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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

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

18 Plaintiffs,

19 v.

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

26 Defendants.

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

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

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

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1 Dated: December 19, 2017

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INTRODUCTION

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

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

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

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

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

25 For these reasons, BLM's Suspension should be promptly enjoined so that the Waste
26 Prevention Rule's January 17, 2018 compliance requirements remain in effect and the status quo
27 is preserved while this litigation proceeds.
28

FACTUAL AND PROCEDURAL BACKGROUND

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

BLM oversees more than 245 million acres of land and 700 million subsurface acres of federal mineral estate, on which reside nearly 100,000 producing onshore oil and gas wells. 81 Fed. Reg. at 83,014.¹ In fiscal year 2015, the production value of this oil and gas exceeded \$20 billion and generated over \$2.3 billion in royalties, which were shared with tribes and states. *Id.*; see 30 U.S.C. § 191(a). Oil and gas production in the United States has increased dramatically over the past decade due to technological advances such as hydraulic fracturing and directional drilling. 81 Fed. Reg. at 83,009. However, the American public has not fully benefitted from this increase in domestic energy production because it “has been accompanied by significant and growing quantities of wasted natural gas.” *Id.* at 83,014. For example, between 2009 and 2015, nearly 100,000 oil and gas wells on federal land released approximately 462 billion cubic feet of natural gas through venting and flaring, enough gas to serve about 6.2 million households for a year. *Id.* at 83,009.

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

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

1 **II. THE BLM WASTE PREVENTION RULE.**

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

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

18 BLM issued the final Waste Prevention Rule in November 2016. *Id.* at 83,008. In the final
19 Rule, BLM refined many of the provisions of the Proposed Rule based on public comments to
20 ensure both that compliance was feasible for operators and that the Rule achieved its waste
21 prevention objectives. *Id.* at 83,022-23. The Rule is designed to force considerable reductions in
22 waste from flaring, venting, and equipment leaks, saving and putting to use up to 41 billion cubic
23 feet of gas per year. *Id.* at 83,014. In addition, the Rule would avoid an estimated 175,000-
24 180,000 tons of methane emissions per year and reduce emissions of VOCs, including benzene
25 and other hazardous air pollutants, by 250,000–267,000 tons per year. *Id.*

26 On January 17, 2017, the Waste Prevention Rule went into effect. *See* 81 Fed. Reg. at
27 83,008. The Rule addresses each major source of natural gas waste from oil and gas
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1 production—venting, flaring, and equipment leaks—through different requirements. *Id.* at
2 83,010-13. In particular, the Rule prohibits venting except under specified conditions, and
3 requires updates to existing equipment. *Id.* at 83,011-13. The Rule’s flaring regulations reduce
4 waste by requiring gas capture percentages that increase over time, providing exemptions that are
5 scaled down over time, and requiring operators to submit Waste Minimization Plans. *Id.* at
6 83,011. Leak detection provisions require semi-annual inspections for well sites and quarterly
7 inspections for compressor stations. *Id.*

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

9 Soon after the Rule was finalized, two industry groups and the States of Wyoming and
10 Montana (later joined by North Dakota and Texas) (collectively, “Petitioners”) challenged the
11 Rule in federal district court in Wyoming, on the alleged basis that BLM did not have statutory
12 authority to regulate air pollution and that the Rule was arbitrary and capricious. *Western Energy*
13 *Alliance v. Jewell*, No. 2:16-cv-00280-SWS (D. Wyo. petition filed Nov. 16, 2016); *State of*
14 *Wyoming v. Jewell*, No. 2:16-cv-00285-SWS (D. Wyo. petition filed Nov. 18, 2016) (collectively,
15 the “Wyoming Litigation”). Plaintiffs, along with several environmental organizations,
16 intervened on the side of BLM in defense of the Rule. On January 16, 2017, the Wyoming
17 district court denied the Petitioners’ motions for a preliminary injunction, finding that the
18 Petitioners had failed to establish a likelihood of success on the merits or irreparable harm in the
19 absence of an injunction. Wyoming Litigation, Order on Motions for Preliminary Injunction,
20 2017 WL 161428 (D. Wyo. Jan. 16, 2017).

