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7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 SIERRA CLUB; CENTER FOR)
BIOLOGICAL DIVERSITY;)
11 ENVIRONMENTAL DEFENSE FUND;)
NATIONAL WILDLIFE FEDERATION;)
12 NATURAL RESOURCES DEFENSE)
COUNCIL; THE WILDERNESS SOCIETY;)
13 CITIZENS FOR A HEALTHY)
COMMUNITY; DINÉ CITIZENS)
14 AGAINST RUINING OUR)
ENVIRONMENT; EARTHWORKS;)
15 ENVIRONMENTAL LAW AND POLICY)
CENTER; FORT BERTHOLD)
16 PROTECTORS OF WATER AND EARTH)
RIGHTS; MONTANA ENVIRONMENTAL)
17 INFORMATION CENTER; SAN JUAN)
CITIZENS ALLIANCE; WESTERN)
18 ORGANIZATION OF RESOURCE)
COUNCILS; WILDERNESS WORKSHOP;)
19 WILDEARTH GUARDIANS; and)
20 WYOMING OUTDOOR COUNCIL,)

Case No. _____

21 **COMPLAINT FOR DECLARATORY**
22 **AND INJUNCTIVE RELIEF**

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

22 Plaintiffs,)
23)

24 v.)
25)

25 RYAN ZINKE, in his official capacity as)
Secretary of the Interior; BUREAU OF)
26 LAND MANAGEMENT; and UNITED)
STATES DEPARTMENT OF THE)
27 INTERIOR,)

28 Defendants.)

INTRODUCTION

1
2 1. This case challenges the U.S. Bureau of Land Management's (BLM) decision to stay
3 compliance deadlines for certain provisions of its Waste Prevention, Production Subject to Royalties,
4 and Resource Conservation Rule (Waste Prevention Rule or Rule), 81 Fed. Reg. 83,008 (Nov. 18,
5 2016), which has been in effect since January 17, 2017. *See* 82 Fed. Reg. 27,430 (June 15, 2017).
6 BLM's June 15, 2017 stay violates the Administrative Procedure Act (APA). 5 U.S.C. §§ 553, 705,
7 706(2)(A). The stay harms Plaintiffs (collectively, Conservation and Tribal Citizen Groups) and
8 other members of the public by reducing royalty payments and allowing waste of public natural gas
9 resources and excessive air pollution that would otherwise be controlled under the Rule.

10 2. The Waste Prevention Rule sets standards to limit the pervasive problem of waste of
11 natural gas by oil and gas companies operating on federal or tribal oil and gas leases. These
12 companies waste publicly-owned gas by deliberately venting it into the atmosphere, flaring it
13 (burning it without capturing the energy), or otherwise allowing it to leak into the air. BLM
14 estimates that, between 2009 and 2015, federal and tribal lessees vented or flared enough gas to
15 serve about 6.2 million households for a year. By controlling this waste and requiring more gas to
16 be brought to market, the Rule increases revenues for states and local governments that receive
17 royalties paid on oil and gas production. The Rule also reduces air pollution, including greenhouse
18 gas emissions and other smog-forming and hazardous pollutants.

19 3. Opponents of the Rule attempted to prevent it from being implemented by seeking a
20 preliminary injunction in the U.S. District Court for the District of Wyoming (District of Wyoming)
21 and lobbying Congress to repeal the Rule using the Congressional Review Act. The court denied the
22 preliminary injunction on January 16, 2017. *See Wyoming v. U.S. Dep't of the Interior*, No. 2:16-
23 CV-285-SWS, 2017 WL 161428 (D. Wyo. Jan. 16, 2017). Thus, the Rule went into effect as
24 scheduled on January 17, 2017. On May 10, 2017, the Senate rejected a motion to proceed with a
25 vote to repeal the Rule under the Congressional Review Act, effectively ending efforts to repeal the
26 Rule under that Act.

27 4. On June 15, 2017, without providing notice or an opportunity for public comment,
28 BLM announced that, pursuant to purported authority under 5 U.S.C. § 705, it was indefinitely

1 staying all the provisions for which the compliance dates had not yet passed and doing so “pending
2 judicial review.” 82 Fed. Reg. at 27,430. Days later, BLM sought to postpone that judicial review
3 by delaying briefing of the merits of the Wyoming case for at least 90 days to allow BLM to focus
4 on a notice and comment rulemaking to suspend all of the Rule’s provisions and ultimately rescind
5 or revise the Rule. The District of Wyoming granted BLM’s request on June 27, 2017.

