause significant degradation of some human environmental factor.” *Idaho Sporting*  
10 *Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998).

11           31. To determine whether a proposed project may significantly affect the environment,  
12 NEPA requires that both the context and the intensity of an action be considered. 40 C.F.R. §  
13 1508.27. In evaluating the context, “[s]ignificance varies with the setting of the proposed action”  
14 and includes an examination of “the affected region, the affected interests, and the locality.” *Id.* §  
15 1508.27(a). Intensity “refers to the severity of impact,” and NEPA’s implementing regulations  
16 list ten factors to be considered in evaluating intensity, including “[u]nique characteristics of the  
17 geographic area such as proximity to ... ecologically critical areas,” “[t]he degree to which the  
18 effects on the quality of the human environment are likely to be highly controversial,” “[t]he  
19 degree to which the possible effects on the human environment are highly uncertain or involve  
20 unique or unknown risks,” and “[t]he degree to which the action may establish a precedent for  
21 future actions with significant effects or represents a decision in principle about a future  
22 consideration.” *Id.* § 1508.27(b). The presence of just “one of these factors may be sufficient to  
23 require the preparation of an EIS in appropriate circumstances.” *Ocean Advocates v. U.S. Army*  
24 *Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2005).

### 25 **III. The Administrative Procedure Act.**

26           32. The Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, governs the procedural  
27 requirements for agency decision-making, including the agency rule making process. Under the  
28 APA, a “reviewing court shall...hold unlawful and set aside” agency action found to be “arbitrary,

1 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706. If  
2 an agency reverses course by suspending a fully-promulgated regulation, it is “obligated to supply  
3 a reasoned analysis for the change.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm*  
4 *Mutual Automobile Ins. Co.*, 463 U.S. 29, 42 (1983). Further, an agency must show that “there  
5 are good reasons” for the reversal. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515  
6 (2009). An agency must “provide a more detailed justification than what would suffice for a new  
7 policy created on a blank slate” when “its new policy rests upon factual findings that contradict  
8 those which underlay its prior policy.” *Id.* Moreover, an agency cannot suspend a validly  
9 promulgated rule without first “pursu[ing] available alternatives that might have corrected the  
10 deficiencies in the program which the agency relied upon to justify the suspension.” *Public*  
11 *Citizen v. Steed*, 733 F.2d 93, 103 (D.C. Cir. 1984).

12 33. Prior to formulating, amending, or repealing a rule, agencies must engage in a notice-  
13 and-comment process. 5 U.S.C. §§ 551(5), 553. Notice must include “either the terms or  
14 substance of the proposed rule or a description of the subjects and issues involved.” *Id.* § 553(b).  
15 To satisfy the requirements of APA Section 553(b), notice of a proposed rule must “provide an  
16 accurate picture of the reasoning that has led the agency to the proposed rule,” so as to allow an  
17 “opportunity for interested parties to participate in a meaningful way in the discussion and final  
18 formulation of rules.” *Connecticut Light & Power Co. v. Nuclear Regulatory Comm’n*, 673 F.2d  
19 525, 528-30 (D.C. Cir. 1982). The public may then submit comments which the agency must  
20 consider before promulgating a final rule. *Id.* § 553(c). This process is designed to “give  
21 interested persons an opportunity to participate in the rule making through submission of written  
22 data, views, or arguments.” *Id.*

### 23 **FACTUAL AND PROCEDURAL BACKGROUND**

24 34. BLM oversees more than 245 million acres of land and 700 million subsurface acres  
25 of federal mineral estate, on which reside nearly 100,000 producing onshore oil and gas wells.  
26 81 Fed. Reg. at 83,014. In fiscal year 2015, the production value of this oil and gas exceeded \$20  
27 billion and generated over \$2.3 billion in royalties which were shared with tribes and states. *Id.*;  
28 *see* 30 U.S.C. § 191(a).

1           35. Oil and gas production in the United States has increased dramatically over the past  
2 decade due to technological advances such as hydraulic fracturing and directional drilling.  
3 81 Fed. Reg. at 83,009. However, the American public has not fully benefitted from this increase  
4 in domestic energy production because it “has been accompanied by significant and growing  
5 quantities of wasted natural gas.” 81 Fed. Reg. at 83,014. For example, between 2009 and 2015,  
6 nearly 100,000 oil and gas wells on federal land vented or flared enough gas to serve about 6.2  
7 million households for a year. 81 Fed. Reg. at 83,009. In 2014 alone, operators vented and flared  
8 approximately 4.1 percent of the total production from BLM-administered leases, or enough  
9 natural gas to supply 1.5 million households for a year. 81 Fed. Reg. at 83,010.

