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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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,

v.

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

Defendants.

Case No. 3:17-cv-07186-LB

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES

Date: January 25, 2018
Time: 9:30 am
Dept: Ctrm. C., 15th Floor
Judge: Honorable Laurel Beeler

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NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on January 25, 2018, at 9:30 am, or as soon thereafter as it may be heard, 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"), by and through their undersigned counsel, will, and hereby do, move for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and Civil Local Rules 7-2 and 65-2. This motion will be made before the Honorable Magistrate Judge Laurel Beeler, United States District Judge, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, Courtroom C, 15th Floor, San Francisco, California 94102.

Plaintiffs hereby move for a preliminary injunction enjoining Defendants from suspending or delaying the requirements of the Waste Prevention, Production Subject to Royalties, and Resource Conservation; Final Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016), which became effective on January 17, 2017. In support of this motion, Plaintiffs submit the accompanying memorandum of points and authorities, the declarations of Elizabeth Scheehle and Sandra Ely, request for judicial notice and authenticating declaration, and a proposed order.

Dated: December 19, 2017

Respectfully Submitted,

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INTRODUCTION

With this motion for a preliminary injunction, 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") seek to enjoin the latest unlawful action by the U.S. Bureau of Land Management ("BLM") to effectively revoke its 2016 regulations governing the waste of natural gas and royalty payments from oil and gas operations on federal and Indian lands. *See* 81 Fed. Reg. 83,008 (Nov. 18, 2016) (Waste Prevention, Production Subject to Royalties, and Resource Conservation; Final Rule) (the "Waste Prevention Rule" or "Rule"). On October 4, 2017, this district court ruled that BLM's initial attempt to delay this Rule—by purporting to postpone the Rule's effective date after it had become effective—was illegal, holding that Section 705 of the Administrative Procedure Act ("APA") did not apply, that the postponement amounted to a rulemaking that required compliance with the APA's notice and comment procedures, and that BLM's failure to consider the foregone benefits of compliance with the Rule was arbitrary and capricious. *See State of California v. U.S. Bureau of Land Mgmt.*, --- F. Supp. 3d ---, 2017 WL 4416409 (N.D. Cal. Oct. 4, 2017), *appeal docketed*, No. 17-17456 (9th Cir. Dec. 4, 2017) ("*California v. BLM*"). BLM's renewed attempt to undermine the Rule similarly fails to pass legal muster because the agency has not supported its action with any rationale or analysis whatsoever.

With a major compliance date of January 17, 2018 rapidly approaching, it is critical that this Court preserve the status quo by preliminarily enjoining BLM's unlawful action to suspend key requirements of the Rule. *See* 82 Fed. Reg. 58,050 (Dec. 8, 2017) (the "Suspension"). Plaintiffs are more than likely to succeed on the merits of their claim that BLM's reversal of its position on regulating natural gas waste is arbitrary and capricious. To begin with, BLM provides no reasoned analysis, much less factual support, for the Suspension. BLM relies on a yet-to-be-proposed revision of the Rule to speculate that compliance with the current Rule might impose "unnecessary burdens" on oil and gas developers. Using this rationale, any agency could serially or indefinitely postpone compliance with an already-effective rule solely on the grounds that the

agency is considering promulgating revisions. Congress, however, never granted BLM such authority. Moreover, BLM's vague "newfound concerns" regarding impacts on operators' costs and oil and gas development are contradicted by BLM's own factual findings, made in the course of adopting both the Rule and the Suspension, that those impacts are insignificant or non-existent. Nor has BLM explained how the Suspension achieves any of the statutory mandates that Congress has imposed on BLM to prevent waste, ensure wasted gas is subject to royalties, and safeguard the public welfare. These and other gross deficiencies render BLM's action unlawful.

Absent a preliminary injunction, Plaintiffs stand to suffer significant and irreparable harm to their public health and environment. In adopting the Waste Prevention Rule in 2016, BLM found that new restrictions on flaring, venting and equipment leaks of natural gas would, on an annual basis, save up to 41 billion cubic feet of gas, avoid up to 180,000 tons of methane emissions, and reduce emissions of hazardous air pollutants by 250,000 to 267,000 tons. 81 Fed. Reg. 83,014. The increased air pollution that would result from the Suspension would elevate rates of heart disease, lung disease, asthma, and risks of cancer. Further, each ton of excess methane emissions has a global warming impact many times that of carbon dioxide, contributing to sea level rise, increased intensity of heat waves and risk of wildfire that are harming Plaintiff States.

Weighed against the speculative economic harm to smaller oil and gas operators—which is not only unsubstantiated but is flatly contradicted by the factual record for the Rule and the Suspension—the public health and environmental harms to Plaintiffs clearly tip the equities in the States' favor. Nor can there be any question where the public interest lies. The Suspension would allow for the waste of billions of cubic feet of natural gas that belongs to the People, and simultaneously would diminish the royalty payments to American taxpayers by millions of dollars in the coming year.

For these reasons, BLM's Suspension should be promptly enjoined so that the Waste Prevention Rule's January 17, 2018 compliance requirements remain in effect and the status quo is preserved while this litigation proceeds.

FACTUAL AND PROCEDURAL BACKGROUND

I. WASTE OF FEDERALLY-MANAGED OIL AND GAS RESOURCES.

BLM oversees more than 245 million acres of land and 700 million subsurface acres of federal mineral estate, on which reside nearly 100,000 producing onshore oil and gas wells. 81 Fed. Reg. at 83,014.[1] In fiscal year 2015, the production value of this oil and gas exceeded $20 billion and generated over $2.3 billion in royalties, which were shared with tribes and states. *Id.*; *see* 30 U.S.C. § 191(a). Oil and gas production in the United States has increased dramatically over the past decade due to technological advances such as hydraulic fracturing and directional drilling. 81 Fed. Reg. at 83,009. However, the American public has not fully benefitted from this increase in domestic energy production because it "has been accompanied by significant and growing quantities of wasted natural gas." *Id*. at 83,014. For example, between 2009 and 2015, nearly 100,000 oil and gas wells on federal land released approximately 462 billion cubic feet of natural gas through venting and flaring, enough gas to serve about 6.2 million households for a year. *Id*. at 83,009.