21 On March 28, 2017, President Donald Trump issued Executive Order 13783, entitled
22 “Promoting Energy Independence and Economic Growth.” 82 Fed. Reg. 16,093 (Mar. 31, 2017).
23 Section 7 of that Executive Order, entitled “Review of Regulations Related to United States Oil
24 and Gas Development,” specifically called on the Secretary of the Interior to review and “as soon
25 as practicable, suspend, revise, or rescind” the Waste Prevention Rule. The next day, Secretary of
26 the Interior Ryan Zinke issued Secretarial Order 3349, which provided that within 21 days, BLM
27 would review the Rule and issue an internal report as to “whether the rule is fully consistent with
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1 the policy set forth in Section 1 of the March 28, 2017 E.O.” BLM published the results of its
2 review on October 24, 2017. *See* 82 Fed. Reg. 50,532 (Nov. 1, 2017). This review consists of
3 less than a single page where BLM concludes, without any rationale or justification, that “the
4 2016 final rule poses a substantial burden on industry, particularly those requirements that are set
5 to become effective on January 17, 2018.” *Id.* at 50,535.

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

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

21 On October 5, 2017, BLM published a notice in the Federal Register proposing to delay and
22 suspend certain requirements of the Rule that were already in effect, or set to take effect in
23 January 2018, until January 17, 2019. 82 Fed. Reg. 46,458 (Oct. 5, 2017) (“Proposed
24 Suspension”). These requirements include those covered by the Postponement Notice, as well as
25 already-effective rules governing waste minimization plans, well drilling, well completion and
26 related operations, and downhole well maintenance and liquids unloading. The public was
27 permitted 30 days to submit comments. *Id.* The States of California and New Mexico, by and
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1 through their Attorneys General, and California Air Resources Board commented in opposition to
2 the Proposed Suspension.

3 On December 8, 2017, BLM published a final rule entitled “Waste Prevention, Production
4 Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain
5 Requirements,” which suspends key requirements of the Waste Prevention Rule. 82 Fed. Reg.
6 58,050 (“Suspension”). To justify the Suspension, BLM stated it had “concerns regarding the
7 statutory authority, cost, complexity, feasibility, and other implications” of the Rule, and
8 therefore sought to “avoid imposing likely considerable and immediate compliance costs on
9 operators for requirements that may be rescinded or significantly revised in the near future.” *Id.*
10 The Suspension also makes reference to BLM’s “initial review” of the Rule conducted pursuant
11 to Executive Order 13783 and Secretarial Order No. 3349, which allegedly uncovered a
12 “newfound concern” regarding the Rule’s burdens on operators of marginal or low-producing
13 wells. *Id.* The Suspension further references Executive Order 13771, entitled “Reducing
14 Regulatory and Controlling Regulatory Costs,” although BLM does not indicate how the
15 Suspension fulfills the direction of that order. *Id.*

16 BLM admits that the Suspension “suspends or delays almost all of the requirements in the
17 2016 final rule that the BLM estimated would...generate benefits of gas savings or reductions in
18 methane emissions.” *Id.* at 58,056. In particular, BLM estimates that the Suspension will “result
19 in additional methane and VOC emissions of 175,000 and 250,000 tons, respectively,” and will
20 “decrease natural gas production from Federal and Indian leases, and likewise, is expected to
21 reduce annual royalties to the Federal Government, tribal governments, States, and private
22 landowners.” *Id.* at 58,056-57. BLM also stated that although it “is currently considering
23 revisions to the 2016 final rule, it cannot definitively determine what form those revisions will
24 take until it completes the notice-and-comment rulemaking process.” *Id.* at 58,061. The
25 Suspension goes into effect on January 8, 2018. *Id.*