10           36. Prior to 2016, BLM’s regulatory scheme governing the minimization of resource  
11 waste had not been updated in over three decades. 81 Fed. Reg. at 83,008. Several oversight  
12 reviews, including those by the Government Accountability Office (“GAO”) and the Department  
13 of the Interior’s Office of the Inspector General, specifically called on BLM to update its  
14 “insufficient and outdated” regulations regarding waste and royalties. 81 Fed. Reg. at 83,009-10.  
15 The reviews recommended that BLM require operators to augment their waste prevention efforts  
16 and clarify policies regarding royalty-free, on-site use of oil and gas. *Id.*

17           37. In 2014, BLM responded to these reports by initiating the development of a rule to  
18 update its existing regulations on these issues. *Id.* After soliciting and reviewing input from  
19 stakeholders and the public, BLM released its proposal in February 2016. 81 Fed. Reg. 6,616  
20 (Feb. 8, 2016) (“Proposed Rule”). BLM received approximately 330,000 public comments,  
21 including approximately 1,000 unique comments, on the Proposed Rule. 81 Fed. Reg. at 83,021.  
22 The agency also hosted stakeholder meetings and met with regulators from states with significant  
23 federal oil and gas production. *Id.*

24           38. BLM issued the final Waste Prevention Rule in November 2016. 81 Fed. Reg. at  
25 83,008. In the final Rule, BLM refined many of the provisions of the Proposed Rule based on  
26 public comments to ensure both that compliance was feasible for operators and that the Rule  
27 achieved its waste prevention objectives. 81 Fed. Reg. at 83,022–23.

28

1           39. The Rule addresses each major source of natural gas waste from oil and gas  
2 production—venting, flaring, and equipment leaks—through different requirements. 81 Fed. Reg.  
3 at 83,010–13. In particular, the Rule prohibits venting except under specified conditions, and  
4 requires updates to existing equipment. 81 Fed. Reg. at 83,011–13. The Rule’s flaring  
5 regulations reduce waste by requiring gas capture percentages that increase over time, providing  
6 exemptions that are scaled down over time, and requiring operators to submit Waste  
7 Minimization Plans. 81 Fed. Reg. at 83,011. Leak detection provisions require semi-annual  
8 inspections for well sites and quarterly inspections for compressor stations. *Id.*

9           40. In promulgating the Rule, BLM stated that it was advancing the mandates placed on  
10 the agency by Congress to oversee federal oil and gas activities, and to ensure that lessees use all  
11 reasonable precautions to prevent waste of public resources. 81 Fed. Reg. at 83,009.

12           41. BLM determined that the Rule’s benefits outweighed its costs “by a significant  
13 margin.” 81 Fed. Reg. at 83,014. BLM measured the benefits of the Rule by considering “the  
14 cost savings that the industry would receive from the recovery and sale of natural gas and the  
15 environmental benefits of reducing the amount of methane (a potent GHG) and other air  
16 pollutants released into the atmosphere.” *Id.* BLM estimated that the Rule would result in  
17 monetized benefits of \$209–\$403 million annually, including the monetized benefits of reducing  
18 methane emissions by roughly 35 percent, and would improve air quality and overall quality of  
19 life for residents living near oil and gas wells. *Id.* The Rule’s costs, on the other hand, would be  
20 minimal—between \$114 and \$275 million per year industry-wide—which even for small  
21 operators would result in an average reduction in profit margin of just 0.15 percentage points.  
22 81 Fed. Reg. at 83,013–14. BLM acknowledged that these cost estimates could be overstated  
23 because they did not take into account operators that were already in compliance with the  
24 requirements of the Rule. 81 Fed. Reg. at 83,013.

25           42. The Rule was immediately challenged by two industry groups and the States of  
26 Wyoming and Montana (later joined by North Dakota and Texas) (collectively, “Petitioners”) in  
27 federal district court in Wyoming, on the alleged basis that BLM did not have statutory authority  
28 to regulate air pollution and that the Rule was arbitrary and capricious. *Western Energy Alliance*

1 *v. Jewell*, No. 2:16-cv-00280-SWS (D. Wyo. petition filed Nov. 16, 2016); *State of Wyoming v.*  
2 *Jewell*, No. 2:16-cv-00285-SWS (D. Wyo. petition filed Nov. 18, 2016) (collectively, the  
3 “Wyoming Litigation”). The industry groups and several states then moved for a preliminary  
4 injunction. The California Attorney General’s Office, on behalf of the California Air Resources  
5 Board, and the State of New Mexico, intervened in December 2016 on the side of BLM to defend  
6 the Rule. Several environmental organizations also intervened on the side of BLM to defend the  
7 Rule. On January 16, 2017, the Wyoming district court denied Petitioners’ motions for a  
8 preliminary injunction, finding that Petitioners had failed to establish a likelihood of success on  
9 the merits or irreparable harm in the absence of an injunction.