When oil and gas operators waste natural gas through venting, flaring, and leaks, this not only squanders a valuable public resource that could be used to supply our nation's power grid and generate royalties, but it also harms air quality. For example, venting, flaring, and leaks of natural gas can release volatile organic compounds ("VOCs"), including benzene and other hazardous air pollutants, as well as nitrogen oxides and particulate matter, which can cause and worsen respiratory and heart problems. *Id*. at 83,014. In addition, the primary constituent of natural gas—methane—is an especially potent greenhouse gas, which contributes to climate change at a rate much higher than carbon dioxide. *Id*. at 83,009.

[1] BLM's Federal Register notices cited herein have been submitted to the Court as part of Plaintiffs' Request for Judicial Notice, filed herewith. *See* Declaration of Mary Tharin in Support of Plaintiffs' Request for Judicial Notice in Support of Motion for Preliminary Injunction ("Tharin Decl."), Exh. A-J. "[F]ederal courts are required to take judicial notice of the Federal Register." *Biodiversity Legal Fdn. v. Badgley*, 309 F.3d 1166, 1179 (9th Cir. 2002); *see also* 44 U.S.C. § 1507 ("The contents of the Federal Register shall be judicially noticed.").

II. THE BLM WASTE PREVENTION RULE.

Prior to 2016, BLM's regulatory scheme governing the minimization of resource waste had not been updated in over three decades. *Id.* at 83,008. Several oversight reviews, including those by the Government Accountability Office ("GAO") and the Department of the Interior's Office of the Inspector General, specifically called on BLM to update its "insufficient and outdated" regulations regarding waste and royalties. *Id*. at 83,009-10. The GAO specifically noted in 2010 that "around 40 percent of natural gas estimated to be vented and flared on onshore Federal leases could be economically captured with currently available control technologies." *Id*. at 83,010. The reviews recommended that BLM require operators to augment their waste prevention efforts and clarify policies regarding royalty-free, on-site use of oil and gas. *Id*.

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

BLM issued the final Waste Prevention Rule in November 2016. *Id*. at 83,008. In the final Rule, BLM refined many of the provisions of the Proposed Rule based on public comments to ensure both that compliance was feasible for operators and that the Rule achieved its waste prevention objectives. *Id*. at 83,022-23. The Rule is designed to force considerable reductions in waste from flaring, venting, and equipment leaks, saving and putting to use up to 41 billion cubic feet of gas per year. *Id*. at 83,014. In addition, the Rule would avoid an estimated 175,000-180,000 tons of methane emissions per year and reduce emissions of VOCs, including benzene and other hazardous air pollutants, by 250,000–267,000 tons per year. *Id*.

On January 17, 2017, the Waste Prevention Rule went into effect. *See* 81 Fed. Reg. at 83,008. The Rule addresses each major source of natural gas waste from oil and gas

production—venting, flaring, and equipment leaks—through different requirements. *Id*. at 83,010-13. In particular, the Rule prohibits venting except under specified conditions, and requires updates to existing equipment. *Id*. at 83,011-13. The Rule's flaring regulations reduce waste by requiring gas capture percentages that increase over time, providing exemptions that are scaled down over time, and requiring operators to submit Waste Minimization Plans. *Id*. at 83,011. Leak detection provisions require semi-annual inspections for well sites and quarterly inspections for compressor stations. *Id*.

III. ATTEMPTS TO INVALIDATE, POSTPONE, OR SUSPEND OF THE RULE.

Soon after the Rule was finalized, two industry groups and the States of Wyoming and Montana (later joined by North Dakota and Texas) (collectively, "Petitioners") challenged the Rule in federal district court in Wyoming, on the alleged basis that BLM did not have statutory authority to regulate air pollution and that the Rule was arbitrary and capricious. *Western Energy Alliance v. Jewell*, No. 2:16-cv-00280-SWS (D. Wyo. petition filed Nov. 16, 2016); *State of Wyoming v. Jewell*, No. 2:16-cv-00285-SWS (D. Wyo. petition filed Nov. 18, 2016) (collectively, the "Wyoming Litigation"). Plaintiffs, along with several environmental organizations, intervened on the side of BLM in defense of the Rule. On January 16, 2017, the Wyoming district court denied the Petitioners' motions for a preliminary injunction, finding that the Petitioners had failed to establish a likelihood of success on the merits or irreparable harm in the absence of an injunction. Wyoming Litigation, Order on Motions for Preliminary Injunction, 2017 WL 161428 (D. Wyo. Jan. 16, 2017).

On March 28, 2017, President Donald Trump issued Executive Order 13783, entitled "Promoting Energy Independence and Economic Growth." 82 Fed. Reg. 16,093 (Mar. 31, 2017). Section 7 of that Executive Order, entitled "Review of Regulations Related to United States Oil and Gas Development," specifically called on the Secretary of the Interior to review and "as soon as practicable, suspend, revise, or rescind" the Waste Prevention Rule. The next day, Secretary of the Interior Ryan Zinke issued Secretarial Order 3349, which provided that within 21 days, BLM would review the Rule and issue an internal report as to "whether the rule is fully consistent with

the policy set forth in Section 1 of the March 28, 2017 E.O." BLM published the results of its review on October 24, 2017. *See* 82 Fed. Reg. 50,532 (Nov. 1, 2017). This review consists of less then a single page where BLM concludes, without any rationale or justification, that "the 2016 final rule poses a substantial burden on industry, particularly those requirements that are set to become effective on January 17, 2018." *Id.* at 50,535.

