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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 EARTHWORKS; ENVIRONMENTAL )  
DEFENSE FUND; NATURAL )  
12 RESOURCES DEFENSE COUNCIL; THE )  
WILDERNESS SOCIETY; NATIONAL )  
13 WILDLIFE FEDERATION; CITIZENS )  
FOR A HEALTHY COMMUNITY; DINÉ )  
14 CITIZENS AGAINST RUINING OUR )  
ENVIRONMENT; ENVIRONMENTAL )  
15 LAW AND POLICY CENTER; FORT )  
BERTHOLD PROTECTORS OF WATER )  
16 AND EARTH RIGHTS; MONTANA )  
ENVIRONMENTAL INFORMATION )  
17 CENTER; SAN JUAN CITIZENS )  
ALLIANCE; WESTERN ORGANIZATION )  
18 OF RESOURCE COUNCILS; )  
WILDERNESS WORKSHOP; )  
19 WILDEARTH GUARDIANS; and )  
20 WYOMING OUTDOOR COUNCIL, )  
21 )

22 Plaintiffs, )  
23 )

24 v. )  
25 )

26 RYAN ZINKE, in his official capacity as )  
Secretary of the Interior; BUREAU OF )  
27 LAND MANAGEMENT; and UNITED )  
STATES DEPARTMENT OF THE )  
INTERIOR, )  
28 )

Defendants. )

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

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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

## INTRODUCTION

1  
2 1. This case challenges the U.S. Bureau of Land Management's (BLM) final decision,  
3 82 Fed. Reg. 58,050 (Dec. 8, 2017) (Amendment), to amend the compliance deadlines for the  
4 majority of the requirements of its Waste Prevention, Production Subject to Royalties, and Resource  
5 Conservation Rule (Waste Prevention Rule or Rule). 81 Fed. Reg. 83,008 (Nov. 18, 2016). The  
6 Amendment unlawfully pushes the compliance deadlines one year into the future while BLM  
7 considers other changes to the Waste Prevention Rule.

8 2. The Waste Prevention Rule sets standards to limit the pervasive problem of waste of  
9 natural gas by oil and gas companies operating on federal or tribal oil and gas leases. These  
10 companies waste publicly-owned gas by deliberately venting it into the atmosphere, flaring it  
11 (burning it without capturing the energy), or otherwise allowing it to leak into the air. The Rule  
12 requires operators to control this waste and bring more gas to market using proven, widely-available  
13 technologies that are already required in some states and used by leading companies.

14 3. BLM adopted the Waste Prevention Rule in response to numerous federal studies and  
15 its own findings showing that waste of publicly and tribally owned natural gas is a problem that must  
16 be addressed. BLM determined that its existing waste regulation, Notice to Lessees and Operators  
17 of Onshore Federal and Indian Oil and Gas Leases (NTL-4A), 44 Fed. Reg. 76,600 (Dec. 27,  
18 1979)—which had not been updated in more than 35 years—was outdated and inadequate.

19 4. The Waste Prevention Rule has many benefits beyond controlling waste: it increases  
20 revenues for states, local governments, tribes, and individual Indian mineral owners that receive  
21 royalties paid on oil and gas production, and reduces air pollution, including greenhouse gas  
22 emissions and other smog-forming and hazardous air pollutants.

23 5. In response to direction from President Trump, BLM has announced its intention to  
24 reverse course and revise or rescind the Waste Prevention Rule. Although BLM has yet to issue a  
25 proposal to revise or rescind the Rule (beyond amending its compliance dates), it has twice  
26 attempted to put off those compliance deadlines while it more broadly reconsiders the Rule. On  
27 June 15, 2017, without providing notice or an opportunity for public comment, BLM announced that  
28 it was indefinitely staying all of the Rule's provisions with future compliance dates, pursuant to

1 purported authority under 5 U.S.C. § 705. 82 Fed. Reg. 27,430 (June 15, 2017). The Conservation  
2 and Tribal Citizen Groups and the States of California and New Mexico filed suit over that action in  
3 this Court. This Court granted plaintiffs' motions for summary judgment, declared that BLM's  
4 purported attempt to stay the Rule's compliance dates violated the APA, vacated the stay, and  
5 ordered BLM to reinstate the Rule in its entirety. *California v. BLM*, Nos. 17-cv-3804-EDL & 17-  
6 cv-3885-EDL, 2017 WL 4416409, at \*14 (Oct. 4, 2017).

7 6. The very next day, BLM published a proposal to suspend or delay compliance with  
8 the same requirements that the Court had just ordered BLM to reinstate, plus additional  
9 requirements, for a year, and opened a 30-day public comment period. 82 Fed. Reg. 46,458 (Oct. 5,  
10 2017). BLM explained that its proposed suspension was based on its desire to avoid imposing  
11 compliance costs on operators while the agency reconsiders the Rule. On December 8th, 2017,  
12 BLM took final action, amending the compliance dates for the Rule's most significant provisions by  
13 delaying them for a year, until January 17, 2019 (the Amendment).

14 7. In the Amendment, BLM neither analyzes nor offers interim rules or guidance to  
15 satisfy its statutory responsibility to prevent waste. The Amendment does not even reinstate BLM's  
16 prior, outdated waste regulation, NTL-4A. Instead, BLM's action creates a regulatory and policy  
17 vacuum that BLM concedes will decrease the amount of natural gas brought to market by nine  
18 billion cubic feet (bcf). This will result in a reduction in royalties and will have harmful impacts on  
19 public health and the environment by increasing emissions of methane—a potent greenhouse gas—  
20 and other air pollutants.

21 8. The Conservation and Tribal Citizen groups challenge the Amendment's unlawful  
22 modification of the Waste Prevention Rule based on violations of the Mineral Leasing Act (MLA),  
23 30 U.S.C. §§ 187, 225, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C.  
24 §§ 1701(a)(8), 1702(c), 1732(b), the National Environmental Policy Act (NEPA), 42 U.S.C. §  
25 4332(C); and the Administrative Procedure Act (APA), 5 U.S.C. §§ 553, 706(2)(A), (C).

26 9. The Conservation and Tribal Citizen Groups respectfully seek a declaration that  
27 BLM's Amendment violates the MLA, FLPMA, NEPA, and the APA, and is arbitrary, capricious,  
28 contrary to law, and in excess of authority within the meaning of 5 U.S.C. §§ 706(2)(A), (C). The

1 Conservation and Tribal Citizen Groups also seek an order vacating the Amendment and  
2 immediately reinstating all provisions of the Waste Prevention Rule.

3 **JURISDICTION AND VENUE**

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

6 11. An actual controversy exists between the parties within the meaning of 28 U.S.C.  
7 § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief pursuant to  
8 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 705–706.

9 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant BLM  
10 maintains offices in this district. BLM administers 15 million acres of public lands, more than 49  
11 million acres of subsurface mineral estate, and nearly 600,000 acres of Native American tribal  
12 mineral estate in California. At the end of fiscal year 2016, BLM administered 530 oil and gas  
13 leases in California, covering around 200,000 acres and containing around 6,800 oil and gas wells.  
14 BLM specifically manages public oil and gas resources in this district that are subject to the Waste  
15 Prevention Rule. In 2016, California operators developed more than 11 million barrels of federal oil  
16 and 12 bcf of federal natural gas, and flared more than 0.4 bcf of federal natural gas.