6 5. BLM’s stay of certain provisions of the Waste Prevention Rule violates the APA.
7 First, BLM’s attempt to justify the stay based on 5 U.S.C. § 705 violates the plain meaning of that
8 provision and is arbitrary and capricious and must be set aside pursuant to 5 U.S.C. § 706(2)(A). For
9 example, BLM’s action (1) seeks to “postpone” the effective date of a rule that has already taken
10 effect, (2) attempts to use legal authority authorizing agencies to postpone the effective date of a rule
11 “pending litigation” to justify a stay to allow BLM time to administratively rescind or revise the
12 Waste Prevention Rule, (3) fails to apply the four-part test necessary to support a stay under § 705,
13 (4) fails to offer a rational explanation for its changed position, including its reversal from its prior
14 position that the Rule’s costs are justified, and (5) fails to consider important aspects of the problem
15 under BLM’s governing statutes, such as the reduced waste and air pollution and increased royalties
16 that will be foregone as a result of the stay. Second, BLM violated 5 U.S.C. § 553 by substantively
17 revising the Rule’s compliance deadlines without providing notice or an opportunity for public
18 comment.

19 6. Accordingly, the Conservation and Tribal Citizen Groups respectfully seek a
20 declaration that BLM’s stay of the Waste Prevention Rule violates APA §§ 705 and 553 and is
21 arbitrary and capricious within the meaning of § 706(2)(A). The Conservation and Tribal Citizen
22 Groups also seek an order vacating BLM’s postponement of the Rule’s compliance dates and
23 thereby immediately reinstating those deadlines.

24 **JURISDICTION AND VENUE**

25 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question
26 jurisdiction) and 5 U.S.C. § 702 (the APA).

1 public education, lobbying, and legal action. Sierra Club currently has more than 777,000 members
2 nationwide, including 173,000 in California.

3 12. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the Center) is a nonprofit
4 organization incorporated in the State of California that works through science, law, and policy to
5 secure a future for all species, great or small, hovering on the brink of extinction. The Center has
6 offices throughout the country, including an office in Oakland, California. The Center has over
7 58,000 members, including more than 13,000 in California, and more than 1.3 million online
8 supporters worldwide. The Center's members use BLM-managed public lands for recreational,
9 scientific, educational, and other pursuits and intend to continue to do so in the future, and are
10 particularly interested in protecting the many native, imperiled, and sensitive species and their
11 habitats that may be affected by oil and gas leasing.

12 13. Plaintiff ENVIRONMENTAL DEFENSE FUND (EDF) is a national nonprofit
13 organization representing over 410,000 members nationwide, including over 69,000 in California.
14 Since 1967, EDF has linked science, economics, and law to create innovative, equitable, and cost-
15 effective solutions to urgent environmental problems. EDF pursues initiatives at the state and
16 national levels designed to protect human health and the environment. Among these initiatives, EDF
17 has worked to reduce waste from oil and gas operations on public lands along with its associated
18 health-harming and climate-altering air pollution. EDF has offices throughout the country, including
19 one in San Francisco, California.

20 14. Plaintiff NATIONAL WILDLIFE FEDERATION (NWF), founded in 1936, has
21 emerged as one of the nation's premier grassroots non-profit conservation advocacy and education
22 organizations. The group is America's largest conservation organization with a mission to all
23 Americans to ensure that wildlife thrive in a rapidly-changing world. Headquartered in Reston,
24 Virginia, NWF has offices throughout the country, including an office in California. NWF has more
25 than six million members and supporters and has affiliate organizations in 51 states and territories,
26 including California. NWF has a strong history of protecting public lands for wildlife and outdoor
27 recreation by its members and is known among conservation groups for its ability to combine strong
28 science, federal and state policy development, education, litigation, and grassroots organizing.

1 15. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL (NRDC) is a non-profit
2 environmental membership organization that uses law, science, and the support of more than two
3 million members and activists throughout the United States, including 66,000 in California, to
4 protect wildlife and wild places and to ensure a safe and healthy environment for all living things.
5 NRDC has offices throughout the country, including an office in San Francisco, California. NRDC
6 has a long-established history of working to protect public lands and clean air. In particular, NRDC
7 has worked for decades to protect public lands, nearby communities, wildlife habitat and air quality
8 from the threats posed by oil and gas development.