On June 15, 2017, BLM published a notice in the Federal Register postponing the effectiveness of certain provisions of the Rule. 82 Fed. Reg. 27,430 (June 15, 2017) ("Waste Prevention, Production Subject to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates") (the "Postponement Notice"). Citing "the existence and potential consequences of the pending [Wyoming] litigation," BLM stated that it "has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to [Section 705 of] the Administrative Procedure Act, pending judicial review." *Id*.

The States of California and New Mexico challenged this unlawful action on July 5, 2017 in this district court. Case No. 3:17-cv-03804-EDL. On October 4, 2017, the court ruled that Section 705 did not apply to an already-effective rule, and that the postponement amounted to a rulemaking that required compliance with the APA's notice and comment procedures. *See California v. BLM*, 2017 WL 4416409 at *7-10. The court also found that BLM's failure to consider the foregone benefits of the Rule's postponed provisions rendered its action arbitrary and capricious and in violation of the APA. *Id*. at *11-12. Thus, the court vacated the Postponement Notice and the Rule went back into effect. *Id*. at *14.

On October 5, 2017, BLM published a notice in the Federal Register proposing to delay and suspend certain requirements of the Rule that were already in effect, or set to take effect in January 2018, until January 17, 2019. 82 Fed. Reg. 46,458 (Oct. 5, 2017) ("Proposed Suspension"). These requirements include those covered by the Postponement Notice, as well as already-effective rules governing waste minimization plans, well drilling, well completion and related operations, and downhole well maintenance and liquids unloading. The public was permitted 30 days to submit comments. *Id.* The States of California and New Mexico, by and

through their Attorneys General, and California Air Resources Board commented in opposition to the Proposed Suspension.

On December 8, 2017, BLM published a final rule entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements," which suspends key requirements of the Waste Prevention Rule. 82 Fed. Reg. 58,050 ("Suspension"). To justify the Suspension, BLM stated it had "concerns regarding the statutory authority, cost, complexity, feasibility, and other implications" of the Rule, and therefore sought to "avoid imposing likely considerable and immediate compliance costs on operators for requirements that may be rescinded or significantly revised in the near future." *Id*. The Suspension also makes reference to BLM's "initial review" of the Rule conducted pursuant to Executive Order 13783 and Secretarial Order No. 3349, which allegedly uncovered a "newfound concern" regarding the Rule's burdens on operators of marginal or low-producing wells. *Id*. The Suspension further references Executive Order 13771, entitled "Reducing Regulatory and Controlling Regulatory Costs," although BLM does not indicate how the Suspension fulfills the direction of that order. *Id*.

BLM admits that the Suspension "suspends or delays almost all of the requirements in the 2016 final rule that the BLM estimated would…generate benefits of gas savings or reductions in methane emissions." *Id*. at 58,056. In particular, BLM estimates that the Suspension will "result in additional methane and VOC emissions of 175,000 and 250,000 tons, respectively," and will "decrease natural gas production from Federal and Indian leases, and likewise, is expected to reduce annual royalties to the Federal Government, tribal governments, States, and private landowners." *Id.* at 58,056-57. BLM also stated that although it "is currently considering revisions to the 2016 final rule, it cannot definitively determine what form those revisions will take until it completes the notice-and-comment rulemaking process." *Id*. at 58,061. The Suspension goes into effect on January 8, 2018. *Id*.

On December 12, 2017, BLM released a Final Regulatory Impact Analysis for the Suspension. *See* U.S. Bureau of Land Management, Regulatory Impact Analysis for the Final

Rule to Suspend or Delay Certain Requirements of the 2016 Waste Prevention Rule ("Final RIA"). Tharin Decl., Exh. J. The Final RIA states that it "draws heavily upon the analysis conducted for the RIA for the 2016 final rule," although it makes dramatic changes in calculating the costs of increased methane emissions by relying on an "interim" measure that only considers "the domestic social cost of methane." *Id*. at 5, 33-35. Despite the Suspension's justification of avoiding compliance costs for operators, the Final RIA states that such costs would be insignificant and that the Suspension would increase the profit margin for the smallest operators by just 0.17 percentage points. *Id*. at 61. BLM also determined that the Suspension "would not have a significant economic impact" on small companies, and would not "significantly impact the supply, distribution, or use of energy." *Id.* at 55, 67. The only alternatives that BLM considered to the one-year suspension were suspensions of other lengths (six months or two years). *Id*. at 16, 64-65. BLM did not consider any substantive amendments to the Waste Prevention Rule that might have addressed BLM's purported concerns.

STATUTORY BACKGROUND

I. FEDERAL LAND MANAGEMENT STATUTES AND BLM'S DUTY TO PREVENT WASTE.

BLM has a clear statutory duty to prevent waste and regulate royalties from oil and gas operations on federal and Indian lands. First, the Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 181 *et seq*., provides BLM with broad regulatory power to require oil and gas lessees to observe "such rules … for the prevention of undue waste as may be prescribed by [the] Secretary," to protect "the interests of the United States," and to safeguard "the public welfare." *Id*. § 187. The MLA specifically requires that "[a]ll leases of lands containing oil or gas … shall be subject to the condition that the lessee will … use all reasonable precautions to prevent waste of oil or gas developed in the land … ." *Id*. § 225. In the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA"), 30 U.S.C. § 1701 *et seq*., Congress reiterated its concern about waste by providing that: "Any lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the

operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this chapter or any mineral leasing law." 30 U.S.C. § 1756.

In addition, the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq*., mandates that BLM manage public lands "in a manner that will protect the quality of … ecological, environmental, [and] air and atmospheric … values," *id*. § 1701(a)(8), and provides that BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." *Id*. § 1732(b). Finally, pursuant to the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a–396g, and the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–08, BLM has authority to regulate oil and gas development on 56 million acres of Indian mineral estate held in trust by the federal government. *See, e.g.*, 25 U.S.C. § 396d (oil and gas operations on Indian lands subject "to the rules and regulations promulgated by the Secretary").