17 13. Venue is further proper in this district because Plaintiffs Sierra Club and Center for  
18 Biological Diversity are nonprofit corporations in good standing incorporated in the State of  
19 California. Plaintiff Sierra Club is headquartered in Oakland, and Center for Biological Diversity  
20 and Earthworks have offices in Oakland. Additionally, Plaintiffs Environmental Defense Fund,  
21 Natural Resources Defense Council, and The Wilderness Society maintain offices in this district.  
22 The Conservation and Tribal Citizen Groups collectively have more than half a million members  
23 living in California. This includes more than 160,000 members residing in the Northern District.

24 **INTRADISTRICT ASSIGNMENT**

25 14. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), there is no basis for assignment of  
26 this action to any particular location or division of this Court. However, this case is related to Case  
27 No. 3:17-cv-07186, which is currently pending in the San Francisco Division. Case No. 3:17-cv-  
28 07186, filed by the States of California and New Mexico, also challenges the Amendment. The legal

1 claims in that case are nearly identical to the legal claims in this case. Pursuant to Civil Local Rule  
2 3-12(b), Plaintiffs intend to promptly file an Administrative Motion to Consider Whether Cases  
3 Should Be Related.

#### 4 **PARTIES**

5 15. Plaintiff SIERRA CLUB, founded in 1892, is the nation's oldest and largest  
6 grassroots environmental organization. Sierra Club is incorporated and headquartered in California,  
7 with a principal place of business at 2101 Webster St., Suite 1300, Oakland, CA 94612. Sierra Club  
8 has about 250 employees who work in California, including about 200 employees who work at its  
9 headquarters in Oakland. Sierra Club California has thirteen local chapters, including five chapters  
10 in northern California that collectively have about 96,600 members: the Loma Prieta, Mother Lode,  
11 Redwood, San Francisco Bay, and Ventana Chapters. Sierra Club currently has more than 830,000  
12 members nationwide, including more than 182,000 in California. More than 71,000 of these  
13 members reside in the Northern District of California. Sierra Club's mission is to explore, enjoy,  
14 and protect the wild places of the earth; to practice and promote the responsible use of the earth's  
15 ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the  
16 natural and human environment; and to use all lawful means to carry out these objectives. In  
17 addition to helping people from all backgrounds explore nature and our outdoor heritage, Sierra Club  
18 works to promote clean energy, safeguard the health of our communities, protect wildlife, and  
19 preserve our remaining wild places through grassroots activism, public education, lobbying, and  
20 legal action. Sierra Club pursues these objectives nationwide, including in California. For example,  
21 Sierra Club has been actively involved in raising awareness about the public health consequences of  
22 oil and gas activities on public lands, including in northern California. Sierra Club sued BLM for  
23 failing to consider the impacts of hydraulic fracturing before leasing public lands in Monterrey  
24 County for oil and gas development. *Ctr. for Biological Diversity v. BLM*, 937 F. Supp. 2d 1140  
25 (N.D. Cal. 2013). In April 2017, Sierra Club submitted comments on BLM's Draft Resource  
26 Management Plan Amendment/Environmental Impact Statement for oil and gas leasing and  
27 development within the Central Coast Field Office. The Central Coast Field Office includes all or  
28

1 part of several counties within the Northern District of California: Alameda, Contra Costa,  
2 Monterey, San Benito, San Francisco, San Mateo, Santa Clara, and Santa Cruz.

3 16. 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 58,500 members, including more than 13,000 in California, and more than 1.3 million online  
8 supporters worldwide. Specifically, the Center has more than 4,000 members residing in the  
9 Northern District of California. The Center's members use BLM-managed public lands for  
10 recreational, scientific, educational, and other pursuits and intend to continue to do so in the future,  
11 and are particularly interested in protecting the many native, imperiled, and sensitive species and  
12 their habitats that may be affected by oil and gas leasing. Although the Center pursues its objectives  
13 of protecting threatened and endangered species and their habitats nationwide, the Center  
14 specifically works to protect public lands administered by BLM in the Northern District of  
15 California from the harmful impacts of oil and gas development, including methane emissions. The  
16 Center researches, documents, and raises awareness of the environmental consequences of oil and  
17 gas development and hydraulic fracturing in California. This campaign includes, among other  
18 efforts, publishing reports on aquifer contamination and seismic risks from oil and gas activities,  
19 rallying local governments, including Monterey County, to prohibit hydraulic fracturing, and  
20 litigating BLM's oil and gas leasing activities on California public lands. Like Sierra Club, the  
21 Center was a plaintiff in a 2011 lawsuit challenging BLM's failure to consider the impacts of  
22 hydraulic fracturing in the Northern District of California. *Ctr. for Biological Diversity v. BLM*, 937  
23 F. Supp. 2d 1140 (N.D. Cal. 2013).

24 17. Plaintiff EARTHWORKS is a membership-based 501(c)(3) nonprofit organization  
25 dedicated to protecting communities and the environment from the adverse impacts of mineral and  
26 energy development while promoting sustainable solutions. Earthworks was created in 2005, when  
27 two organizations (the Mineral Policy Center and the Oil & Gas Accountability Project) joined  
28 forces. Earthworks collaborates with communities and grassroots groups to reform government

1 policies to better protect air, water, public lands and communities from threats posed by mineral  
2 development. Earthworks has an office in California. Earthworks has more than 70,000 members  
3 nationwide, including over 9,200 members in California. Among Earthworks' members,  
4 approximately 4,200 live in the Northern District of California.

5 18. Plaintiff ENVIRONMENTAL DEFENSE FUND (EDF) is a national nonprofit  
6 organization representing over 420,000 members nationwide, including over 70,000 in California.  
7 Over 25,000 of these members reside in the Northern District of California. Since 1967, EDF has  
8 linked science, economics, and law to create innovative, equitable, and cost-effective solutions to  
9 urgent environmental problems. EDF employs more than 150 scientists, economists, engineers,  
10 business school graduates, and lawyers to help solve challenging environmental problems in a  
11 scientifically sound and cost-effective way. These staff work throughout the nation, including in two  
12 California offices, one in San Francisco, and one in Sacramento. More than 100 EDF staff members  
13 live and work in California. EDF pursues initiatives at the state and national levels designed to  
14 protect human health and the environment. Among these initiatives, EDF has worked to reduce  
15 waste from oil and gas operations on public lands along with its associated health-harming and  
16 climate-altering air pollution.

17 19. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL (NRDC) is a non-profit  
18 environmental membership organization that uses law, science, and the support of more than  
19 408,000 members throughout the United States, including nearly 80,000 in California, to protect  
20 wildlife and wild places and to ensure a safe and healthy environment for all living things. More  
21 than 33,000 NRDC's members reside in the Northern District of California. NRDC has offices  
22 throughout the country, including offices in San Francisco and Santa Monica, California. NRDC has  
23 a long-established history of working to protect public lands and clean air. In particular, NRDC has  
24 worked for decades to protect public lands, nearby communities, wildlife habitat and air quality from  
25 the threats posed by oil and gas development.

26 20. Plaintiff THE WILDERNESS SOCIETY (TWS) has a mission to protect wilderness  
27 and inspire Americans to care for our wild places. TWS has offices throughout the country,  
28 including offices in San Francisco and Pasadena, California, and a California Desert representative.

1 TWS has more than 1,000,000 members and supporters around the West, including more than  
2 91,000 in California. TWS has a long-standing interest in the management of public lands across the  
3 nation, and engages frequently in land use planning and project proposals that could potentially  
4 affect wilderness quality lands, wildlife habitat, and other natural resources, as well as the health,  
5 safety and quality of life of surrounding communities. TWS also has a long-standing interest in the  
6 use of our public and tribal lands for energy development, including supporting a transition to  
7 renewable energy, and ensuring that oil and gas and other energy development are focused in  
8 suitable locations and completed in a manner that does not harm other values. TWS has been  
9 actively involved in planning, policy, and conservation efforts in California, including the Northwest  
10 California Integrated Resource Management Plan for BLM lands in Humboldt, Mendocino, Del  
11 Norte, Trinity, Shasta, Siskiyou, Butte, and Tehama Counties. TWS also focuses on protecting the  
12 Cascade-Siskiyou National Monument, the San Gabriel Mountains, Sierra Nevada, the California  
13 Desert, and the Central Coast.