26 On December 12, 2017, BLM released a Final Regulatory Impact Analysis for the
27 Suspension. *See* U.S. Bureau of Land Management, Regulatory Impact Analysis for the Final
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1 Rule to Suspend or Delay Certain Requirements of the 2016 Waste Prevention Rule (“Final
2 RIA”). Tharin Decl., Exh. J. The Final RIA states that it “draws heavily upon the analysis
3 conducted for the RIA for the 2016 final rule,” although it makes dramatic changes in calculating
4 the costs of increased methane emissions by relying on an “interim” measure that only considers
5 “the domestic social cost of methane.” *Id.* at 5, 33-35. Despite the Suspension’s justification of
6 avoiding compliance costs for operators, the Final RIA states that such costs would be
7 insignificant and that the Suspension would increase the profit margin for the smallest operators
8 by just 0.17 percentage points. *Id.* at 61. BLM also determined that the Suspension “would not
9 have a significant economic impact” on small companies, and would not “significantly impact the
10 supply, distribution, or use of energy.” *Id.* at 55, 67. The only alternatives that BLM considered
11 to the one-year suspension were suspensions of other lengths (six months or two years). *Id.* at 16,
12 64-65. BLM did not consider any substantive amendments to the Waste Prevention Rule that
13 might have addressed BLM’s purported concerns.

14 STATUTORY BACKGROUND

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

16 BLM has a clear statutory duty to prevent waste and regulate royalties from oil and gas
17 operations on federal and Indian lands. First, the Mineral Leasing Act of 1920 (“MLA”), 30
18 U.S.C. § 181 *et seq.*, provides BLM with broad regulatory power to require oil and gas lessees to
19 observe “such rules ... for the prevention of undue waste as may be prescribed by [the]
20 Secretary,” to protect “the interests of the United States,” and to safeguard “the public welfare.”
21 *Id.* § 187. The MLA specifically requires that “[a]ll leases of lands containing oil or gas ... shall
22 be subject to the condition that the lessee will ... use all reasonable precautions to prevent waste
23 of oil or gas developed in the land” *Id.* § 225. In the Federal Oil and Gas Royalty
24 Management Act of 1982 (“FOGRMA”), 30 U.S.C. § 1701 *et seq.*, Congress reiterated its
25 concern about waste by providing that: “Any lessee is liable for royalty payments on oil or gas
26 lost or wasted from a lease site when such loss or waste is due to negligence on the part of the
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1 operator of the lease, or due to the failure to comply with any rule or regulation, order or citation
2 issued under this chapter or any mineral leasing law.” 30 U.S.C. § 1756.

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

13 **II. THE ADMINISTRATIVE PROCEDURE ACT.**

14 Under the Administrative Procedure Act, courts will set aside an agency action that is
15 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.
16 § 706(2)(A). An agency action is arbitrary and capricious where the agency (i) has relied on
17 factors which Congress has not intended it to consider; (ii) entirely failed to consider an important
18 aspect of the problem; (iii) offered an explanation for its decision that runs counter to the
19 evidence before the agency; or (iv) is so implausible that it could not be ascribed to a difference
20 of view or the product of agency expertise. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm*
21 *Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (“*State Farm*”).

22 When an agency reverses course by suspending a duly promulgated regulation, it is
23 “obligated to supply a reasoned analysis for the change.” *Id.* at 42. Further, an agency must
24 show that “there are good reasons” for the reversal. *F.C.C. v. Fox Television Stations, Inc.*, 556
25 U.S. 502, 515 (2009). An agency must “provide a more detailed justification than what would
26 suffice for a new policy created on a blank slate” when “its new policy rests upon factual findings
27 that contradict those which underlay its prior policy.” *Id.* “[E]ven when reversing a policy after
28

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

6 STANDARD OF REVIEW

7 “The purpose of a preliminary injunction is merely to preserve the relative position of the
 8 parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395
 9 (1981). To obtain an injunction, the moving party must demonstrate four factors: (1) a likelihood
 10 of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the
 11 absence of preliminary relief; (3) that the balance of equities tips in the movant’s favor; and (4)
 12 that the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,
 13 20 (2008). “In each case, courts must balance the competing claims of injury and must consider
 14 the effect on each party of the granting or withholding of the requested relief.” *Id.* at 24.

15 ARGUMENT

16 I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS THAT 17 BLM’S SUSPENSION OF THE WASTE PREVENTION RULE WAS UNLAWFUL.