II. THE ADMINISTRATIVE PROCEDURE ACT.

Under the Administrative Procedure Act, courts will set aside an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious where the agency (i) has relied on factors which Congress has not intended it to consider; (ii) entirely failed to consider an important aspect of the problem; (iii) offered an explanation for its decision that runs counter to the evidence before the agency; or (iv) is so implausible that it could not be ascribed to a difference of view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*").

When an agency reverses course by suspending a duly promulgated regulation, it is "obligated to supply a reasoned analysis for the change." *Id.* at 42. Further, an agency must show that "there are good reasons" for the reversal. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). An agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy." *Id*. "[E]ven when reversing a policy after

an election, an agency may not simply discard prior factual findings without a reasoned explanation." *Organized Village of Kake v. U.S. Dept. of Agriculture*, 795 F.3d 956, 968 (9th Cir. 2015). Moreover, an agency cannot suspend a validly promulgated rule without first "pursu[ing] available alternatives that might have corrected the deficiencies in the program which the agency relied upon to justify the suspension." *Public Citizen v. Steed*, 733 F.2d 93, 103 (D.C. Cir. 1984).

STANDARD OF REVIEW

"The purpose of a preliminary injunction is merely to preserve the relative position of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). To obtain an injunction, the moving party must demonstrate four factors: (1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Id.* at 24.

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS THAT BLM'S SUSPENSION OF THE WASTE PREVENTION RULE WAS UNLAWFUL.

A. BLM Has Failed to Provide any Reasoned Analysis for the Suspension of a Duly Promulgated Rule.

As the D.C. Circuit recently reiterated, "an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked." *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017). BLM does not have "inherent authority" to delay key provisions of a duly promulgated rule, and has not cited a single provision of any federal statute that would grant it such authority. *See id.* at 9; *Natural Resources Defense Council v. Abraham*, 355 F.3d 179, 202 (2d Cir. 2004) (rejecting the contention that agency had "inherent power" to suspend a promulgated rule where no statute conferred such authority). The agency's characterization of the Suspension as a "temporary delay" of certain requirements is not dispositive—rather it is the "the substance of what the [agency] has purported to do and has done which is decisive." *Steed*,

733 F.2d at 98 (quoting *Environmental Defense Fund, Inc. v. Gorsuch*, 713 F.2d 802, 816 (D.C. Cir. 1983) (alteration in original). Here, BLM's Suspension acts as a revocation of the Rule because it is expressly designed to allow the agency sufficient time to complete a notice-and-comment rulemaking to revise the provisions that have been suspended. *See id*.

If BLM wishes to reconsider a regulation, it must establish that "the new policy is permissible under the statute[s]" which the agency purports to interpret, and that "there are good reasons" for the change. *Fox*, 556 U.S. at 515. It must provide a "reasoned analysis" for its change in position and "cogently explain why it has exercised its discretion in a given manner." *State Farm*, 463 U.S. at 43, 48. Here, BLM has entirely failed to provide such analysis or explanation.

The primary rationale cited in the Suspension is BLM's desire to "avoid imposing likely considerable and immediate compliance costs on operators for requirements that may be rescinded or significantly revised in the near future." 82 Fed. Reg. at 58,050. However, BLM has provided no factual basis whatsoever to explain why such revisions are necessary. To the contrary, BLM admits that although it "is currently considering revisions to the 2016 final rule, it cannot definitively determine what form those revisions will take until it completes the notice-and-comment rulemaking process." *Id*. at 58,061.

In its section-by-section discussion, BLM lists a number of "concerns" that the agency is reviewing—including whether various provisions impose unnecessary burdens on oil and gas developers, and whether certain provisions might be replaced with less stringent requirements. But the agency's musings and guesses as to what may be wrong with a Rule that it recently finalized after an extensive notice-and comment period are not sufficient to provide the kind of reasoned analysis required under *State Farm*. BLM also claims it will reconsider certain "specific assumptions" underlying the Rule, including the assumption that all marginal wells would receive exemptions, that certain administrative processes would not be delayed, and that capture percentage requirements would not have a disproportionate impact on small operators. *Id*. at 58,051. Once again, the Suspension offers no explanation as to how, why, or on what basis these

assumptions will be reconsidered.

BLM has also failed to consider alternative solutions to address any alleged problems with the Rule, such as through the issuance of guidance or making adjustments necessary to clarify certain provisions. For an agency's decision-making to be regarded as rational, it must consider significant alternatives to the course it ultimately chooses. *See State Farm*, 463 U.S. at 50-51 (agency violated APA by failing to explain abandonment of "effective and cost-beneficial" alternative). Here, the only alternatives considered by BLM were "alternative timeframes for which it could suspend or delay the requirements (e.g., 6 months and 2 years)." Final RIA at 16, 64-65. This clearly insufficient consideration of alternatives underscores the complete lack of reasoned analysis put forth by BLM. *See Yakima Valley Cablevision, Inc. v. F.C.C.*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986) (noting that "[t]he failure of an agency to consider obvious alternatives has led uniformly to reversal" and citing cases).

In sum, BLM has failed to identify *any* deficiencies in the Rule that would warrant an amendment or adjustment to its requirements. The agency has effectively revoked a statutorily-mandated regulation without any explanation whatsoever, in cavalier disregard for the duty of agencies to apply their expertise in a transparent and well-reasoned manner. If this action is allowed to stand, nothing would stop BLM from repeating this exact conduct again and again every year, thus ensuring that key requirements of the Waste Prevention Rule are never implemented despite the fact that the agency has offered no reasons for changing its mind. As the Court recognized in *Steed*, "[w]ithout showing that the old policy is unreasonable," for an agency to claim that "no policy is better than the old policy because a new policy might be put into place in the indefinite future is as silly as it sounds." 733 F.2d at 102. Thus, in the absence of any "reasoned analysis" or evidence regarding problems with the promulgated Waste Prevention Rule, suspending its requirements is patently arbitrary and capricious, in violation of the APA.