14 21. Plaintiff NATIONAL WILDLIFE FEDERATION (NWF), founded in 1936, is one of  
15 the nation's premier grassroots non-profit conservation advocacy and education organizations. The  
16 group is America's largest conservation organization with a mission to ensure that wildlife thrive in  
17 a rapidly-changing world. Headquartered in Reston, Virginia, NWF has offices throughout the  
18 country, including an office in California. NWF has more than six million members and supporters  
19 and has affiliate organizations in 51 states and territories, including more than 57,000 members and  
20 3,500 affiliate members in California. More than 25,000 of NWF's members reside in the Northern  
21 District of California. NWF has a strong history of protecting public lands for wildlife and outdoor  
22 recreation by its members and is known among conservation groups for its ability to combine strong  
23 science, federal and state policy development, education, litigation, and grassroots organizing.

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



1 development. CHC members have been actively involved in commenting on BLM's oil and gas  
2 activities.

3 23. Plaintiff DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT (Diné  
4 C.A.R.E.) is an all-Navajo organization comprised of a federation of grassroots community activists  
5 in Arizona, New Mexico and Utah who strive to educate and advocate for traditional teachings  
6 derived from Diné Fundamental Laws. Diné C.A.R.E.'s goal is to protect all life in their ancestral  
7 homeland by empowering local and traditional people to organize, speak out, and determine the  
8 outlook of the environment through civic involvement and engagement in decision-making  
9 processes relating to tribal development, including oil and gas development on public and tribal  
10 lands in the San Juan Basin of New Mexico.

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

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

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

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

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

27           29. Plaintiff WILDERNESS WORKSHOP is a nonprofit organization based in  
28 Carbondale, Colorado that is dedicated to preservation and conservation of the wilderness and

1 natural resources of the White River National Forest and adjacent public lands. Wilderness  
2 Workshop engages in research, education, legal advocacy and grassroots organizing to protect the  
3 ecological integrity of local landscapes and public lands. Wilderness Workshop focuses on the  
4 monitoring and conservation of air and water quality, wildlife species and habitat, natural  
5 communities and lands of wilderness quality. Wilderness Workshop was founded in 1967 and has  
6 approximately 800 members.

7 30. Plaintiff WILDEARTH GUARDIANS (Guardians) is a non-profit conservation  
8 organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of  
9 the American West. Guardians has offices in Colorado, Montana, New Mexico, Arizona,  
10 Washington, and Oregon. With more than 120,000 members and supporters, Guardians works to  
11 sustain a transition from fossil fuels to clean energy in order to safeguard the West.

12 31. Plaintiff WYOMING OUTDOOR COUNCIL (WOC) was founded in 1967. It is  
13 Wyoming's oldest independent conservation organization. WOC works to protect Wyoming's  
14 environment and quality of life for future generations. Its goal is to develop productive and lasting  
15 solutions for managing natural resources through collaborative engagement with stakeholders and  
16 decision makers. WOC believes responsible environmental stewardship is fundamental to  
17 safeguarding public health and Wyoming's quality of life. WOC's nearly 2,000 members recognize  
18 that Wyoming's landscapes, wildlife, and diverse cultural history are vital resources, and that  
19 everyone relies on the state's clean air and water.

20 32. The Conservation and Tribal Citizen Groups bring this action on behalf of themselves  
21 and their adversely affected members. For many years, the Conservation and Tribal Citizen Groups  
22 have actively advocated for strong BLM standards for the reduction of waste and associated air  
23 pollution from federal and tribal leases, and have devoted significant resources toward that effort.  
24 For example, the Conservation and Tribal Citizen Groups and their members submitted scoping  
25 comments and comments on the proposed Waste Prevention Rule and participated in public  
26 meetings and hearings. The Conservation and Tribal Citizen Groups also have intervened to defend  
27 the Waste Prevention Rule from a lawsuit filed by several states and industry groups. Further, the  
28 Conservation and Tribal Citizen Groups' staff and members helped to successfully oppose an

1 attempt to persuade Congress to repeal the Rule using the Congressional Review Act. Moreover, the  
2 Conservation and Tribal Citizen Groups successfully sued BLM when it unlawfully attempted to  
3 stay the Waste Prevention Rule's compliance dates. *California v. BLM*, Nos. 17-cv-3804-EDL &  
4 17-cv-3885-EDL, 2017 WL 4416409, at \*14 (Oct. 4, 2017). Finally, the Conservation and Tribal  
5 Citizen Groups and their members submitted comments on BLM's proposed Amendment.

6 33. Many Conservation and Tribal Citizen Group members live in communities that  
7 receive income from royalties from oil and gas development on public and tribal lands that is used to  
8 fund schools, healthcare, and infrastructure. Other Conservation and Tribal Citizen Group members  
9 are partial royalty owners of tribal leases. The Amendment will lead to reductions in these royalty  
10 payments.

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

24 35. Defendant RYAN ZINKE is the Secretary of the Interior. The Conservation and  
25 Tribal Citizen Groups sue Secretary Zinke in his official capacity. Secretary Zinke oversees the  
26 development of energy, including natural resource extraction, on federal and tribal leases. Secretary  
27 Zinke is ultimately responsible for BLM's Amendment.

28



1           43.     FLPMA further provides that BLM “shall, by regulation or otherwise, take any action  
2 necessary to prevent unnecessary or undue degradation of the [public] lands.” *Id.* § 1732(b).

3           44.     FLPMA requires that “[t]he Secretary shall manage the public lands under the  
4 principles of multiple use and sustained yield.” *Id.* § 1732(a). “Multiple use” is defined as  
5 “management of the public lands . . . that takes into account the long-term needs of future  
6 generations for renewable and nonrenewable resources, including, but not limited to, recreation . . .  
7 minerals . . . and natural, scenic, scientific, and historical values; and harmonious and coordinated  
8 management of the various resources without permanent impairment of the productivity of the land  
9 and the quality of the environment with consideration being given to the relative values of the  
10 resources and not necessarily the combination of uses that will give the greatest economic return or  
11 the greatest unit output.” *Id.* § 1702(c).

### 12 **III. National Environmental Policy Act**

13           45.     Prior to undertaking any “major Federal action[] significantly affecting the quality of  
14 the human environment,” NEPA requires federal agencies to provide a “detailed statement”  
15 explaining “the environmental impact of the proposed action . . . alternatives to the proposed action,  
16 . . . and any irreversible and irretrievable commitments of resources which would be involved in the  
17 proposed action should it be implemented.” 42 U.S.C. § 4332(2)(C)(i), (iii), (v). Agencies must  
18 “integrate the NEPA process with other planning at the earliest possible time.” 40 C.F.R. § 1501.2.

19           46.     NEPA analyses are intended “to foster excellent action” and “to help public officials  
20 make decisions that are based on [an] understanding of environmental consequences, and take  
21 actions that protect, restore, and enhance the environment.” *Id.*

22           47.     To determine if preparing an environmental impact statement (EIS) is necessary,  
23 Council on Environmental Quality (CEQ) regulations implementing NEPA allow agencies to  
24 prepare an environmental assessment (EA) with “sufficient evidence and analysis for determining  
25 whether to prepare an environmental impact statement or a finding of no significant impact.” 40  
26 C.F.R. § 1508.9. Department of the Interior regulations include a similar requirement. *See* 43  
27 C.F.R. § 46.300.