9 16. Plaintiff THE WILDERNESS SOCIETY (TWS's) mission is to protect wilderness
10 and inspire Americans to care for our wild places. TWS has offices throughout the country,
11 including an office in San Francisco. TWS has more than 1,000,000 members and supporters around
12 the West, including more than 91,000 in California. TWS has a long-standing interest in the
13 management of public lands across the nation, and engages frequently in land use planning and
14 project proposals that could potentially affect wilderness quality lands, wildlife habitat, and other
15 natural resources, as well as the health, safety and quality of life of surrounding communities. TWS
16 also has a long-standing interest in the use of our public and tribal lands for energy development,
17 including supporting a transition to renewable energy, and ensuring that oil and gas and other energy
18 development are focused in suitable locations and completed in a manner that does not harm other
19 values.

20 17. Plaintiff CITIZENS FOR A HEALTHY COMMUNITY (CHC) is a grass-roots
21 organization with more than 500 members formed in 2009 for the purpose of protecting people and
22 their environment from the impacts of BLM-authorized oil and gas development in the Delta County
23 region of Colorado. CHC's members and supporters include organic farmers, ranchers, vineyard and
24 winery owners, sportsmen, realtors, and other concerned citizens impacted by oil and gas
25 development. CHC members have been actively involved in commenting on BLM's oil and gas
26 activities.

27 18. Plaintiff DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT (Diné
28 C.A.R.E.) is an all-Navajo organization comprised of a federation of grassroots community activists

1 in Arizona, New Mexico and Utah who strive to educate and advocate for traditional teachings
2 derived from Diné Fundamental Laws. Diné C.A.R.E.'s goal is to protect all life in their ancestral
3 homeland by empowering local and traditional people to organize, speak out, and determine the
4 outlook of the environment through civic involvement and engagement in decision-making
5 processes relating to tribal development, including oil and gas development on public and tribal
6 lands in the San Juan Basin of New Mexico.

7 19. Plaintiff EARTHWORKS is a nonprofit organization dedicated to protecting
8 communities and the environment from the adverse impacts of mineral and energy development
9 while promoting sustainable solutions. Earthworks was created in 2005, when two organizations
10 (the Mineral Policy Center and the Oil & Gas Accountability Project) joined forces. Earthworks
11 collaborates with communities and grassroots groups to reform government policies to better protect
12 air, water, public lands and communities from threats posed by mineral development.

13 20. Plaintiff ENVIRONMENTAL LAW AND POLICY CENTER (ELPC) is a Midwest
14 based not-for-profit corporation and legal advocacy organization concerned with improving
15 environmental quality and protecting natural resources in the Midwest and Great Plains states.
16 ELPC works on a variety of issues throughout the Midwest and Great Plains states, including
17 advocating for clean air, clean water, renewable energy, sustainable transportation, and protecting
18 natural places. ELPC's work includes efforts to minimize negative environmental impacts from oil
19 and gas development. ELPC has members in North Dakota whose recreational and aesthetic
20 interests are impacted by the wasteful and polluting practices of venting and flaring natural gas from
21 oil wells.

22 21. Plaintiff FORT BERTHOLD PROTECTORS OF WATER AND EARTH RIGHTS
23 (Fort Berthold POWER) is a grassroots, member-led community group that works to promote
24 responsible energy development in and around Fort Berthold Indian Reservation in North Dakota.
25 Fort Berthold POWER is committed to work toward a sustainable society with an awareness for all
26 life. The mission of Fort Berthold POWER is to conserve and protect the land, water, and air on
27 which all life depends. Fort Berthold POWER works to engage citizens in activities that protect the
28 environment, facilitates learning for members to disseminate information on environmental issues

1 that affect all people, and expands members' ability to take effective action to address issues that
2 affect land, air, and water.

3 22. Plaintiff MONTANA ENVIRONMENTAL INFORMATION CENTER (MEIC) is a
4 nonprofit organization founded in 1973 with approximately 5,000 members and supporters
5 throughout the United States, including in California. MEIC is dedicated to the preservation and
6 enhancement of the natural resources and natural environment of Montana and to the gathering and
7 disseminating of information concerning the protection and preservation of the human environment
8 through education of its members and the general public concerning their rights and obligations
9 under local, state, and federal environmental protection laws and regulations. MEIC is also
10 dedicated to assuring that federal officials comply with and fully uphold the laws of the United
11 States that are designed to protect the environment from pollution.