18 A. BLM Has Failed to Provide any Reasoned Analysis for the Suspension of a 19 Duly Promulgated Rule.

20 As the D.C. Circuit recently reiterated, “an agency issuing a legislative rule is itself bound
 21 by the rule until that rule is amended or revoked.” *Clean Air Council v. Pruitt*, 862 F.3d 1, 9
 22 (D.C. Cir. 2017). BLM does not have “inherent authority” to delay key provisions of a duly
 23 promulgated rule, and has not cited a single provision of any federal statute that would grant it
 24 such authority. *See id.* at 9; *Natural Resources Defense Council v. Abraham*, 355 F.3d 179, 202
 25 (2d Cir. 2004) (rejecting the contention that agency had “inherent power” to suspend a
 26 promulgated rule where no statute conferred such authority). The agency’s characterization of
 27 the Suspension as a “temporary delay” of certain requirements is not dispositive—rather it is the
 28 “the substance of what the [agency] has purported to do and has done which is decisive.” *Steed*,

1 733 F.2d at 98 (quoting *Environmental Defense Fund, Inc. v. Gorsuch*, 713 F.2d 802, 816 (D.C.
2 Cir. 1983) (alteration in original). Here, BLM’s Suspension acts as a revocation of the Rule
3 because it is expressly designed to allow the agency sufficient time to complete a notice-and-
4 comment rulemaking to revise the provisions that have been suspended. *See id.*

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

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

18 In its section-by-section discussion, BLM lists a number of “concerns” that the agency is
19 reviewing—including whether various provisions impose unnecessary burdens on oil and gas
20 developers, and whether certain provisions might be replaced with less stringent requirements.
21 But the agency’s musings and guesses as to what may be wrong with a Rule that it recently
22 finalized after an extensive notice-and comment period are not sufficient to provide the kind of
23 reasoned analysis required under *State Farm*. BLM also claims it will reconsider certain “specific
24 assumptions” underlying the Rule, including the assumption that all marginal wells would receive
25 exemptions, that certain administrative processes would not be delayed, and that capture
26 percentage requirements would not have a disproportionate impact on small operators. *Id.* at
27 58,051. Once again, the Suspension offers no explanation as to how, why, or on what basis these
28

1 assumptions will be reconsidered.

2 BLM has also failed to consider alternative solutions to address any alleged problems with
3 the Rule, such as through the issuance of guidance or making adjustments necessary to clarify
4 certain provisions. For an agency's decision-making to be regarded as rational, it must consider
5 significant alternatives to the course it ultimately chooses. *See State Farm*, 463 U.S. at 50-51
6 (agency violated APA by failing to explain abandonment of "effective and cost-beneficial"
7 alternative). Here, the only alternatives considered by BLM were "alternative timeframes for
8 which it could suspend or delay the requirements (e.g., 6 months and 2 years)." Final RIA at 16,
9 64-65. This clearly insufficient consideration of alternatives underscores the complete lack of
10 reasoned analysis put forth by BLM. *See Yakima Valley Cablevision, Inc. v. F.C.C.*, 794 F.2d
11 737, 746 n.36 (D.C. Cir. 1986) (noting that "[t]he failure of an agency to consider obvious
12 alternatives has led uniformly to reversal" and citing cases).

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

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

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

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

8 For example, BLM now claims to be concerned that the Rule would have a
9 “disproportionate effect on small operators.” 82 Fed. Reg. at 58,051. However, in the
10 rulemaking record for the Waste Prevention Rule, BLM conducted a regulatory impact analysis
11 (“2016 RIA”) and found that implementation costs for “individual operators would be small, even
12 for businesses with less than 500 employees.” *See* 81 Fed. Reg. at 83,013. Specifically, BLM
13 estimated that average costs for a “representative small operator” would “result in an average
14 reduction in profit margin of 0.15 percentage points.” *Id.* at 83,013-14 (citing 2016 RIA at 129).
15 BLM’s new analysis similarly concludes that the Suspension will increase the profit margin for
16 small operators by just 0.17 percentage points, and admits that such an amount is insignificant.
17 Final RIA at 5, 61 n.32 (increase in profit margin is “unlikely to achieve the level of being
18 significant”); *see* 82 Fed. Reg. at 58,064 (“the average reduction in compliance costs associated
19 with this final delay rule will be a small fraction of a percent of the profit margin for small
20 companies, which is not a large enough impact to be considered significant”). Additionally, BLM
21 admits that “this final delay rule will not have a significant economic impact on a substantial
22 number of small entities.” 82 Fed. Reg. at 58,064. BLM offers no explanation for its newfound
23 concerns about the Rule’s impacts on small entities given this unchanged data.