1           48.     Relevant factors in determining whether an EIS is necessary include “consideration of  
2 both context and intensity.” 40 C.F.R. § 1508.27. Factors relevant to “intensity” include “[t]he  
3 degree to which the proposed action affects public health or safety,” “[t]he degree to which the  
4 effects on the quality of the human environment are likely to be highly controversial,” and  
5 “[w]hether the action is related to other actions with individually insignificant but cumulatively  
6 significant impacts.” *Id.* § 1508.27(b)(2), (4), (7).

7           49.     Regardless of whether agencies choose to prepare an EIS or EA, they must  
8 “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.* § 1502.14(a). In  
9 mandating the comparative analysis of reasonable alternatives, agencies are able to “sharply defin[e]  
10 the issues and provid[e] a clear basis for choice among options by the decisionmaker and the  
11 public.” *Id.* § 1502.14. CEQ regulations implementing NEPA identify the alternatives analysis as  
12 the “heart” of a NEPA document. *Id.* § 1502.14.

13           50.     An EIS or EA must take a hard look at the direct, indirect, and cumulative impacts of  
14 each reasonable alternative. *Id.* §§ 1502.16(a), (b), 1508.7, 1508.8, 1508.25(c). Direct impacts are  
15 those impacts “caused by the action and [that] occur at the same time and place.” *Id.* § 1508.8.  
16 Indirect impacts are “caused by the action and are later in time or farther removed in distance, but  
17 are still reasonably foreseeable.” *Id.* Cumulative impacts are “the impact[s] on the environment  
18 which results from the incremental impact of the action when added to other past, present, and  
19 reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person  
20 undertakes such other actions. Cumulative impacts can result from individually minor but  
21 collectively significant actions taking place over a period of time.” *Id.* § 1508.7.

22           51.     “Agencies shall insure the professional integrity, including scientific integrity, of the  
23 discussions and analyses in environmental impact statements.” *Id.* § 1502.24. An agency’s  
24 environmental analysis must be based on “high quality” information, “[a]ccurate scientific analysis,”  
25 and “expert agency comments.” *Id.* § 1500.1(b).

#### 26           **IV.     Administrative Procedure Act**

27           52.     The APA requires agencies to provide the public with notice before they adopt,  
28 amend, or repeal a regulation. 5 U.S.C. § 553(b). The notice shall include “reference to the legal

1 authority under which the rule is proposed; and either the terms or substance of the proposed rule.”  
2 *Id.* Agencies must also solicit comments, “giv[ing] interested persons an opportunity to participate  
3 in the rule making through submission of written data, views, or arguments.” *Id.* § 553(c). After  
4 consideration of the comments, “the agency shall incorporate in the rules adopted a concise general  
5 statement of their basis and purpose.” *Id.*

6 53. The APA also authorizes judicial review of agency actions and provides that courts  
7 “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary,  
8 capricious, an abuse of discretion, or otherwise not in accordance with law . . . in excess of statutory  
9 jurisdiction, authority, or limitations, or short of statutory right; . . . [or] without observance of  
10 procedure required by law.” *Id.* § 706(2)(A), (C), (D).

11 54. As a component of judicial review, “to prevent irreparable injury, the reviewing court  
12 . . . may issue all necessary and appropriate process to postpone the effective date of an agency  
13 action or to preserve status or rights pending conclusion of the review proceedings.” *Id.* § 705.

## 14 **FACTUAL BACKGROUND**

### 15 **I. BLM Develops the Waste Prevention Rule**

16 55. BLM adopted the Waste Prevention Rule pursuant to its authority under the MLA,  
17 FLPMA, and other statutes to address wasteful venting, flaring, and leaking of natural gas from oil  
18 and gas leases developing federal or tribal minerals.

19 56. BLM has long regulated venting and flaring of publicly owned natural gas produced  
20 from federal leases, and determined when operators must pay the federal government royalties for  
21 wasted gas. *See* Notice To Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases  
22 (NTL-4A), 44 Fed. Reg. 76,600 (Dec. 27, 1979). When BLM promulgated the Waste Prevention  
23 Rule in 2016, it replaced NTL-4A. This was the first update of its standards for venting and flaring  
24 publicly-owned natural gas since NTL-4A was issued in 1979. BLM determined that it was  
25 necessary to update NTL-4A because it did not reflect modern technologies and practices, was  
26 subject to inconsistent application, and was not effective in minimizing waste and lost royalties.

27 57. BLM also adopted the Rule in response to recommendations from several oversight  
28 reviews, including reviews by the Office of the Inspector General of the Department of the Interior



1 and the Government Accountability Office (GAO). An October 2010 report by the GAO raised  
2 concerns about waste of public resources and the inadequacies of BLM's existing requirements. The  
3 GAO specifically recommended that BLM update its regulations to take advantage of opportunities  
4 to capture additional recoverable natural gas using available technologies.

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

10 59. In 2014 BLM commenced the rulemaking process for the Waste Prevention Rule.  
11 BLM solicited extensive stakeholder feedback through public forums held in communities across the  
12 country. BLM issued a proposed rule, incorporating this feedback, in early 2016. BLM again held  
13 public hearings, as well as tribal outreach sessions, at locations around the country. The agency  
14 received more than 330,000 public comments. BLM finalized the Waste Prevention Rule on  
15 November 18, 2016. The Rule's effective date was January 17, 2017.

16 60. BLM determined that the Rule's requirements were reasonable and cost-effective  
17 measures to minimize waste. The Rule requires operators to capture and sell natural gas that would  
18 otherwise be vented or flared by establishing a phased-in capture target that tightens from 85% in  
19 January 2018 to 98% by 2026. The Rule also sets specific performance standards to reduce waste  
20 from some types of equipment, including storage tanks and pneumatic controllers. The Rule further  
21 requires operators to periodically inspect their facilities for leaks, and to promptly repair any leaks  
22 identified. The Rule includes exemptions if compliance would cause operators to abandon  
23 development of significant oil or gas resources.

24 61. Operators were required to comply with some of the Rule's requirements, such as the  
25 requirement to submit unenforceable waste minimization plans with applications for permits to drill,  
26 starting on January 17, 2017. For other requirements provisions, BLM set an initial compliance  
27 deadline of January 17, 2018, one year after the Rule's effective date.

28

1           62.     BLM estimates that the Rule would reduce wasteful venting and methane emissions  
2 by 35% and wasteful flaring by 49%. BLM also estimates that the Rule would increase royalties by  
3 up to \$14 million per year.

4           63.     BLM also found that the Rule would significantly benefit local communities, public  
5 health, and the environment. For example, BLM found that the Rule would reduce the visual and  
6 noise impacts associated with flaring. BLM further found that the Rule would protect communities  
7 from smog and carcinogenic air toxic emissions, and reduce greenhouse gas emissions. BLM  
8 estimated that the Rule would reduce emissions of methane by 175,000 to 180,000 tons per year  
9 (tpy), volatile organic compounds by 250,000 to 267,300 tpy, and hazardous air pollutants by 1,859  
10 to 2,031 tpy.

11           64.     In accordance with Executive Order 12,866, BLM prepared a regulatory impact  
12 analysis (RIA) that examined the costs and benefits of the Rule. Overall, BLM concluded that the  
13 Waste Prevention Rule's benefits outweighed its costs "by a significant margin" with "net benefits  
14 ranging from \$46 million to \$199 million per year." 81 Fed. Reg. at 83,014.

