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DISTRICT OF WYOMING  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

WESTERN ENERGY ALLIANCE, and the )  
INDEPENDENT PETROLEUM )  
ASSOCIATION OF AMERICA, )  
Petitioners, )  
v. )  
SALLY JEWELL, in her official capacity as )  
Secretary of the United States Department of )  
the Interior, and BUREAU OF LAND )  
MANAGEMENT, )  
Respondents. )

Civil Case No. 16-cv-280-C

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**PETITION FOR REVIEW OF FINAL AGENCY ACTION**

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Petitioners Western Energy Alliance (the Alliance) and the Independent Petroleum Association of America (IPAA) respectfully submit this Petition for Review of Final Agency Action (Petition) under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (APA) and U.S.D.C.L.R. 83.6. On November 15, 2016, the Bureau of Land Management (BLM) within the

United States Department of the Interior issued a final rule intended to regulate the waste of natural gas from flaring, venting, and leaks from oil and natural gas production activities on onshore federal and Indian oil and gas leases and certain non-federal oil and gas leases. *See* “Waste Prevention, Production Subject to Royalties, and Resources Conservation: Final Rule” (Venting and Flaring Rule).<sup>1</sup>

The Venting and Flaring Rule represents unlawful and unconstitutional agency action. The APA requires a reviewing court to hold unlawful and set aside agency action found to be contrary to constitutional right, arbitrary and capricious, an abuse of discretion, contrary to law, or in excess of statutory jurisdiction or authority. 5 U.S.C. § 706(2). Major portions of the Venting and Flaring Rule seek to regulate air quality from and at oil and gas production facilities on public and Indian lands and on some non-federal lands; BLM lacks the Congressionally-delegated authority to do so. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *see also* 42 U.S.C. §§ 7401-7671q (Congress delegating exclusive authority to comprehensively regulate air quality under the Clean Air Act to the United States Environmental Protection Agency (EPA), state and local governments, and the tribes, not the BLM); *Wyoming Outdoor Council, et. al.* 176 IBLA 15, 26 (2008) (holding EPA and the states, not BLM, have exclusive authority to promulgate comprehensive air quality control regulations). In this respect the Venting and Flaring Rule is unconstitutional, in excess of BLM’s statutory authority, and otherwise not in accordance with law. *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649 (1990) (“Although agency determinations within the scope of delegated authority are entitled to deference, it is fundamental ‘that an agency

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<sup>1</sup> *See* [https://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/methane\\_and\\_waste.html](https://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/methane_and_waste.html). An electronic copy of the Venting and Flaring Rule will be filed with the Court when it is published in the Federal Register.

may not bootstrap itself into an area in which it has no jurisdiction.”) (quoting *Federal Maritime Comm’n v. Seatrain Lines, Inc.*, 411 U.S. 726, 745 (1973)).

The Venting and Flaring Rule also is arbitrary and capricious, an abuse of discretion, not supported by the administrative record, procedurally deficient, and does not represent reasoned decision making. Among other things, the Venting and Flaring Rule places arbitrary limits on flaring, relies on flawed scientific, engineering, and economic assumptions and methodologies to estimate regulatory impacts, improperly relies on EPA air quality rules and the administrative record underlying those rules, which themselves are being litigated, and conflicts with or unlawfully usurps the primary jurisdiction of state and tribal governments. For these and other reasons, the Court should invalidate and set aside the Venting and Flaring Rule and order temporary, or preliminary and permanent injunctive or other relief as the Petitioner may subsequently request.

This Court has federal question jurisdiction over this Petition under 28 U.S.C. § 1331. Respondent Sally Jewell is an officer of the United States; Respondent BLM is an entity of the United States Government. The United States has waived its sovereign immunity under the APA, 5 U.S.C. § 704.

Dated this 15 day of November, 2016.

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