24 The Suspension also reaches internally contradictory conclusions on the question of
25 whether the Rule would inhibit oil and gas development on public lands. 82 Fed. Reg. at 58,050-
26 51. BLM contends that its ongoing review of the Rule is based on direction from Executive
27
28

1 Order 13783² and Secretarial Order 3349 to review any rules that unduly burden domestic energy
2 production.³ 82 Fed. Reg. at 46,459. The Suspension asserts that BLM has concluded that “some
3 provisions of the 2016 final rule add considerable regulatory burdens that unnecessarily encumber
4 energy production, constrain economic growth, and prevent job creation.” 82 Fed. Reg. at
5 58,050. However, rather than providing any analysis or factual data to support these its findings,
6 BLM simply provides one example—the agency’s “newfound concern” that the Rule would
7 “pose a particular compliance burden to operators of marginal or low-producing wells.” *Id.* The
8 agency does not explain how burdens on low-producing wells would unduly burden energy
9 production. Further, BLM admits that the Suspension will not “significantly impact the price,
10 supply, or distribution of energy,” or “substantially alter the investment or employment
11 decisions” of operators. *Id.* at 58,057; *see* Final RIA at 5 (“The 2017 final delay rule will not
12 adversely affect in a material way the economy, a sector of the economy, productivity,
13 competition, [or] jobs...”), 55, 60 (“We do not believe that the 2017 final delay rule substantially
14 alters the investment or employment decisions of firms.”). Moreover, considering the increased
15 pollution that will result from the Suspension, BLM has failed to address the other provisions of
16 Executive Order 13783, including that “all agencies should take appropriate actions to promote
17 clean air and clean water for the American people.”⁴ *See* Executive Order 13783, Section 1(d),
18

19 ² Executive Order 13783 directs agencies to review regulations that “unduly burden the
20 development of domestic energy resources beyond the degree necessary to protect the public
21 interest or otherwise comply with the law.” Executive Order 13783, Sec. 1, 82 Fed. Reg. 16,093
22 (Mar. 31, 2017). The Executive Order further defines “burden” as “to unnecessarily obstruct,
23 delay, curtail, or otherwise impose significant costs on the siting, permitting, production,
24 utilization, transmission, or delivery of energy resources.” *Id.*, Sec. 2(b). Secretarial Order No.
25 3349, which was promulgated just one day after Executive Order 13783, directs BLM to review
26 the Waste Prevention Rule to determine whether it is consistent with Section 1 of Executive
27 Order 13783.

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

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

1 82 Fed. Reg. at 16,093.

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

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

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

25
26 _____
27 reasoned explanation required by the APA. *California v. BLM*, 2017 WL 4416409 at *11 ("New
28 presidential administrations are entitled to change policy positions, but to meet the requirements
of the APA they must give reasoned explanations for those changes and address [the] prior factual
findings underpinning a prior regulatory regime.") (internal quotations and citation omitted).

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

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

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

1 2016 final rule that we estimated would pose a compliance burden to operators and generate
2 benefits of gas savings or reductions in methane emissions.”). In sum, BLM’s failure to consider
3 how the Suspension will affect its statutory mandates or trust responsibilities was arbitrary and
4 capricious.