15           65.     BLM also evaluated the cost of the Rule on small businesses. It determined that the  
16 average annual compliance costs would range from about \$44,600 to \$65,800 for each company.  
17 Based on the midpoint average of \$55,200, BLM estimated that compliance costs would constitute  
18 approximately 0.15% of per company profits. Based on this analysis, BLM concluded that the Rule  
19 was not expected to impact investment decisions or employment in the oil and gas industry.

20           66.     Part of BLM's net benefits calculation was based on the social cost of methane. BLM  
21 relied upon an estimate of the social cost of methane that was published in peer-reviewed literature  
22 and approved for use by an inter-agency working group, made up of representatives of 12 agencies,  
23 including the Department of the Interior and the White House Office of Management and Budget.  
24 This social cost of methane estimate was based on a closely related social cost estimate for carbon  
25 dioxide developed by the interagency working group in 2010, which has been subject to extensive  
26 public comment and peer review, including review by the National Academy of Sciences. In the  
27 preamble to the Waste Prevention Rule, BLM discussed the limitations of the social cost of methane  
28

1 metric, but nevertheless concluded that it represents the best available information about the social  
2 benefits of methane reductions to be used in a cost-benefit analysis.

3 **II. The New Presidential Administration Decides to Revise or Rescind the Rule and**  
4 **Unsuccessfully Attempts to Alleviate Compliance Obligations.**

5 67. The Western Energy Alliance (WEA), other industry groups, and the states of North  
6 Dakota, Wyoming, and Montana challenged the Waste Prevention Rule in the District of Wyoming.  
7 The district court denied their request for a preliminary injunction, and the Waste Prevention Rule  
8 went into effect on January 17, 2017.

9 68. WEA, the American Petroleum Institute (API) and other industry groups, as well as  
10 some states, also lobbied members of Congress to repeal the Rule using the Congressional Review  
11 Act (CRA).

12 69. While still a member of the U.S. House of Representatives, Secretary Zinke voted in  
13 favor of repealing the Waste Prevention Rule through the CRA. Once he became the Secretary of  
14 the Interior, Secretary Zinke lobbied Congress to repeal the Rule. When asked about the Waste  
15 Prevention Rule by a reporter, Secretary Zinke characterized it as “duplicative and unnecessary.” He  
16 later answered “yes” when asked by a Senate committee if he supported congressional efforts to  
17 repeal the Rule through the CRA.

18 70. However, a majority of Senators voted against the motion to proceed to debate on the  
19 CRA resolution on May 10, 2017. On May 11, 2017, the window for expedited consideration under  
20 the CRA expired.

21 71. Prior to the Senate vote, on March 28, 2017, President Trump issued Executive Order  
22 No. 13,783, directing the Secretary of the Interior to consider revising or rescinding the Waste  
23 Prevention Rule. Exec. Order No. 13,783, Promoting Energy Independence and Economic Growth,  
24 at § 7(b)(iv), 82 Fed. Reg. 16,093, 16,093 (Mar. 28, 2017).

25 72. The next day, Secretary Zinke issued Secretarial Order No. 3349 directing the BLM  
26 Director to review the Rule and report to the Assistant Secretary of Land and Minerals Management  
27 within 21 days on whether the Rule is fully consistent with the policies set forth in Executive Order  
28

1 No. 13,783. Secretary of the Interior, Order No. 3349, American Energy Independence, at § 5(c)(ii)  
2 (Mar. 29, 2017).

3 73. On April 4, 2017, WEA sent a written request to Secretary Zinke, asking BLM to  
4 suspend the Waste Prevention Rule during the ongoing administrative review of the Rule.

5 74. On May 16, 2017, API also sent a letter requesting that BLM postpone the Rule's  
6 compliance dates.

7 75. BLM's Acting Director completed the 21-day report required by the Secretarial  
8 Order. A copy of that report has not been made public. BLM has failed to release copies of the 21-  
9 day report in response to multiple requests under the Freedom of Information Act submitted by the  
10 Conservation and Tribal Citizen Groups.

11 76. BLM then developed a "three-step plan" to propose to revise or rescind the Waste  
12 Prevention Rule and prevent any costs associated with compliance with the Rule in the interim.

13 77. BLM took the first step on June 15, 2017 when, without notice or an opportunity for  
14 public comment, BLM issued a notice under 5 U.S.C. § 705 staying all sections of the Rule with  
15 compliance dates one year or more after the Rule's effective date. 82 Fed. Reg. 27,430 (June 15,  
16 2017). BLM stayed the Rule in response to WEA's and API's claims that the Rule was too costly.  
17 BLM also concluded a stay was necessary because of the uncertain future of the requirements due to  
18 the administration's decision to reconsider the Rule.

19 78. The Conservation and Tribal Citizen Groups, as well as the States of California and  
20 New Mexico, filed suit against BLM's stay in the Northern District of California. BLM moved to  
21 transfer venue to the District of Wyoming. This Court denied that motion, holding that the Northern  
22 District of California had a significant interest in the litigation as a result of the millions of acres of  
23 BLM-managed lands and minerals in the state. Order Denying Defs.' Mot. to Transfer at 4, 7,  
24 *California v. BLM*, Nos. 17-cv-3804-EDL (Sept. 7, 2017), ECF No. 73. The Court also held that the  
25 Conservation and Tribal Citizen groups have close ties to California sufficient to support venue. *Id.*  
26 at 4.

27 79. This Court later granted the Conservation and Tribal Citizen Groups' and the states'  
28 motions for summary judgment, declared that BLM's purported attempt to stay the Rule's

1 compliance dates violated the APA, vacated the stay, and ordered BLM to reinstate the Rule in its  
2 entirety. *California v. BLM*, Nos. 17-cv-3804-EDL & 17-cv-3885-EDL, 2017 WL 4416409, at \*14  
3 (Oct. 4, 2017).

4 80. The Court explained that “[t]he retraction of a duly-promulgated regulation requires  
5 compliance with the APA’s notice-and-comment procedures.” *Id.* at \*9. It further explained that  
6 “the policy underlying the statutory requirement of notice-and-comment is equally applicable to the  
7 repeal of regulations as to their adoption.” *Id.* at \*10.

8 81. The Court further held that BLM “entirely failed to consider the benefits of the Rule,  
9 such as decreased resource waste, air pollution, and enhanced public revenues.” *Id.* at \*11. It  
10 reasoned that “[w]ithout considering both the costs and the benefits of postponement of the  
11 compliance dates, the Bureau’s decision failed to take this ‘important aspect’ of the problem into  
12 account and was therefore arbitrary.” *Id.*

13 82. As a result of this Court’s Order, the Waste Prevention Rule was in effect until BLM  
14 finalized the Amendment.

### 15 **III. BLM Proposes and Finalizes the Amendment.**

16 83. One day after the Court reinstated the Rule, BLM took the second step of its three-  
17 step plan, proposing a rule to amend most of the Rule’s compliance deadlines by extending them for  
18 a year. 82 Fed. Reg. 46,458 (Oct. 5, 2017). BLM proposed the one-year extension to allow  
19 sufficient time for the agency to further revise or rescind the Rule.

20 84. After issuing the proposal, BLM publicly represented that it *would* modify the Rule’s  
21 compliance dates. BLM informed the Wyoming district court that it planned to finalize the  
22 Amendment by December 8, 2017 and that its final action would alleviate the Petitioners’ concerns  
23 about compliance with the Rule. BLM also informed the court that it was working on a second  
24 rulemaking to revise or rescind the Waste Prevention Rule, which would obviate the need to proceed  
25 with the merits.