10 43. The Rule became effective on January 17, 2017.

11 44. On March 28, 2017, President Donald Trump issued Executive Order 13783, entitled  
12 “Promoting Energy Independence and Economic Growth.” 82 Fed. Reg. 16,093 (Mar. 31, 2017).  
13 Section 7 of that Executive Order, entitled “Review of Regulations Related to United States Oil  
14 and Gas Development,” specifically called on the Secretary of the Interior to review and “as soon  
15 as practicable, suspend, revise, or rescind” the Waste Prevention Rule.

16 45. The following day, Secretary of the Interior Ryan Zinke issued Secretarial Order  
17 3349, which provided that within 21 days, BLM would review the Rule and issue an internal  
18 report as to “whether the rule is fully consistent with the policy set forth in Section 1 of the March  
19 28, 2017 E.O.” BLM published the results of its review on October 24, 2017. *See* 82 Fed. Reg.  
20 50,540 (Nov. 1, 2017). This review consists of less than a single page where BLM concludes,  
21 without any rationale or justification, that “the 2016 final rule poses a substantial burden on  
22 industry, particularly those requirements that are set to become effective on January 17, 2018.”

23 46. Various states and industry groups also lobbied members of Congress to repeal the  
24 Waste Prevention Rule using the Congressional Review Act. On May 10, 2017, the United States  
25 Senate voted to reject such a measure, leaving the Rule in effect.

26 47. On June 15, 2017, BLM published a notice in the Federal Register purporting to  
27 postpone certain compliance dates of the Rule subject to APA Section 705. 82 Fed. Reg. 27,430  
28 (“Postponement Notice”). The States of California and New Mexico challenged this unlawful

1 action on July 5, 2017 in the U.S. District Court for the Northern District of California. On  
2 October 4, 2017, the court ruled that Section 705 did not apply to an already-effective rule, and  
3 that the postponement amounted to a rulemaking that required compliance with the APA's notice  
4 and comment procedures. The Court also found that BLM's failure to consider the benefits of  
5 compliance with the provisions that were postponed rendered their action arbitrary and capricious  
6 and in violation of the APA. Thus, the court vacated the Postponement Notice and the Rule went  
7 back into effect. On December 4, 2017, BLM filed a notice of appeal.

8 48. On October 5, 2017, BLM published a notice in the Federal Register proposing to  
9 delay and suspend key requirements of the Rule that were already in effect, or set to take effect in  
10 January 2018, until January 17, 2019. 82 Fed. Reg. 46,458 (Oct. 5, 2017) ("Proposed  
11 Suspension"). These requirements include those covered by the Postponement Notice, as well as  
12 already-effective provisions governing waste minimization plans, well drilling, well completion  
13 and related operations, and downhole well maintenance and liquids unloading.

14 49. BLM's stated rationale for the Proposed Suspension was that it was "currently  
15 reviewing the 2016 final rule and want[ed] to avoid imposing temporary or permanent  
16 compliance costs on operators for requirements that may be rescinded or significantly revised in  
17 the near future." *Id.* However, BLM provided no justification regarding how the Proposed  
18 Suspension would fulfill its statutory mandates to prevent waste, ensure the adequate payment of  
19 royalties, protect the interests of the United States or public welfare, or meet its statutory trust  
20 responsibilities on tribal lands. To the contrary, BLM admitted that the benefits of the Rule in  
21 reducing waste, increasing royalty payments, and cutting air pollution and greenhouse gas  
22 emissions would not be achieved. 82 Fed. Reg. at 46,464-65 ("BLM's proposed rule would  
23 temporarily suspend or delay almost all of the requirements in the 2016 final rule that we  
24 estimated would generate benefits of gas savings or reductions in methane emissions.").

25 50. BLM prepared a Regulatory Impact Analysis for the Proposed Suspension.  
26 Regulatory Impact Analysis for the Proposed Suspension Rule (Sept. 27, 2017) ("Proposed  
27 RIA"). Rather than considering substantive amendments to the Rule that could have addressed  
28

1 BLM’s purported concerns, the only alternatives to the one-year extension that BLM considered  
2 were suspensions of other lengths (six months and two years). *Id.* at 48-49.