B. BLM's Justification for the Suspension is Contrary to the Evidence Before the Agency.

Not only is BLM's stated rationale an illegitimate basis for suspending the requirements of a validly promulgated rule, it is also contrary to the evidence before the agency. Unexplained

inconsistencies between the Waste Prevention Rule and the Suspension constitute "a reason for holding an interpretation to be an arbitrary and capricious change." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005); *see Organized Village of Kake,* 795 F.3d at 966-67 (finding that agency's contrary conclusions "[o]n precisely the same record" was arbitrary and capricious). Moreover, BLM's "[d]ivergent factual findings…raise questions as to whether the agency is fulfilling its statutory mandates impartially and competently." *Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1049 (9th Cir. 2010).

For example, BLM now claims to be concerned that the Rule would have a "disproportionate effect on small operators." 82 Fed. Reg. at 58,051. However, in the rulemaking record for the Waste Prevention Rule, BLM conducted a regulatory impact analysis ("2016 RIA") and found that implementation costs for "individual operators would be small, even for businesses with less than 500 employees." *See* 81 Fed. Reg. at 83,013. Specifically, BLM estimated that average costs for a "representative small operator" would "result in an average reduction in profit margin of 0.15 percentage points." *Id*. at 83,013-14 (citing 2016 RIA at 129). BLM's new analysis similarly concludes that the Suspension will increase the profit margin for small operators by just 0.17 percentage points, and admits that such an amount is insignificant. Final RIA at 5, 61 n.32 (increase in profit margin is "unlikely to achieve the level of being significant"); *see* 82 Fed. Reg. at 58,064 ("the average reduction in compliance costs associated with this final delay rule will be a small fraction of a percent of the profit margin for small companies, which is not a large enough impact to be considered significant"). Additionally, BLM admits that "this final delay rule will not have a significant economic impact on a substantial number of small entities." 82 Fed. Reg. at 58,064. BLM offers no explanation for its newfound concerns about the Rule's impacts on small entities given this unchanged data.

The Suspension also reaches internally contradictory conclusions on the question of whether the Rule would inhibit oil and gas development on public lands. 82 Fed. Reg. at 58,050-51. BLM contends that its ongoing review of the Rule is based on direction from Executive

Order 13783[2] and Secretarial Order 3349 to review any rules that unduly burden domestic energy production.[3] 82 Fed. Reg. at 46,459. The Suspension asserts that BLM has concluded that "some provisions of the 2016 final rule add considerable regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." 82 Fed. Reg. at 58,050. However, rather than providing any analysis or factual data to support these its findings, BLM simply provides one example—the agency's "newfound concern" that the Rule would "pose a particular compliance burden to operators of marginal or low-producing wells." *Id*. The agency does not explain how burdens on low-producing wells would unduly burden energy production. Further, BLM admits that the Suspension will not "significantly impact the price, supply, or distribution of energy," or "substantially alter the investment or employment decisions" of operators. *Id*. at 58,057; *see* Final RIA at 5 ("The 2017 final delay rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, [or] jobs… ."), 55, 60 ("We do not believe that the 2017 final delay rule substantially alters the investment or employment decisions of firms."). Moreover, considering the increased pollution that will result from the Suspension, BLM has failed to address the other provisions of Executive Order 13783, including that "all agencies should take appropriate actions to promote clean air and clean water for the American people."[4] *See* Executive Order 13783, Section 1(d),

[2] Executive Order 13783 directs agencies to review regulations that "unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." Executive Order 13783, Sec. 1, 82 Fed. Reg. 16,093 (Mar. 31, 2017). The Executive Order further defines "burden" as "to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources." *Id*., Sec. 2(b). Secretarial Order No. 3349, which was promulgated just one day after Executive Order 13783, directs BLM to review the Waste Prevention Rule to determine whether it is consistent with Section 1 of Executive Order 13783.

[3] BLM also cites Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs," which requires federal agencies to take proactive measures to reduce the costs associated with complying with federal regulations. 82 Fed. Reg. at 58,050. However, it is unclear how the Suspension achieves the goals of this order given that it is not tied to any new regulations and, as discussed above, imposes minimal compliance costs on operators. *See* Executive Order 13771, Sec. 2, 82 Fed. Reg. 9,339 (Feb. 3, 2017).

[4] The court in *California v. BLM* rejected BLM's similarly unsubstantiated reliance on Executive Order 13783 to justify its June 2017 Postponement Notice because BLM had failed to provide the

82 Fed. Reg. at 16,093.

In sum, by BLM's own admission, the Waste Prevention Rule does not impose significant compliance costs on industry and likely has no impact on the development of federal oil and gas resources. Given that BLM also recently found that the Rule would "enhance our nation's natural gas supplies, boost royalty receipts for American taxpayers, tribes, and States, reduce environmental damage from venting, flaring, and leaks of gas, and ensure the safe and responsible development of oil and gas resources," 81 Fed. Reg. at 83,009, its rationale for the Suspension runs counter to the evidence before the agency and fails to provide a reasoned basis for suspending the Rule's requirements. *See State Farm*, 463 U.S. at 42-43. Because BLM has failed to provide a reasoned explanation for its dramatic change in position, or to address its prior factual findings in any meaningful way, its suspension of the Waste Prevention Rule is arbitrary and capricious. *See Brand X Internet Servs*., 545 U.S. at 981.

C. BLM Has Failed to Consider How the Suspension Will Achieve its Statutory Mandates to Prevent Waste and Ensure the Responsible Development of Public Lands.