26 85. BLM solicited public comment on its proposal for just 30 days. This was much  
27 shorter than the 74-day comment period on the Waste Prevention Rule. BLM did not hold any  
28 public hearings, as it had when developing the Waste Prevention Rule. Although BLM received

1 numerous requests to extend the public comment period and hold public hearings, BLM refused to  
2 do so.

3 86. The sum total of BLM's stakeholder outreach involved two letters and a follow-up  
4 call to tribal governments.

5 87. BLM received over 158,000 public comments on the Amendment, including  
6 approximately 750 unique comments. The Conservation and Tribal Citizen Groups submitted  
7 extensive comments objecting to the Amendment.

8 88. BLM finalized the Amendment on December 8, 2017.

9 89. The Amendment will take effect on January 8, 2017. Despite having stated in its  
10 proposal that the Amendment is a major rule (and would therefore could not take effect until  
11 February 8, 2017), in its final Rule BLM states that the Amendment is *not* a major rule. BLM  
12 provides no explanation for this change.

13 90. The Amendment modifies the Waste Prevention Rule by suspending until January 17,  
14 2019 the obligation to comply with requirements of the Rule that have been in place since January  
15 17, 2017, such as the requirement to prepare a waste management plan prior to drilling. The  
16 Amendment also revises the Waste Prevention Rule by delaying for a year the provisions of the Rule  
17 with compliance deadlines on or after January 18, 2017. BLM states that the Amendment suspends  
18 or delays all the requirements that "generate benefits of gas savings or reductions in methane  
19 emissions." 82 Fed. Reg. at 58,051.

20 91. BLM prepared an RIA for the Amendment. The RIA estimates that the Amendment  
21 will lead to decreased natural gas production of around 9.0 billion cubic feet during the year it is in  
22 place. This gas would have been captured and put to use under the Waste Prevention Rule. BLM  
23 estimates that the Amendment will lead to a corresponding reduction in royalties of \$2.61 million.

24 92. BLM projects additional emissions of 175,000 tons of methane and 250,000 tons of  
25 volatile organic compounds during the year of the Amendment. These methane emissions are the  
26 climate equivalent of adding 3,000,000 passenger vehicles to the road during that time (at the 20-  
27 year global warming potential).

1 93. BLM states that the Amendment is authorized under its authority to revise its existing  
2 regulations. At the same time, BLM claims that the Amendment does not substantively change the  
3 Waste Prevention Rule. BLM provides no explanation for how the Amendment is consistent with its  
4 statutory mandates under the MLA, FLPMA, or other statutes.

5 94. The Waste Prevention Rule replaced BLM's existing waste prevention regulations  
6 found in NTL-4A. The Amendment neither reinstates NTL-4A nor analyzes or provides any interim  
7 regulations or guidance to prevent waste. But BLM's Amendment RIA erroneously assumes that the  
8 suspension will result in a return to NTL-4A and thereby underestimates the waste of natural gas,  
9 lost royalties and social harms that will occur under the Amendment.

10 95. BLM points to other federal, tribal, and state regulations that limit waste. In the  
11 Waste Prevention Rule, however, BLM determined that these existing regulations were not sufficient  
12 to adequately limit waste. BLM offers no explanation for its change in position. BLM also does not  
13 discuss the impact of EPA's similar proposal to suspend its regulations in anticipation of later  
14 revising or rescinding them.

15 96. BLM states that the purpose of the Amendment is to avoid imposing compliance  
16 costs on operators for provisions that may be revised or rescinded in the future. BLM also expresses  
17 its desire to avoid expending agency resources implementing the Rule.

18 97. BLM concedes that the Amendment is a direct outgrowth of President Trump's  
19 direction in Executive Order 13,783 to consider whether it is appropriate to rescind or revise the  
20 Waste Prevention Rule. BLM claims that its initial review of the Waste Prevention Rule found that  
21 "some provisions of the 2016 final rule add considerable regulatory burdens that unnecessarily  
22 encumber energy production, constrain economic growth and prevent job creation." 82 Fed. Reg. at  
23 58,050. BLM offers no evidence in support of this conclusion, which conflicts with its prior position  
24 that compliance costs are modest and unlikely to significantly affect even the smallest companies or  
25 affect employment in the industry.

26 98. Although BLM did not identify any specific burdens to industry in the proposed rule,  
27 in the final Amendment BLM states, without support, that there is "newfound concern" that the  
28 Waste Prevention Rule's requirements would pose a burden to operators of marginal or low-

1 producing wells. This conflicts with BLM's prior position that the Rule reasonably accounted for  
2 marginal or low-producing wells.

3 99. Nor does the agency explain how its conclusions regarding the burdens to industry  
4 are consistent with its own findings in the Amendment RIA. Indeed, BLM determines that the  
5 Amendment will have no significant economic benefit for even the smallest companies. The  
6 Amendment RIA concludes that the average reduction in compliance costs associated with the  
7 Amendment would be a small fraction of a percent (0.17%) of the profit margin for small  
8 companies. Based on this analysis, BLM concludes that a one-year suspension would not  
9 substantially alter the investment or employment decisions of firms.

10 100. BLM also fails to explain how its decision to amend the compliance deadlines is  
11 consistent with its stated goal of not substantially burdening the industry, or its previous analysis  
12 finding that several of the Waste Prevention Rule requirements would pay for themselves through  
13 cost savings. For example, in the Waste Prevention Rule RIA, BLM estimated that the pneumatic  
14 controller requirement would pay for itself, imposing costs of about \$2 million per year while  
15 generating cost savings from product recovery of \$3 to \$4 million per year. Likewise, BLM had  
16 estimated that the liquids unloading provisions would impose costs of about \$6 million per year and  
17 would generate cost savings of \$5 to \$9 million per year. BLM did not explain in the Amendment  
18 RIA why or how it changed its estimates of cost savings associated with the Waste Prevention Rule  
19 from those in the Waste Prevention Rule RIA. BLM acknowledged in the Amendment RIA that the  
20 capture target requirements would entail no compliance costs during the year of the Compliance  
21 Revision, yet proceeded to suspend those requirements anyway.

22 101. In the Amendment RIA, BLM uses a new estimate of the social cost of methane that  
23 diverges from the one approved by the interagency working group and used to evaluate the Waste  
24 Prevention Rule. The estimate used to evaluate the Waste Prevention Rule is based on peer-  
25 reviewed literature and analyses that have undergone extensive public comment and external review.  
26 The estimate used to evaluate the Amendment has undergone no such review. Indeed, the  
27 Amendment is the first time the federal government has relied on this estimate in a rulemaking.  
28



1 BLM states that the new estimate is an “interim” value to be used until additional estimates can be  
2 developed.

3 102. BLM made two “interim” changes to the federal government’s prior standardized  
4 estimates of the social cost of methane. First, BLM reduced the cost estimate to attempt to exclude  
5 all harms from climate change that occur outside of the United States. The National Academies and  
6 the interagency working group have concluded that no good methodologies for excluding non-  
7 domestic harms exist. Second, BLM reduced the apparent benefits of the Rule still further by  
8 discounting them at a much higher rate than in the Waste Prevention Rule. This change is contrary  
9 to expert consensus and OMB guidance on discounting for policies with long-term, intergenerational  
10 benefits.

11 103. The two “interim” changes that BLM made to the estimates of the social cost of  
12 methane eliminate 95% or 87% (depending on the discount rate used) of the estimated cost of the  
13 harm from climate change associated from one ton of methane as compared to the social cost of  
14 methane that BLM used in the Waste Prevention Rule.