12 23. Plaintiff SAN JUAN CITIZENS ALLIANCE (SJCA), founded in 1986, organizes
13 people to protect our water and air, our lands, and the character of our rural communities in the San
14 Juan Basin. SJCA focuses on four program areas, one of which is the San Juan Basin Energy
15 Reform Campaign, which seeks to ensure proper regulation and enforcement of the oil, gas, and coal
16 industry and facilitate a transition to a renewable energy economy. SJCA has been active in BLM
17 oil and gas issues in the San Juan Basin since the early 1990s. SJCA has 800 members.

18 24. Plaintiff WESTERN ORGANIZATION OF RESOURCE COUNCILS (WORC) is a
19 nonprofit organization that works to advance the vision of a democratic, sustainable, and just society
20 through community action. WORC is committed to building sustainable environmental and
21 economic communities that balance economic growth with the health of people and stewardship of
22 their land, water, and air resources. WORC is a network of grassroots organizations from seven
23 states that includes over 12,000 members and 39 local community group chapters. WORC's
24 members are family farmers and ranchers, townspeople, and rural residents concerned about their
25 communities and environment. WORC's current goals include organizing and educating
26 landowners, residents, mineral estate owners and water users about the impacts of oil and gas
27 exploration and development and ensuring that the BLM enforces all applicable laws and regulations
28 related to oil and gas leasing and development.

1 25. Plaintiff WILDERNESS WORKSHOP is a nonprofit organization based in
2 Carbondale, Colorado that is dedicated to preservation and conservation of the wilderness and
3 natural resources of the White River National Forest and adjacent public lands. Wilderness
4 Workshop engages in research, education, legal advocacy and grassroots organizing to protect the
5 ecological integrity of local landscapes and public lands. Wilderness Workshop focuses on the
6 monitoring and conservation of air and water quality, wildlife species and habitat, natural
7 communities and lands of wilderness quality. Wilderness Workshop was founded in 1967 and has
8 approximately 800 members.

9 26. Plaintiff WILDEARTH GUARDIANS (Guardians) is a non-profit conservation
10 organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of
11 the American West. Guardians has offices in Colorado, Montana, New Mexico, Arizona,
12 Washington, and Oregon. With more than 200,000 members and supporters, Guardians works to
13 sustain a transition from fossil fuels to clean energy in order to safeguard the West.

14 27. Plaintiff WYOMING OUTDOOR COUNCIL (WOC) was founded in 1967. It is
15 Wyoming's oldest independent conservation organization. WOC works to protect Wyoming's
16 environment and quality of life for future generations. Its goal is to develop productive and lasting
17 solutions for managing natural resources through collaborative engagement with stakeholders and
18 decision makers. WOC believes responsible environmental stewardship is fundamental to
19 safeguarding public health and Wyoming's quality of life. WOC's 5,700 members and supporters
20 recognize that Wyoming's landscapes, wildlife, and diverse cultural history are vital resources, and
21 that everyone relies on the state's clean air and water.

22 28. The Conservation and Tribal Citizen Groups bring this action on behalf of themselves
23 and their adversely affected members. For many years, the Conservation and Tribal Citizen Groups
24 have actively advocated for strong BLM standards for the reduction of waste and associated air
25 pollution from federal and tribal leases, and have devoted significant resources toward that effort.
26 The Conservation and Tribal Citizen Groups and their members submitted scoping comments and
27 comments on the proposed rule and participated in public meetings and hearings. The Conservation
28 and Tribal Citizen Groups have intervened to defend the Waste Prevention Rule from a lawsuit filed

1 by several states and industry groups. Additionally, the Conservation and Tribal Citizen Groups'
2 staff and members helped to successfully oppose an attempt to persuade Congress to repeal the Rule
3 using the Congressional Review Act.

4 29. Many Conservation and Tribal Citizen Group members live in communities that
5 receive income from royalties from oil and gas development on public and tribal lands that is used to
6 fund schools, healthcare, and infrastructure. Other Conservation and Tribal Citizen Group members
7 are partial royalty owners of tribal leases. BLM's stay will lead to reductions in these royalty
8 payments.