An agency action is arbitrary and capricious where the agency has "entirely failed to consider an important aspect of the problem." *State Farm*, 463 U.S. at 42-43. Here, BLM has failed entirely to consider the impact of the Suspension on its statutorily-imposed mandates to reduce waste of public natural resources. In promulgating the Waste Prevention Rule, BLM repeatedly stated that the Rule was necessary to fulfill its statutory obligations to "prevent waste of oil or gas," ensure that wasted gas is subject to royalties, "protect[] the interests of the United States…safeguard[] the public welfare," and fulfill its "trust responsibilities with respect to the development of Indian oil and gas interests." 81 Fed. Reg. at 83,009, 83,010, 83,014, 83,020. As detailed in the executive summary to the Rule:

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reasoned explanation required by the APA. *California v. BLM*, 2017 WL 4416409 at *11 ("New presidential administrations are entitled to change policy positions, but to meet the requirements of the APA they must give reasoned explanations for those changes and address [the] prior factual findings underpinning a prior regulatory regime.") (internal quotations and citation omitted).

> Venting, flaring, and leaks waste a valuable resource that could be put to productive use, and deprive American taxpayers, tribes, and States of royalty revenues. In addition, the wasted gas may harm local communities and surrounding areas through visual and noise impacts from flaring, and contribute to regional and global air pollution problems of smog, particulate matter, and toxics (such as benzene, a carcinogen). Finally, vented or leaked gas contributes to climate change, because the primary constituent of natural gas is methane, an especially powerful greenhouse gas (GHG), with climate impacts roughly 25 times those of carbon dioxide (CO2), if measured over a 100-year period, or 86 times those of CO2, if measured over a 20-year period. Thus, measures to conserve gas and avoid waste may significantly benefit local communities, public health, and the environment.

Id. at 83,009. BLM acknowledged that its existing regulations, which dated back to 1979, were not "particularly effective in minimizing waste of public minerals" or fulfilling its other statutory requirements. *See id*. at 83,017-18. BLM further stated that the Rule "helps to meet the Secretary's statutory trust responsibilities with respect to the development of Indian oil and gas interests" because it "will help ensure that the extraction of natural gas from Indian lands results in the payment of royalties to Indian mineral owners, rather than the waste of owners' mineral resources." *Id*. at 83,020. The Rule also fulfills these trust responsibilities because "tribal members and individual Indian mineral owners who live near Indian oil and gas development will realize environmental benefits as a result of this rule's reductions in flaring and air pollution from Indian oil and gas development." *Id*. at 83,021.

The Suspension undermines BLM's statutory duties and, without explanation, simply ignores the important reasons articulated for promulgation of the Waste Prevention Rule just one year ago. BLM provides absolutely no explanation of how the Suspension will prevent waste, ensure the adequate payment of royalties, protect the interests of the United States or public welfare, or fulfill its statutory trust responsibilities on tribal lands. *See Fox*, 556 U.S. at 515-16 (agency must show that a "new policy is permissible under the statute"). To the contrary, BLM admits that the benefits of the Rule in reducing waste, increasing royalty payments, and cutting air pollution and greenhouse gas emissions will simply not be achieved. 82 Fed. Reg. at 58,056 ("The BLM's final delay rule temporarily suspends or delays almost all of the requirements in the

2016 final rule that we estimated would pose a compliance burden to operators and generate benefits of gas savings or reductions in methane emissions."). In sum, BLM's failure to consider how the Suspension will affect its statutory mandates or trust responsibilities was arbitrary and capricious.

D. The Suspension is Based on a Flawed Regulatory Impact Analysis.

The Suspension is also arbitrary and capricious because it improperly calculates the costs and benefits of the Rule based on an inherently flawed regulatory impact analysis. *See Center for Biological Diversity v. Bureau of Land Mgmt.*, 422 F. Supp. 2d 1115, 1149 (N.D. Cal. 2006) (finding it arbitrary and capricious for agency's economic analysis "to rely on a critical assumption that lacks support in the record to justify" decision); *California v. BLM*, 2017 WL 4416409 at *7-11 ("Defendants' failure to consider the benefits of compliance with the provisions that were postponed, as evidenced by the face of the Postponement Notice, rendered their action arbitrary and capricious and in violation of the APA.").

First, in direct contradiction with the BLM's stated intent to reconsider and revise key elements of the Rule, the agency's analysis assumes for the purposes of calculating costs and benefits that the Rule's impacts will simply be delayed only by one year. 82 Fed. Reg. at 58,056; Final RIA at 32 ("The suspension or delay in the implementation of certain requirements in the 2016 final rule will postpone the impacts estimated previously to the near-term future."). As a result, BLM's estimates that the Suspension will result in a $40-$91 million reduction in compliance costs and a $21-$36 million reduction in benefits between 2017 and 2027 is based entirely on the assumption that the Rule, in its current form, will be implemented fully on January 17, 2019. Final RIA at 27-39. The analysis also arbitrarily assumes that the air quality and climate benefits of the Waste Prevention Rule will only be lost for one year. *Id*. at 58,056-57; Final RIA at 32. However, the plain text of the Suspension belies these assumptions, as BLM has made it abundantly clear that it intends to rescind and/or revise most, if not all, of the provisions that have been suspended. *See* 82 Fed. Reg. 58,051 ("BLM is currently reviewing the 2016 final rule to develop an appropriate proposed revision").