15 104. The RIA also assumes that the costs and benefits of the Rule will be shifted one year  
16 into the future. But the purpose of the Amendment is to relieve operators from compliance  
17 obligations while BLM completes the process of revising or rescinding the Rule. By assuming the  
18 Waste Prevention Rule will go into effect a year later when that is not BLM’s plan, BLM  
19 underestimates the impacts of the Amendment.

20 105. BLM’s EA analyzed only two alternatives: a no action alternative and the chosen  
21 alternative of suspending the Waste Prevention Rule. BLM did not analyze other reasonable  
22 alternatives proposed by members of the public in their comments on the proposed rule. For  
23 example, BLM did not analyze the alternative of suspending oil and gas leasing and permitting  
24 activities for the duration of the Amendment.

25 106. BLM committed to its chosen alternative—suspending the Waste Prevention Rule—  
26 before completing the draft EA. BLM committed to its chosen alternative before it reviewed public  
27 comments.

28

1 107. BLM chose to complete an EA for the Amendment, rather than an Environmental  
2 Impact Statement (EIS). It explained its decision in a Finding of No Significant Impact (FONSI).

3 108. BLM recognizes that the impacts of the action are national in scope, but would  
4 primarily be felt in the West. BLM states that the temporary nature of the Amendment mitigates  
5 against a finding of significance. In the FONSI, BLM assumes that at the end of the year the  
6 Amendment is in place, the requirements of the Waste Prevention Rule will come back into effect.  
7 At the same time, BLM acknowledges in the FONSI that the purpose of the Amendment is to ensure  
8 operators do not have to comply with the Waste Prevention Rule while BLM considers revising or  
9 rescinding the Rule. In the Amendment, BLM indicates that it chose to suspend compliance for one  
10 year because that would provide sufficient time for BLM to finalize its revision or rescission.

11 109. The FONSI does not discuss the significant controversy associated with BLM's  
12 "interim" social cost of methane estimate or concerns raised in comments that it dramatically  
13 underestimates the harm from the Amendment.

14 110. In the EA, BLM projects additional emissions of 175,000 tons of methane, 250,000  
15 tons of volatile organic compounds, and 1,860 tons of hazardous air pollutants during the year of the  
16 Amendment. Although the EA quantified these increased emissions, BLM did not analyze how  
17 those increased emissions would impact human health and the environment. In the FONSI, BLM  
18 discounted the significance of these impacts by arguing that they would occur largely in sparsely  
19 populated areas.

20 111. BLM has previously completed EISs for oil and gas development projects with much  
21 lower methane, volatile organic compound, and hazardous air pollutant emissions. Despite the  
22 Amendment's significant air quality and climate impacts on public health, BLM did not complete an  
23 EIS.

24 112. In the EA, BLM did not analyze how increased flaring will negatively impact people  
25 who live and/or recreate on or near lands managed by BLM.

26 113. BLM did not analyze the environmental justice concerns that result from increased  
27 flaring and air pollution, including disproportionate impacts on tribal communities.

28

1 114. In the EA, BLM acknowledges that EPA recently proposed to delay portions of new  
2 source performance standards for the oil and gas sector. EPA is also considering whether to revise  
3 or rescind those standards. BLM did not analyze the cumulative impacts of the Amendment and  
4 EPA's potential suspension, revision, or rescission of its new source performance standards for the  
5 oil and gas sector.

6 115. BLM has yet to take the third step of its "three-step plan," proposing a rule to revise  
7 or rescind the Waste Prevention Rule. But it has promised that it will use the period during which  
8 the Waste Prevention Rule's obligations are lifted in order to issue such a proposal. The EA does  
9 not analyze the impacts of completely repealing or partially rescinding the Waste Prevention Rule.  
10 BLM also did not analyze the cumulative impacts of the Amendment and any potential future action  
11 to revise or rescind the Waste Prevention Rule.

#### 12 **FIRST CLAIM FOR RELIEF**

##### 13 ***(Failure to Take Reasonable Precautions to Prevent Waste: Violation of the MLA and APA)***

14 116. The allegations in paragraphs 1–115 are incorporated herein by reference.

15 117. Under the MLA, BLM has a duty to ensure that oil and gas companies developing  
16 publicly-owned natural resources "use all reasonable precautions to prevent waste of oil or gas." 30  
17 U.S.C. § 225. Likewise, the MLA requires that each federal lease "shall contain provisions . . . for  
18 the prevention of undue waste." *Id.* § 187.

19 118. BLM adopted the Waste Prevention Rule to fulfill its legal mandates under the MLA.  
20 Consistent with its statutory duties, BLM determined that the Waste Prevention Rule's requirements  
21 constituted "reasonable precautions to prevent waste of oil or gas" and would "prevent undue  
22 waste."

23 119. BLM's Amendment removes the obligation to implement these "reasonable  
24 precautions to prevent waste of oil or gas" for one year. BLM has not explained how a one-year  
25 suspension of the Rule constitutes all reasonable precautions to prevent waste.

26 120. The Amendment does not even reinstate NTL-4A, which BLM found was inadequate.  
27 Instead, BLM relies on other state or federal laws and regulations to fill the regulatory void created  
28 by BLM's Amendment. However, BLM can neither delegate nor abdicate its distinct, independent

1 MLA obligations to prevent waste to states or other agencies. Moreover, BLM does not analyze or  
2 explain how those regulations are sufficient to meet its independent mandate. In fact, BLM  
3 previously determined that they were insufficient.

4 121. BLM's suspension or delay of reasonable precautions to prevent waste and failure to  
5 have any rules in place to prevent waste violates the MLA, 30 U.S.C. §§ 187, 225, and is not in  
6 accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A). At a minimum, BLM's failure  
7 to address its statutory mandate to prevent waste is arbitrary and capricious in violation of the APA.  
8 5 U.S.C. § 706(2)(A).

9 122. BLM's reliance on the existing laws and regulations of other state or federal agencies  
10 as sufficient also represents an arbitrary and capricious change in position without adequate  
11 explanation or support in the administrative record in violation of the APA. 5 U.S.C. § 706(2)(A).

## 12 **SECOND CLAIM FOR RELIEF**

### 13 *(Arbitrary Revision of the Waste Prevention Rule: Violation of the APA)*

14 123. The allegations in paragraphs 1–115 are incorporated herein by reference.

15 124. BLM's Amendment changes the compliance dates of a duly promulgated regulation  
16 and therefore amounts to a substantive revision of the Waste Prevention Rule. But BLM has not  
17 gone through the proper procedure to make a substantive revision, including (1) demonstrating that  
18 the new approach is permissible under the governing statutes, (2) showing there are “good reasons”  
19 for changing the rule, and (3) offering a “reasoned explanation” for its changed position. *FCC v.*  
20 *Fox Television Stations, Inc.* 556 U.S. 502, 514–16 (2009).

21 125. BLM fails to explain how the Amendment is consistent with its statutory duties to  
22 prevent waste under the MLA, 30 U.S.C. §§ 187, 225, to protect the interests of the United States  
23 and the public welfare under the MLA, *id.* § 187, and to manage the public lands “in a manner that  
24 will protect the quality of the . . . scenic . . . environmental, [and] air and atmospheric . . . values”  
25 and “prevent unnecessary or undue degradation” under FLPMA, 43 U.S.C. §§ 1701(a)(8), 1732(b).

26 126. BLM fails to offer a reasoned explanation for its claim that the Rule's provisions “add  
27 considerable regulatory burdens that unnecessarily encumber energy production, constrain economic  
28 growth and prevent job creation,” which conflicts with its prior conclusions and evidence in the

1 record. Even accepting BLM’s stated purpose for the Amendment, BLM fails to provide good  
2 reasons for suspending requirements that have no compliance costs during the year of the  
3 Amendment or pay for themselves, or explain its changed positions with respect to these issues.