3 51. The public was permitted 30 days to submit comments, and no public hearing was  
4 held. *Id.* The States of California and New Mexico, by and through their Attorneys General,  
5 commented in opposition to the Proposed Suspension. The California Air Resources Board also  
6 submitted comments in opposition to the Proposed Suspension. On October 20, 2017, while the  
7 public comment period was ongoing, BLM represented to the court in the Wyoming Litigation  
8 that: “Once the Suspension Rule is completed, it will provide the immediate relief sought by  
9 Petitioners—relief from the portions of the Waste Prevention Rule that would otherwise come  
10 into effect on January 17, 2018, as well as other provisions of the Waste Prevention Rule already  
11 in effect—and thereby obviate the need for immediate judicial review of the Waste Prevention  
12 Rule.” Wyoming Litigation, Fed. Mot. to Extend Briefing Deadlines (Dkt. No. 155) at 4.

13 52. On December 8, 2017, BLM issued a final rule suspending key requirements of the  
14 Waste Prevention Rule until January 17, 2019. 82 Fed. Reg. 58,050 (Dec. 8, 2017)  
15 (“Suspension”). To justify the Suspension, BLM stated it had “concerns regarding the statutory  
16 authority, cost, complexity, feasibility, and other implications” of the Rule, and therefore sought  
17 to “avoid imposing likely considerable and immediate compliance costs on operators for  
18 requirements that may be rescinded or significantly revised in the near future.” *Id.* The  
19 Suspension also makes reference BLM’s “initial review” of the Rule conducted pursuant to  
20 Executive Order 13783 and Secretarial Order No. 3349, which allegedly uncovered a “newfound  
21 concern” regarding the Rule’s burdens on operators of marginal or low-producing wells. *Id.* The  
22 Suspension further references Executive Order 13371, entitled “Reducing Regulatory and  
23 Controlling Regulatory Costs,” although BLM does not indicate how the Suspension fulfills the  
24 direction of this order. *Id.* BLM acknowledged that the Suspension “suspends or delays almost  
25 all of the requirements in the 2016 final rule that we estimated would...generate benefits of gas  
26 savings or reductions in methane emissions.” *Id.* at 58,056. BLM also stated that although it “is  
27 currently considering revisions to the 2016 final rule, it cannot definitively determine what form  
28



1 those revisions will take until it completes the notice-and-comment rulemaking process.” *Id.* at  
2 58,061.

3 53. On December 12, 2017, BLM released a final regulatory impact analysis for the  
4 Suspension (“Final RIA”) that did not change materially from the Proposed RIA. *See* U.S.  
5 Bureau of Land Management, Regulatory Impact Analysis for the Final Rule to Suspend or Delay  
6 Certain Requirements of the 2016 Waste Prevention Rule (“Final RIA”). The Final RIA states  
7 that it “draws heavily upon the analysis conducted for the RIA for the 2016 final rule,” Final RIA  
8 at 5, although it makes dramatic changes in calculating the costs of increased methane emissions  
9 by relying on an “interim” measure that only considers “the domestic social cost of methane.” *Id.*  
10 at 33-35. This interim measure lacks substantial analysis, much less peer review, and ignores  
11 nearly ninety-percent of the costs imposed by methane emissions. Further, despite the  
12 Suspension’s justification of avoiding compliance costs for operators, the Final RIA states that  
13 such costs would be insignificant and that the Suspension would increase the profit margin for the  
14 smallest operators by just 0.17 percentage points. *Id.* at 61. BLM also determined that the  
15 Suspension “would not have a significant impact” on small companies, and that it would not  
16 “significantly impact the supply, distribution, or use of energy.” *Id.* at 55, 67. Also, contrary to  
17 BLM’s stated justification for the Suspension, the Final RIA calculates costs and benefits based  
18 on an assumption that the Rule will go into effect, unaltered and in its entirety, on January 17,  
19 2019. *Id.* at 27-39. Finally, BLM bases its estimates of industry cost savings on the unfounded  
20 assumption that oil and gas operators have not already undergone compliance activities to meet  
21 the January 17, 2018 deadlines. *Id.* at 33.

22 54. BLM also issued a Final Environmental Assessment (“Final EA”) and Finding of No  
23 Significant Impact (“FONSI”) for the Suspension, which determined that the Suspension “would  
24 not have a significant effect on the quality of the human environment; therefore, an EIS is not  
25 required.” The FONSI, like the Final RIA, relies on the premise that the Rule will be  
26 implemented completely on January 17, 2019. *See* FONSI at 5 (“While a delay in implementing  
27 the rule would postpone any anticipated reductions, delaying the rule would not result in an  
28 increase of GHG, air pollutant, and HAP emissions over current conditions.”).