Further, BLM bases its estimates of industry cost savings on the unfounded assumption that oil and gas operators have not already undergone any compliance activities to meet the January 17, 2018 deadlines. Final RIA at 33 ("The BLM recognizes that, to the extent that operators have already undertaken compliance activities, either for requirements already being implemented or in anticipation of the requirements with implementation dates of January 17, 2018, the reduction in compliance costs estimated for this 2017 final delay rule could be overstated."). Oil and gas operators have had almost a full year to make the necessary updates to equipment and reporting procedures in accordance with the January 2018 deadlines, and there is no reason to believe they have not done so. While BLM claims to be "fairly certain that operators are likely to have ceased some compliance activities prior to this final delay rule being implemented, considering the BLM's recent postponement of future compliance dates," this certainty is misplaced. The Waste Prevention Rule became effective on January 17, 2017 and was in effect for the next five months. BLM's attempt to postpone the Rule without notice-and-comment on June 15, 2017 was challenged on July 5, 2017. Case No. 3:17-cv-03804-EDL. On October 4, 2017, the district court found the postponement was an illegal misuse of the APA, and reinstated the Rule. *California v. BLM*, 2017 WL 4416409 at *14. Thus, BLM's assertion that the Suspension's benefits outweigh its costs is premised on the dubious assumption that regulated industries blatantly disregarded their duties under the duly-promulgated Waste Prevention Rule for nearly a year. *See* Final RIA at 36 (acknowledging uncertainty due to the fact that "operators likely started undertaking compliance activities"). BLM has no basis for this arbitrary assumption. *See California v. BLM*, 2017 WL 4416409 at *8 (noting "the Rule imposed compliance obligations starting on its effective date of January 17, 2017 'that increased over time but did not abruptly commence' on January 17, 2018").

Finally, while the Final RIA admits that it "draws heavily upon the analysis conducted for the RIA for the 2016 final rule," Final RIA at 5, it arbitrarily relies on an "interim domestic Social Cost of Methane" metric that greatly undervalues the impacts of increased methane emissions by failing to consider the full, global impacts of these emissions. *Id*. at 33-35. This new interim

measure instead considers only "domestic" impacts and assumes that "U.S. damages are approximated as 10% of the global values"—effectively dismissing 90 percent of the costs of increased methane emissions. The effect of this swap is to significantly reduce the estimated benefits of the Waste Prevention Rule, rendering them lower than largely-unchanged compliance costs, without reasoned justification or amendment to the record.

BLM claims that this metric is based on direction from Executive Order 13783, which disbanded the working group and technical support documents regarding the social cost of methane used for evaluating the Rule, and "directed agencies to ensure that estimates of the social cost of greenhouse gases used in regulatory analyses 'are based on the best available science and economics' and are consistent with the guidance contained in OMB Circular A-4." Final RIA at 33 (quoting E.O. 13783, Section 5(c)). However, nothing in Executive Order 13783 directs agencies to ignore the global impacts of a rulemaking. Moreover, OMB Circular A-4 specifically recognizes that a regulation may "have effects beyond the borders of the United States," and states that an agency's economic analysis should encompass "all the important benefits and costs likely to result from the rule," including "any important ancillary benefits."[5] Further, OMB Circular A-4 provides guidance for the implementation of Executive Order 12866, which directs agencies to assess "*all* costs and benefits" of regulatory actions. Executive Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993) (emphasis added). Consequently, it was arbitrary and capricious for BLM to completely ignore the global costs of increased methane emissions that will result from the Suspension.

In sum, the Final RIA for the Suspension was arbitrary and capricious, and BLM has offered no reasoned basis for concluding that the Suspension's benefits outweigh its costs.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM FROM SUSPENSION OF THE RULE.

BLM's suspension of key requirements of the Waste Prevention Rule will cause irreparable harm to Plaintiffs by increasing air pollution and related health impacts, exacerbating climate harms, and causing other environmental injury such as noise and light pollution. As the

[5] Office of Management and Budget, Circular A-4 (Sept. 17, 2003), *available at*: https://www.whitehouse.gov/omb/circulars_a004_a-4.

U.S. Supreme Court has stated, "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment." *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987); *see Cal. ex rel. Lockyer v. U.S. Dep't of Agric*., 575 F.3d 999, 1020 (9th Cir. 2009) (same). Increased air pollution from fossil fuel extraction or combustion constitutes irreparable harm, as once the pollution is in the air the damage cannot be reversed. *See, e.g., Sierra Club v. U.S. Dep't of Agric.*, 841 F. Supp. 2d 349, 358 (D.D.C. 2012) (finding that coal plant expansion would "emit substantial quantities of air pollutants that endanger human health and the environment and thereby cause irreparable harm") (quotation omitted). Moreover, injuries where "sovereign interests and public policies [are] at stake" are irreparable. *Kansas v. United States*, 249 F.3d 1213, 1228 (10th Cir. 2001).

As BLM stated a year ago, the Waste Prevention Rule is expected to reduce emissions of VOCs, including benzene and other hazardous air pollutants, by 250,000–267,000 tons per year, and reduce methane emissions by 175,000-180,000 tons per year. 81 Fed. Reg. at 83,014. As a result of the Suspension, BLM admits that the benefits of the Rule in reducing waste, increasing royalty payments, and cutting air pollution and greenhouse gas emissions will not be achieved. 82 Fed. Reg. at 58,051. In particular, BLM estimates that the Suspension will result in "additional methane and VOC emissions of 175,000 and 250,000 tons, respectively, in Year 1." *Id*. at 58,056-57; Final RIA at 32.

Even factoring in California's own rules to limit pollution from oil and gas operations, the Suspension is likely to result in an additional 150 tons of VOC emissions and 4.9 tons of toxic air contaminants, worsening adverse health impacts to Californians and the State. Declaration of Elizabeth Scheehle in Support of Motion for Preliminary Injunction ("Scheehle Decl."), ¶¶ 16-23, filed herewith. A large preponderance of BLM-managed oil and gas activity in California is located in close proximity to areas designated Disadvantaged Communities by the California Environmental Protection Agency. *Id*. at ¶ 24. For example, nearly all federal drilling within

California occurs in Kern County, home to four of the country's seven top-producing oil fields. *Id*. at ¶ 14. The San Joaquin Valley portion of the County is in extreme nonattainment with the federal 2008 eight-hour ozone standard, in nonattainment with federal fine particulate matter standards, and in nonattainment with multiple state ambient air quality standards. *Id*. at ¶ 14. Excess air pollution in this region, including emissions of VOCs, particulate matter, and hazardous air pollutants from oil and gas operations, contribute to increased rates of heart disease, lung disease, asthma and other respiratory problems, and elevated cancer risk. *Id*. at ¶¶ 10-12, 14.