9 30. Numerous Conservation and Tribal Citizen Group members live, work, and recreate
10 in and around, and otherwise use and enjoy lands where oil and gas development is occurring or has
11 been proposed on federal and tribal leases. They also live, work, and recreate in and around lands
12 likely to be affected by the associated air pollution and other impacts from such development. For
13 example, some members live on or near split estate lands (where the federal government owns the
14 minerals underlying their property) that are already subject to oil and gas development or are likely
15 to be developed in the future. Other members use public lands in and around federal and tribal
16 leases for recreation, solitude, and scientific study. These members will be adversely affected by
17 BLM's decision to stay provisions of the Waste Prevention Rule. As a result of the stay, operators
18 will be permitted to pollute the air and flare more gas—which causes bright, incandescent fires at
19 flare stacks and excessive noise—than if the Rule remained in effect. This harms the Conservation
20 and Tribal Citizen Groups' members by disrupting their daily lives, subjecting them to adverse
21 health risks, and reducing their enjoyment of public lands and split estate and tribal lands where they
22 live and recreate.

23 31. Defendant RYAN ZINKE is the Secretary of the Interior. The Conservation and
24 Tribal Citizen Groups sue Secretary Zinke in his official capacity. Secretary Zinke oversees the
25 development of energy, including natural resource extraction, on federal and tribal leases. The
26 Secretary has authority to promulgate regulations pursuant to the Mineral Leasing Act (MLA), 30
27 U.S.C. § 189. The MLA is one of the principal statutes that BLM cited as its authority for the Waste
28 Prevention Rule.

1 36. BLM also adopted the Rule in response to recommendations from several oversight
2 reviews, including reviews by the Office of the Inspector General of the Department of the Interior
3 and the Government Accountability Office. An October 2010 report by the Government
4 Accountability Office raised concerns about waste of public resources and the inadequacies of
5 BLM's existing requirements, and specifically recommended that BLM update its regulations to take
6 advantage of opportunities to capture additional recoverable natural gas using available technologies.

7 37. BLM estimates that federal oil and gas lessees vented or flared more than 462 billion
8 cubic feet of natural gas on public and tribal lands between 2009 and 2015. This figure does not
9 include natural gas that leaked from various pieces of drilling, storage, and processing equipment.
10 As a result of this waste, states, tribes, and federal taxpayers lost millions of dollars annually in
11 royalty revenues. These revenues otherwise would have been available to fund schools, health care,
12 and infrastructure.

13 38. Natural gas that is vented or leaked into the air also has environmental impacts
14 because natural gas is made up of methane, non-methane volatile organic compounds, and hazardous
15 air pollutants, like benzene. Methane is a greenhouse gas 87 times more powerful than carbon
16 dioxide over a 20-year period that can accelerate climate change. Methane, along with other, non-
17 methane volatile organic compounds, also contribute to the formation of ground level ozone (or
18 smog), which at high concentrations causes serious negative public health effects, such as increased
19 numbers of asthma and heart attacks. Additionally, benzene and other toxic or carcinogenic
20 compounds found in natural gas can cause long term negative health impacts for the people that
21 breathe them in.

22 39. In 2014 BLM commenced a rulemaking process to address wasteful venting, flaring,
23 and leaking of natural gas on public and tribal lands. BLM solicited extensive stakeholder feedback
24 through public forums held in communities across the country. BLM issued a proposed rule,
25 incorporating this feedback, in early 2016. The agency received more than 330,000 public
26 comments. BLM finalized the Waste Prevention Rule on November 18, 2016.

27 40. The Rule's effective date was January 17, 2017.
28

1 41. The Rule requires operators to capture and sell natural gas that would otherwise be
2 vented or flared by establishing a phased-in capture target that tightens from 85% in January 2018 to
3 98% by 2026. The Rule also sets specific performance standards to reduce waste from some types
4 of equipment, like storage tanks and pneumatic controllers. The Rule further requires operators to
5 periodically inspect their facilities for leaks, and to promptly repair any leaks identified.

6 42. Additionally, the Rule modifies BLM’s royalty regulations to indicate, consistent
7 with the MLA’s statutory language, that a royalty rate of 12.5% is the floor and not the ceiling. The
8 Rule also clarifies when loss of gas is considered ‘unavoidable,’ and therefore not subject to royalty
9 payments.

10 43. Consistent with its purpose to prevent waste, the Rule includes exemptions if
11 compliance would cause operators to abandon development of significant oil or gas resources.

12 44. Operators were required to comply with some of the Rule’s requirements, such as the
13 requirement to submit unenforceable waste minimization plans with applications for permits to drill,
14 starting on January 17, 2017. BLM chose to phase in other Rule requirements, including the capture
15 requirements, to ease potential burdens on operators. For those provisions, BLM set a compliance
16 deadline of January 17, 2018, one year after the Rule’s effective date.