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

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

14 First, in direct contradiction with the BLM’s stated intent to reconsider and revise key
15 elements of the Rule, the agency’s analysis assumes for the purposes of calculating costs and
16 benefits that the Rule’s impacts will simply be delayed only by one year. 82 Fed. Reg. at 58,056;
17 Final RIA at 32 (“The suspension or delay in the implementation of certain requirements in the
18 2016 final rule will postpone the impacts estimated previously to the near-term future.”). As a
19 result, BLM’s estimates that the Suspension will result in a \$40-\$91 million reduction in
20 compliance costs and a \$21-\$36 million reduction in benefits between 2017 and 2027 is based
21 entirely on the assumption that the Rule, in its current form, will be implemented fully on January
22 17, 2019. Final RIA at 27-39. The analysis also arbitrarily assumes that the air quality and
23 climate benefits of the Waste Prevention Rule will only be lost for one year. *Id.* at 58,056-57;
24 Final RIA at 32. However, the plain text of the Suspension belies these assumptions, as BLM has
25 made it abundantly clear that it intends to rescind and/or revise most, if not all, of the provisions
26 that have been suspended. *See* 82 Fed. Reg. 58,051 (“BLM is currently reviewing the 2016 final
27 rule to develop an appropriate proposed revision”).
28

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

24 Finally, while the Final RIA admits that it “draws heavily upon the analysis conducted for
25 the RIA for the 2016 final rule,” Final RIA at 5, it arbitrarily relies on an “interim domestic Social
26 Cost of Methane” metric that greatly undervalues the impacts of increased methane emissions by
27 failing to consider the full, global impacts of these emissions. *Id.* at 33-35. This new interim
28

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

6 BLM claims that this metric is based on direction from Executive Order 13783, which
7 disbanded the working group and technical support documents regarding the social cost of
8 methane used for evaluating the Rule, and “directed agencies to ensure that estimates of the social
9 cost of greenhouse gases used in regulatory analyses ‘are based on the best available science and
10 economics’ and are consistent with the guidance contained in OMB Circular A-4.” Final RIA at
11 33 (quoting E.O. 13783, Section 5(c)). However, nothing in Executive Order 13783 directs
12 agencies to ignore the global impacts of a rulemaking. Moreover, OMB Circular A-4 specifically
13 recognizes that a regulation may “have effects beyond the borders of the United States,” and
14 states that an agency’s economic analysis should encompass “all the important benefits and costs
15 likely to result from the rule,” including “any important ancillary benefits.”⁵ Further, OMB
16 Circular A-4 provides guidance for the implementation of Executive Order 12866, which directs
17 agencies to assess “*all* costs and benefits” of regulatory actions. Executive Order 12866, 58 Fed.
18 Reg. 51,735 (Oct. 4, 1993) (emphasis added). Consequently, it was arbitrary and capricious for
19 BLM to completely ignore the global costs of increased methane emissions that will result from
20 the Suspension.

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

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

24 BLM’s suspension of key requirements of the Waste Prevention Rule will cause
25 irreparable harm to Plaintiffs by increasing air pollution and related health impacts, exacerbating
26 climate harms, and causing other environmental injury such as noise and light pollution. As the
27

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

1 U.S. Supreme Court has stated, “[e]nvironmental injury, by its nature, can seldom be adequately
2 remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.
3 If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance
4 of an injunction to protect the environment.” *Amoco Prod. Co. v. Village of Gambell*, 480 U.S.
5 531, 545 (1987); *see Cal. ex rel. Lockyer v. U.S. Dep’t of Agric.*, 575 F.3d 999, 1020 (9th Cir.
6 2009) (same). Increased air pollution from fossil fuel extraction or combustion constitutes
7 irreparable harm, as once the pollution is in the air the damage cannot be reversed. *See, e.g.*,
8 *Sierra Club v. U.S. Dep’t of Agric.*, 841 F. Supp. 2d 349, 358 (D.D.C. 2012) (finding that coal
9 plant expansion would “emit substantial quantities of air pollutants that endanger human health
10 and the environment and thereby cause irreparable harm”) (quotation omitted). Moreover,
11 injuries where “sovereign interests and public policies [are] at stake” are irreparable. *Kansas v.*
12 *United States*, 249 F.3d 1213, 1228 (10th Cir. 2001).