In New Mexico, the San Juan Basin has one of the highest rates of natural gas emissions in the country, accounting for nearly 17 percent of national methane losses, and is situated in a 2,500 square mile methane "hot spot" detected by satellites and largely attributable to oil and gas development. Declaration of Sandra Ely in Support of Motion for Preliminary Injunction, ("Ely Decl."), ¶ 6,8 filed herewith. VOC emissions from oil and gas development contribute to high ozone levels in San Juan County, leading to an "F" grade by the American Lung Association in 2016. *Id.* at ¶ 12. Because natural gas emissions in New Mexico comprise such a large portion of national emissions, thousands of tons of VOC emissions may be expected in New Mexico due to the suspension, exacerbating air quality deterioration. *Id*. at ¶ 17.

Plaintiffs will also be irreparably harmed by the additional methane emissions resulting from the Suspension. Methane is a powerful heat-trapping greenhouse gas with more than 80 times the global warming potential of carbon dioxide within the first twenty years after it is emitted. Scheehle Decl., ¶ 13. Once in the atmosphere, these emissions contribute to climate harms that cannot be undone, including a reduction in the average annual snowpack that provides approximately 35 percent of California's water supply, increased erosion and flooding from rising sea levels, and extreme weather events. *Id*. at ¶ 15. Methane is also a precursor to ground-level ozone and contributes to its associated harmful health effects. *Id*. at ¶ 11. The increased methane emissions that will result from the Suspension, which are the equivalent of 15,050,000 metric tons of carbon dioxide over 20 years, will exacerbate climate change impacts within California. *Id*. at ¶ 25. New Mexico, whose social, economic and environmental systems are already water-scarce,

is especially vulnerable to the water supply disruptions which are likely to accompany climate change. Ely Decl., ¶ 10. Average temperatures in New Mexico have been increasing 50 percent faster than the global average over the last century. *Id.* New Mexico is facing warming-caused drought and insect outbreak leading to more wildfires, increased public health threats from amplified heat in urban areas, and disruption to water and electricity supplies. *Id*. The increased methane emissions from the Suspension will exacerbate these climate effects in New Mexico.

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST SUPPORT GRANTING THE REQUESTED INJUNCTION.

Finally, a party seeking a preliminary injunction "must establish . . . that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences" when issuing an injunction. *Id.* at 24.

Here, both the balance of equities and the public interest strongly favor an injunction. As discussed above, the requirements of the Waste Prevention Rule will prevent the waste of a public resource, increase royalty payments to American taxpayers, tribes, and States, and fulfill BLM's trust responsibilities on tribal lands. The Rule will significantly reduce emissions of VOCs and hazardous air pollutants from oil and gas production and thereby reduce health impacts such as asthma, heart disease, lung disease. Compliance with the Rule will also significantly reduce methane emissions, a highly potent greenhouse gas, and the resulting climate harms.

By contrast, the oil and gas companies charged with implementing the Rule face only modest compliance expenditures, and any harm they would face from the relief requested would be small. As discussed above, BLM has found that implementation costs for "individual operators would be small, even for businesses with less than 500 employees." *See* 81 Fed. Reg. at 83,013; 82 Fed. Reg. at 58,064. Specifically, BLM has estimated that average impact on annual profit margins for small operators would be between 0.15 and 0.17 percentage points. 81 Fed. Reg at 83,013-14; Final RIA at 61. These minor compliance costs do not constitute irreparable harm or outweigh the significant environmental harms that will occur in the absence of an

injunction. *See, e.g., Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1177 (9th Cir. 2006), *cert. denied* 549 U.S. 1278 (2007) (economic losses suffered as a result of enjoined timber sales does not outweigh potential irreparable environmental harm and the public's interest in preserving the environment); *Nat'l Parks & Conservation Ass'n v. Babbitt,* 241 F.3d 722, 738 (9th Cir 2001), *cert. denied* 534 U.S. 1104 (2002) ("loss of anticipated revenue…does not outweigh the potential irreparable harm to the environment"); *Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (injunction proper where environmental harm was sufficiently likely, despite fact that it "could present financial hardship" to government agency). The Rule has also been in effect since January 17, 2017, providing companies with a year to prepare to meet the January 2018 compliance deadlines.

Furthermore, the Suspension will, at a minimum, result in a "decrease in natural gas production of 9.0 billion cubic feet" and "a reduction in royalties of $2.6 million." 82 Fed. Reg. at 58,057. As BLM has previously stated, "natural gas is a limited and valuable public resource, which is critical to U.S. energy security and national security. Natural gas also provides significant economic benefits as an energy source for electricity generation and industrial and residential use, and as a feedstock for manufacturing .... Venting, flaring, and leaks of natural gas from production on BLM-administered sites waste this limited natural resource and deprive the American public and tribes of the security and economic benefits that this resource, which belongs to the public and tribes, would otherwise provide." 81 Fed. Reg. at 83,014.

Because implementation of the Waste Prevention Rule will prevent the waste of natural resources, which belong to the People, reduce air and climate pollution, and enhance our nation's energy and national security, the balance of equities and the public interest overwhelmingly favor an injunction.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' Motion for a Preliminary Injunction and enjoin BLM's arbitrary and capricious attempt to suspend the Waste Prevention Rule.

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