17 45. BLM estimated that the Rule would reduce wasteful venting and methane emissions
18 by 35%, wasteful flaring by 49%, and increase royalties by up to \$14 million per year. BLM also
19 found that the Rule would significantly benefit local communities, public health and the environment
20 by reducing the visual and noise impacts associated with flaring, protecting communities from smog
21 and carcinogenic air toxic emissions, and reducing greenhouse gas emissions.

22 46. BLM concluded that the Waste Prevention Rule’s benefits outweighed its costs “by a
23 significant margin” with “net benefits ranging from \$46 million to \$199 million per year
24 (annualizing capital costs using a 7 percent discount rate).” 81 Fed. Reg. at 83,104. BLM also
25 estimated that, as a result of the Rule, operators will earn up to \$157 million per year (and up to \$764
26 million over ten years) from selling recovered natural gas and natural gas liquids.

1 **II. Opponents of the Rule Unsuccessfully Attempt to Prevent the Rule from Taking Effect**

2 47. Prior to the Rule's January 17, 2017 effective date, the states of North Dakota,
3 Wyoming, and Montana requested that BLM postpone the effective date of the Rule by 9 months.
4 BLM did not grant the request.

5 48. The Western Energy Alliance (WEA), other industry groups, and the states of North
6 Dakota, Wyoming, and Montana also filed a lawsuit challenging the Waste Prevention Rule in the
7 District of Wyoming. The industry groups and several states then moved for a preliminary
8 injunction.

9 49. The Conservation and Tribal Citizen Groups and the States of California and New
10 Mexico intervened on BLM's behalf to defend the Rule.

11 50. In opposing the motion for a preliminary injunction, BLM argued that "[t]he waste of
12 public resources and the associated loss of royalty revenues are ongoing harms suffered by the
13 American public and federal, state, and tribal governments that far outweigh Petitioners' speculative
14 economic harms. Because Petitioners have failed to demonstrate a likelihood of success on the
15 merits of their claims or to overcome the public's strong interest in utilizing, rather than wasting,
16 domestic energy sources, their request for a preliminary injunction must be denied." Fed. Resp'ts'
17 Consolidated Opp'n to Pet'rs' & Pet'r-Intervenor's Mots. for Prelim. Inj. at 2, *Wyoming v. U.S.*
18 *Dep't of the Interior*, No. 2:16-cv-285 (D. Wyo. Dec. 15, 2016).

19 51. On January 16, 2017, following briefing and argument, the District of Wyoming
20 denied the preliminary injunction request. No party appealed that ruling. Thus, the Rule went into
21 effect on its effective date of January 17, 2017.

22 52. WEA, the American Petroleum Institute (API) and other industry groups as well as
23 some states also lobbied members of Congress to repeal the Rule using the Congressional Review
24 Act (CRA). However, a majority of Senators voted against the motion to proceed to debate on the
25 CRA resolution on May 10, 2017. On May 11, 2017, the window for expedited consideration under
26 the CRA expired. As a result, the Rule remained in effect until BLM issued the stay challenged in
27 this case.

1 **III. The Trump Administration Indicates That It Will Rescind or Revise the Rule**

2 53. On March 28, 2017, President Trump issued Executive Order No. 13,783, directing
3 the Secretary of the Interior to consider revising or rescinding the Waste Prevention Rule. Exec.
4 Order No. 13,783, Promoting Energy Independence and Economic Growth, at § 7(b)(iv), 82 Fed.
5 Reg. 16,093, 16,093 (Mar. 28, 2017).

6 54. The next day, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349
7 directing the BLM Director to review the Rule and report to the Assistant Secretary of Land and
8 Minerals Management within 21 days on whether the Rule is fully consistent with the policies set
9 forth in Executive Order No. 13,783. Secretary of the Interior, Order No. 3349, American Energy
10 Independence, at § 5(c)(ii) (Mar. 29, 2017).

11 55. BLM's Director completed the 21-day report. A copy of that report has not been
12 made public. BLM has failed to release copies of the 21-day report in response to requests under the
13 Freedom of Information Act.

14 56. On April 4, 2017, WEA sent a written request to Secretary Zinke, asking BLM to
15 suspend the Waste Prevention Rule during the ongoing administrative review of the Rule. WEA
16 acknowledged that such a suspension would require BLM to comply with the APA's notice and
17 public comment procedures.