4 127. BLM also fails to offer good reasons for relying on a new “interim” estimate of the  
5 social cost of methane that relies on methodologies that are unsupported in the record and contrary to  
6 expert consensus.

7 128. In adopting the Amendment, BLM omits consideration of relevant factors and data,  
8 relies on factors which Congress did not intend the agency to consider, and offers rationales that are  
9 unsupported or run counter to the evidence in the administrative record, lack a rational basis,  
10 represent unexplained and unsupported changes in position, and are otherwise arbitrary and  
11 capricious in violation of the APA. 5 U.S.C. § 706(2)(A).

### 12 **THIRD CLAIM FOR RELIEF**

#### 13 ***(Ultra Vires Action: Exceeding Authority of MLA and APA)***

14 129. The allegations in paragraphs 1–115 are incorporated herein by reference.

15 130. To the extent that BLM claims it has authority to suspend compliance with a final  
16 rule while it considers further changes to the rule, neither the MLA, the APA, nor any other statutory  
17 provision provide BLM with such authority.

18 131. BLM also does not have inherent authority to suspend compliance with a final rule  
19 while it considers changes to the rule.

20 132. BLM’s attempt to suspend compliance with the Waste Prevention Rule while it  
21 considers revising or rescinding it exceeds its statutory authority in violation of the APA. 5 U.S.C.  
22 § 706(2)(A), (C).

### 23 **FOURTH CLAIM FOR RELIEF**

#### 24 ***(Failure to Provide for Meaningful Public Comment: Violation of the APA)***

25 133. The allegations in paragraphs 1–115 are incorporated herein by reference.

26 134. The APA requires agencies to engage in a public, notice-and-comment rulemaking  
27 process prior to adopting, amending, or repealing a regulation. 5 U.S.C. § 553. This process is  
28 designed to “give interested persons an opportunity to participate in the rule making through

1 submission of written data, views, or arguments.” *Id.* § 553(c). The purpose of § 553 is to allow for  
2 meaningful public comment.

3 135. By inappropriately treating the Rule as a non-substantive revision, BLM failed to put  
4 forward any analysis of why the Rule is permissible under the MLA or other statutory authorities, or  
5 the factual basis supporting the revisions to specific provisions. BLM’s failure to do so precluded  
6 meaningful comment on BLM’s proposal, including the substantive legal and factual reasons to  
7 retain the existing compliance deadlines.

8 136. In its response to comments, BLM further deemed any comments about the merits of  
9 the Waste Prevention Rule or its requirements “beyond the scope of this rulemaking,” disregarding  
10 comments that were directly relevant to its substantive revision of the Rule.

11 137. BLM failed to keep an open mind during the notice and comment process and instead  
12 committed to revising the compliance deadlines in the Rule before taking public comment, rendering  
13 the public comment period meaningless. Indeed, BLM failed to make any significant changes to the  
14 final rule in response to public comments.

15 138. BLM’s rushed process also precluded meaningful public comment. For example,  
16 BLM failed to provide adequate time to comment on its proposal, did not provide for any public  
17 hearing, and the extent of its consultation with tribes was two letters informing the tribes of this  
18 action. This was all despite the fact that BLM’s proposal constituted a significant reversal of its  
19 prior positions. For example, BLM fundamentally changed the way it evaluates and monetizes the  
20 harm caused by methane emissions by relying on a novel and unsupported “interim” social cost of  
21 methane rather than the peer-reviewed social cost of methane developed through multi-year inter-  
22 agency effort. BLM’s rush to get the final Amendment out the door also led to perfunctory—rather  
23 than searching or careful—consideration of public comments.

24 139. BLM’s decision to suspend or delay provision of the Waste Prevention Rule without  
25 providing a meaningful opportunity for public comment violates § 553 and is arbitrary and  
26 capricious, an abuse of discretion, not in accordance with law, and without observance of procedure  
27 required by law in violation of the APA. 5 U.S.C. § 706(2)(A), (D).

28

**FIFTH CLAIM FOR RELIEF**

*(Violation of NEPA)*

140. The allegations in paragraphs 1–115 are incorporated herein by reference.

141. NEPA requires agencies to take a “hard look” at the environmental impacts of proposed actions *before* the agency makes a decision or takes action to implement it. 42 U.S.C. § 4332; 40 C.F.R. §§ 1500.1, 1508.9. Agencies must consider the direct, indirect, and cumulative impacts of their actions. *Id.* §§ 1502.15, 1508.7, 1508.8, 1508.25(c).

142. NEPA requires federal agencies to analyze “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii); *see also id.* § 4332(2)(E). Agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.16.

143. NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all “major Federal actions significantly affecting the environment.” *Id.* § 4332(2)(C); 40 C.F.R. § 1501.4. To determine whether an action has significant environmental impacts, an agency must consider, among other factors, “[t]he degree to which the proposed action affects public health or safety,” “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial,” and “whether the action is related to other actions with individually insignificant but cumulative significant impacts.” 40 C.F.R. § 1508.27. These factors must be assessed relative to both their “context” and “intensity.” *Id.* § 1508.27(a), (b).

144. An agency’s environmental analysis must be based on “high quality” information, “[a]ccurate scientific analysis,” and “expert agency comments.” 40 C.F.R. § 1500.1(b). “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24.

145. An agency may only forgo preparation of an EIS and rely on an Environmental Assessment (EA) if it issues a Finding of No Significant Impact (FONSI) that supplies a convincing statement of reasons explaining why a proposed action’s impacts are insignificant.

146. BLM failed to consider a reasonable range of alternatives, including the alternative of suspending or deferring oil and gas leasing and permitting for the duration of the Amendment as a mechanism to prevent waste. BLM failed to provide any explanation for rejecting this alternative.

1 147. BLM failed to take a hard look at the direct, indirect, and cumulative impacts of the  
2 Amendment, including the negative impacts of increased air pollution on public health, the negative  
3 impacts of increased flaring, and the climate impacts of increasing methane emissions. BLM also  
4 failed to take a look at the disproportionate impacts of such impacts on tribal communities.

5 148. BLM's reliance on the "interim" social cost of methane lacks professional and  
6 scientific integrity, is not based on high quality information, ignores information from expert  
7 agencies, and underscores the significance, in particular the highly controversial nature, of its  
8 proposed action.

9 149. BLM failed to prepare an EIS despite the context and intensity of its proposed action  
10 and despite the extensive negative public health impacts, the high degree of controversy, and the  
11 cumulative impacts of the Amendment render it a "significant" action. Accordingly, BLM failed to  
12 provide a convincing statement of reasons justifying its decision to forgo preparation of an EIS.

13 150. For these reasons, BLM's decision to finalize the Amendment violates NEPA and is  
14 arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without  
15 observance of procedure required by law. 5 U.S.C. § 706(2)(A), (D).

16 **PRAYER FOR RELIEF**

17 Plaintiffs respectfully request that this Court:

- 18 1. Issue a declaratory judgment that BLM violated the MLA FLPMA, NEPA, and acted  
19 arbitrarily, capriciously, contrary to law, and in excess of statutory authority, and failed to follow the  
20 procedure required by the APA by suspending and delaying the Waste Prevention Rule's compliance  
21 dates;
  - 22 2. Vacate the Amendment and reinstate the Waste Prevention Rule in its entirety;
  - 23 3. Award the Conservation and Tribal Citizen Groups their costs, expenses, and  
24 reasonable attorney fees; and
  - 25 4. Provide such other relief as the Court deems just and proper.
- 26  
27  
28



1 Respectfully submitted this 19th day of December, 2017,

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