13 As BLM stated a year ago, the Waste Prevention Rule is expected to reduce emissions of
14 VOCs, including benzene and other hazardous air pollutants, by 250,000–267,000 tons per year,
15 and reduce methane emissions by 175,000-180,000 tons per year. 81 Fed. Reg. at 83,014. As a
16 result of the Suspension, BLM admits that the benefits of the Rule in reducing waste, increasing
17 royalty payments, and cutting air pollution and greenhouse gas emissions will not be achieved.
18 82 Fed. Reg. at 58,051. In particular, BLM estimates that the Suspension will result in
19 “additional methane and VOC emissions of 175,000 and 250,000 tons, respectively, in Year 1.”
20 *Id.* at 58,056-57; Final RIA at 32.

21 Even factoring in California’s own rules to limit pollution from oil and gas operations, the
22 Suspension is likely to result in an additional 150 tons of VOC emissions and 4.9 tons of toxic air
23 contaminants, worsening adverse health impacts to Californians and the State. Declaration of
24 Elizabeth Scheehle in Support of Motion for Preliminary Injunction (“Scheehle Decl.”), ¶¶ 16-23,
25 filed herewith. A large preponderance of BLM-managed oil and gas activity in California is
26 located in close proximity to areas designated Disadvantaged Communities by the California
27 Environmental Protection Agency. *Id.* at ¶ 24. For example, nearly all federal drilling within
28

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

8
9 In New Mexico, the San Juan Basin has one of the highest rates of natural gas emissions
10 in the country, accounting for nearly 17 percent of national methane losses, and is situated in a
11 2,500 square mile methane “hot spot” detected by satellites and largely attributable to oil and gas
12 development. Declaration of Sandra Ely in Support of Motion for Preliminary Injunction, (“Ely
13 Decl.”), ¶ 6,8 filed herewith. VOC emissions from oil and gas development contribute to high
14 ozone levels in San Juan County, leading to an “F” grade by the American Lung Association in
15 2016. *Id.* at ¶ 12. Because natural gas emissions in New Mexico comprise such a large portion of
16 national emissions, thousands of tons of VOC emissions may be expected in New Mexico due to
17 the suspension, exacerbating air quality deterioration. *Id.* at ¶ 17.

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

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

7
8 **III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST SUPPORT GRANTING THE
9 REQUESTED INJUNCTION.**

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

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

21 By contrast, the oil and gas companies charged with implementing the Rule face only
22 modest compliance expenditures, and any harm they would face from the relief requested would
23 be small. As discussed above, BLM has found that implementation costs for “individual
24 operators would be small, even for businesses with less than 500 employees.” *See* 81 Fed. Reg. at
25 83,013; 82 Fed. Reg. at 58,064. Specifically, BLM has estimated that average impact on annual
26 profit margins for small operators would be between 0.15 and 0.17 percentage points. 81 Fed.
27 Reg at 83,013-14; Final RIA at 61. These minor compliance costs do not constitute irreparable
28 harm or outweigh the significant environmental harms that will occur in the absence of an

1 injunction. *See, e.g., Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1177 (9th Cir. 2006),
2 *cert. denied* 549 U.S. 1278 (2007) (economic losses suffered as a result of enjoined timber sales
3 does not outweigh potential irreparable environmental harm and the public’s interest in
4 preserving the environment); *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 738
5 (9th Cir 2001), *cert. denied* 534 U.S. 1104 (2002) (“loss of anticipated revenue...does not
6 outweigh the potential irreparable harm to the environment”); *Idaho Sporting Congress Inc. v.*
7 *Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (injunction proper where environmental harm was
8 sufficiently likely, despite fact that it “could present financial hardship” to government agency).
9 The Rule has also been in effect since January 17, 2017, providing companies with a year to
10 prepare to meet the January 2018 compliance deadlines.

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

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

24 CONCLUSION

25 For the foregoing reasons, the Court should grant Plaintiffs’ Motion for a Preliminary
26 Injunction and enjoin BLM’s arbitrary and capricious attempt to suspend the Waste Prevention
27 Rule.
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Respectfully Submitted,

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