18 57. On May 16, 2017, API also sent a letter requesting that BLM postpone the Rule's
19 compliance dates. API acknowledged that a postponement would require a rulemaking process.

20 **IV. BLM Stays Future Compliance Dates**

21 58. On June 15, 2017, without notice or an opportunity for public comment, BLM issued
22 a notice under 5 U.S.C. § 705 staying all sections of the Rule with compliance dates one year or
23 more after the effective date of the Rule. The stayed provisions include requirements to capture gas,
24 reduce flaring, upgrade or replace certain equipment, and inspect for and repair leaks. These
25 provisions taken together would have been responsible for the majority of the waste reduction BLM
26 anticipated from the Rule.

27 59. The notice did not affect the sections of the Rule for which the compliance dates had
28 already passed. These include the requirement to prepare waste minimization plans prior to drilling,

1 provisions requiring control of waste from drilling, well completions, and liquids unloading, and
2 certain royalty provisions.

3 60. The notice concedes that the Rule was “properly promulgated.” 82 Fed. Reg. at
4 27,431.

5 61. BLM issued the stay in response to WEA’s and API’s claims that the Rule is too
6 costly. In support, BLM cites to the regulatory impact analysis that BLM had previously used to
7 support adoption of the Rule and which demonstrates that the Rule’s costs are justified. But in the
8 stay notice, BLM concludes a stay is necessary because of the cost of compliance as well as the
9 uncertain future of the requirements due to pending litigation and the administration’s decision to
10 reconsider the Rule.

11 62. Prior to issuing the stay, BLM did not evaluate whether (1) the Rule violates the law,
12 (2) industry would suffer irreparable harm absent a stay, (3) the balance of equities supports a stay,
13 or (4) a stay is in the public interest.

14 63. BLM also did not consider any of the Rule’s benefits that would be lost as a result of
15 the stay. BLM did not address financial impacts on the states and tribes that rely on royalties
16 resulting from gas captured under the Rule. Nor did it address the impacts of staying the Rule on
17 public health or the environment.

18 64. BLM also offered no explanation for its change from the positions it took, in the
19 Rule’s preamble and during proceedings on the preliminary injunction, that the Rule’s costs were
20 justified and that no stay was warranted.

21 65. BLM announced that it was staying the January 17, 2018 compliance dates “pending
22 judicial review.” But days after announcing the stay of the Rule under 5 U.S.C. § 705, BLM moved
23 to postpone briefing in the challenge to the Rule in the District of Wyoming by 90 days. On June 27,
24 2017, the court granted BLM’s request.

25 66. BLM’s motion for a 90-day extension of the briefing schedule indicated that BLM
26 plans to implement a three-step process to rescind or revise the Rule while ensuring that industry
27 will not have to comply during BLM’s administrative process. The first step is the § 705 stay
28 challenged here. The second step is that BLM will conduct notice and comment rulemaking to

1 suspend all provisions (including those with compliance dates that have already passed) until June
2 17, 2019. BLM plans to issue a proposed rule prior to the end of August 2017 and a final rule prior
3 to January 17, 2018. The third step is that BLM will conduct a separate notice and comment
4 rulemaking to rescind or revise the rule. Despite purporting to issue the stay under authority that
5 permits a stay pending judicial review, BLM acknowledged that its reconsideration of the Rule
6 might ultimately obviate the need for that judicial review.

7 67. The Department of the Interior has also illegally asserted its authority to use 5 U.S.C.
8 § 705 to stay another regulation related to oil and gas royalties that was already in effect. On
9 February 27, 2017, the Office of Onshore Natural Resource Revenue (ONRR) purported to use
10 § 705 to postpone the compliance date of its Royalty Rule, which had become effective on January
11 1, 2017. The states of California and New Mexico have challenged ONRR's unlawful use of § 705
12 in this court. *See Cal. ex rel. Becerra v. U.S. Dep't of the Interior*, No. 17-cv-2376-EDL (N.D. Cal.
13 Apr. 26, 2017).

14 **FIRST CAUSE OF ACTION**

15 *(Violation of the APA, 5 U.S.C. §§ 705, 706(2)(A))*

16 68. The allegations in paragraphs 1-67 are incorporated by reference.