1 impact on operator compliance costs or energy development on federal or Indian lands. Further,  
2 these Executive Orders cannot contravene statutory mandates imposed upon Defendants by  
3 Congress.

4 61. Defendants' reliance on the Final RIA is also arbitrary and capricious for several  
5 reasons, including its assumptions that the Waste Prevention Rule will take full effect in January  
6 2019 and that operators have not already incurred costs to comply with the requirements affected  
7 by the Suspension, its use of an "interim" domestic social cost of methane measure, and its failure  
8 to consider the full costs of the Suspension.

9 62. Finally, Defendants failed to consider alternative solutions to address any alleged  
10 deficiencies with the Rule, such as through the issuance of guidance or making adjustments  
11 necessary to clarify certain provisions, rather than a suspension of the Rule's key requirements.

12 63. Accordingly, Defendants acted in a manner that was arbitrary, capricious, an abuse of  
13 discretion, not in accordance with law, and in excess of their statutory authority. 5 U.S.C. § 706.  
14 Consequently, the Suspension should be held unlawful and set aside.

## 15 SECOND CAUSE OF ACTION

### 16 (Violation of the MLA, FOGRMA, FLPMA and the APA;

17 **30 U.S.C. §§ 187, 225; 30 U.S.C. § 1756; 43 U.S.C. §§ 1701, 1732; 5 U.S.C. § 706)**

18 64. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

19 65. The MLA vests BLM with broad responsibility to require oil and gas lessees to  
20 observe "such rules ... for the prevention of undue waste as may be prescribed by [the]  
21 Secretary," to protect "the interests of the United States," and to safeguard "the public welfare."  
22 30 U.S.C. § 187. The MLA also requires that "[a]ll leases of lands containing oil or gas ... shall  
23 be subject to the condition that the lessee will ... use all reasonable precautions to prevent waste  
24 of oil or gas developed in the land ... ." *Id.* § 225.

25 66. FOGRMA provides that, "Any lessee is liable for royalty payments on oil or gas lost  
26 or wasted from a lease site when such loss or waste is due to negligence on the part of the  
27 operator of the lease, or due to the failure to comply with any rule or regulation, order or citation  
28 issued under this chapter or any mineral leasing law." 30 U.S.C. § 1756.



1 significance factor can require the preparation of an EIS. “The agency must prepare an EIS if  
2 substantial questions are raised as to whether a project may cause significant environmental  
3 impacts.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 946 (9th Cir. 2014).

4 73. As the comment letters from Plaintiffs, as well as BLM’s own analysis, demonstrate,  
5 there are substantial questions, if not certainties, as to whether the Suspension may have  
6 significant environmental impacts. In particular, the Suspension will result in significant adverse  
7 impacts including increased air pollution and related public health impacts, climate change harms,  
8 and increased visual and noise impacts from venting, flaring or leaking billions of cubic feet of  
9 natural gas.

10 74. Defendants’ determination that the Suspension would result in no significant impacts,  
11 and its reliance on a FONSI and failure to prepare an EIS, constitutes agency action unlawfully or  
12 unreasonably withheld or delayed, in violation of the requirements of NEPA. 5 U.S.C. § 706(1).  
13 Alternatively, Defendants’ determination that the Suspension would result in no significant  
14 impacts, and its reliance on a FONSI and failure to prepare an EIS, is arbitrary and capricious, an  
15 abuse of discretion, and contrary to the requirements of NEPA. 5 U.S.C. § 706(2).

#### 16 **FOURTH CAUSE OF ACTION**

#### 17 **(Violation of the APA, 5 U.S.C. §§ 553(b), 706)**

18 75. Paragraphs 1 through 74 are realleged and incorporated herein by reference.

19 76. The Proposed Suspension provided no explanation as to why certain provisions of the  
20 Waste Prevention Rule might no longer be valid or prudent, and no data to support such purported  
21 deficiencies. *See* 5 U.S.C. § 553. Further, Defendants’ statements indicate that BLM had already  
22 made up its mind to finalize the Suspension prior to considering public comments. Defendants  
23 therefore “did not provide a meaningful opportunity for comment, and did not solicit or receive  
24 relevant comments regarding the substance or merits of either set of regulations.” *N. Carolina*  
25 *Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 770 (4th Cir. 2012). Hence, the  
26 public has not had an opportunity to “participate in the rule making through submission of written  
27 data, views, or arguments...on the relevant matter presented,” as required by the APA. 5 U.S.C.  
28 § 553(c).



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Respectfully Submitted,

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