17 69. The APA governs the procedures and practices that agencies must follow when
18 making decisions. Section 705 of the APA provides:

19 *When an agency finds that justice so requires, it may postpone the effective date of*
20 *action taken by it, pending judicial review. On such conditions as may be required*
21 *and to the extent necessary to prevent irreparable injury, the reviewing court,*
22 *including the court to which a case may be taken on appeal from or on application for*
certiorari or other writ to a reviewing court, may issue all necessary and appropriate
process to postpone the effective date of an agency action or to preserve status or
rights pending conclusion of the review proceedings.

23 5 U.S.C. § 705 (emphasis added).

24 70. Five months after the Rule's effective date, BLM announced it was staying the Waste
25 Prevention Rule's future compliance dates. This contradicts the plain language of § 705, which only
26 allows agencies to "postpone the effective date" of a regulation, not to stay a rule already in effect.

27 71. BLM purports to justify the stay based both on pending judicial review and its
28 ongoing reconsideration of the Rule. However, BLM's statements and actions demonstrate that it

1 issued the stay to enable it to administratively rescind or revise the rule, not to allow for “judicial
2 review,” as required by § 705.

3 72. Moreover, even if a stay of future compliance dates was permissible under § 705,
4 BLM stayed the Waste Prevention Rule’s compliance dates without applying the four-part test
5 required by § 705 to stay a regulation’s effective date, including consideration of whether: (1) the
6 action to be stayed is likely unlawful, (2) the party seeking the stay will suffer irreparable harm, (3)
7 the balance of equities favors a stay, and (4) the public interest supports a stay. *Sierra Club v.*
8 *Jackson*, 833 F. Supp. 2d 11, 30 (D.D.C. 2012) (“[T]he standard for a stay at the agency level is the
9 same as the standard for a stay at the judicial level: each is governed by the four-part preliminary
10 injunction test.”). The grounds BLM offered in the notice do not justify staying the Waste
11 Prevention Rule’s compliance dates under the four-factor test.

12 73. Moreover, in finding that “justice so requires” a stay, BLM did not conform to
13 bedrock administrative law principles and failed to provide a reasoned basis for its decision. For
14 example, BLM failed to acknowledge or justify its changed position (including its prior position that
15 the Rule is cost-justified and should go into effect). Other than the benefits that would accrue to
16 regulated industry on account of its stay, BLM also failed to consider how its stay would affect any
17 factors relevant to its decision to adopt the Rule under the MLA and FLPMA, including waste
18 prevented, increased royalties, and reduced environmental harm.

19 74. Accordingly, BLM’s decision to stay the Waste Prevention Rule’s compliance dates
20 is arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of
21 Defendants’ statutory authority. 5 U.S.C. § 706(2)(A).

22 **SECOND CAUSE OF ACTION**

23 *(Violation of the APA, 5 U.S.C. §§ 553, 706(2)(A))*

24 75. The allegations in paragraphs 1-67 are incorporated by reference.

25 76. The APA requires agencies to engage in a public, notice-and-comment rulemaking
26 process prior to adopting, amending, or repealing a regulation. 5 U.S.C. § 553. This process is
27 designed to “give interested persons an opportunity to participate in the rule making through
28 submission of written data, views, or arguments.” *Id.* § 553(c).

1 77. BLM's stay of the Waste Prevention Rule substantively amends the Rule by delaying
2 its compliance dates without complying with the notice-and-comment procedures required by the
3 APA. 5 U.S.C. § 553.

4 78. BLM did not incorporate into the finding a statement of reasons that notice and
5 comment are "impracticable, unnecessary, or contrary to the public interest" pursuant to 5 U.S.C.
6 § 553(b)(B). Nor did BLM provide any justification warranting the use of this extraordinary
7 exception.

8 79. Accordingly, BLM's decision to stay the Waste Prevention Rule's compliance dates
9 is arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of
10 Defendants' statutory authority. 5 U.S.C. § 706(2)(A).

11 **PRAYER FOR RELIEF**

12 Plaintiffs respectfully request that this Court:

13 1. Issue a declaratory judgment that BLM acted arbitrarily, capriciously, contrary to
14 law, and in excess of statutory authority and failed to follow the procedure required by the APA by
15 staying the Waste Prevention Rule's compliance dates;

16 2. Vacate BLM's unlawful stay of the Waste Prevention Rule's compliance dates and
17 reinstate the Rule's compliance dates;

18 3. Award the Conservation and Tribal Citizen Groups their costs, expenses, and
19 reasonable attorney fees; and

20 4. Provide such other relief as the Court deems just and proper.

21
22 Respectfully submitted this 10th day of July, 2017,

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