

1 XAVIER BECERRA  
Attorney General of California  
2 DAVID A. ZONANA, State Bar No. 196029  
Supervising Deputy Attorney General  
3 GEORGE TORGUN, State Bar No. 222085  
MARY S. THARIN, State Bar No. 293335  
4 CONNIE P. SUNG, State Bar No. 304242  
Deputy Attorneys General  
5 1515 Clay Street, 20th Floor  
P.O. Box 70550  
6 Oakland, CA 94612-0550  
Telephone: (510) 879-1974  
7 Fax: (510) 622-2270  
E-mail: Mary.Tharin@doj.ca.gov

8 *Attorneys for Plaintiffs State of California and the*  
9 *California Air Resources Board*

HECTOR BALDERAS  
Attorney General of New Mexico  
ARI BIERNOFF, State Bar No. 231818  
BILL GRANTHAM (*pro hac vice pending*)  
Assistant Attorneys General  
201 Third St. NW, Suite 300  
Albuquerque, NM 87102  
Telephone: (505) 717-3520  
E-Mail: wgrantham@nmag.gov

*Attorneys for Plaintiff State of New Mexico*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

19 v.

20 **RYAN ZINKE, Secretary of the Interior;**  
21 **JOSEPH R. BALASH, Assistant Secretary for**  
22 **Land and Minerals Management, United States**  
23 **Department of the Interior; UNITED STATES**  
24 **BUREAU OF LAND MANAGEMENT; and**  
25 **UNITED STATES DEPARTMENT OF**  
26 **THE INTERIOR,**

Defendants.

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

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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

27 **INTRODUCTION**

28 1. Plaintiffs State of California, by and through Xavier Becerra, Attorney General, and  
the California Air Resources Board, and State of New Mexico, by and through Hector Balderas,  
Attorney General (“Plaintiffs”) bring this action to challenge the latest decision by the U.S.

1 Bureau of Land Management, *et al.* (“BLM” or “Defendants”) to roll back the 2016 Waste  
2 Prevention Rule—a commonsense measure that would reduce the enormous waste of natural gas  
3 on public lands that results from venting, flaring, and equipment leaks. After twice attempting to  
4 illegally suspend the rule, Defendants now seek to erase its key provisions from the books. In  
5 doing so, however, BLM has violated the Administrative Procedure Act (“APA”), the Mineral  
6 Leasing Act (“MLA”), and the National Environmental Policy Act (“NEPA”).

7 2. BLM, a component of the U.S. Department of the Interior (“DOI”), finalized the  
8 Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (“Waste  
9 Prevention Rule” or “Rule”), on November 18, 2016, after conducting a multi-year process of  
10 stakeholder engagement, analysis, and review of thousands of public comments. 81 Fed. Reg.  
11 83,008, 83,010 (Nov. 18, 2016). The Waste Prevention Rule provided a much-needed update to  
12 38-year-old regulations governing the waste of natural gas from new and existing oil and gas  
13 operations on federal and Indian lands, and clarified when gas lost through venting, flaring, or  
14 leaks is subject to royalties. These prior regulations preceded the development of technologies,  
15 such as directional drilling and hydraulic fracturing techniques, that have significantly affected  
16 both the manner and volume of gas produced and wasted. *Id.* at 83,017. BLM specifically found  
17 that its prior regulations were inadequate to prevent the waste of publicly-owned resources and  
18 the volume of natural gas lost during production on public and tribal lands was “unacceptably  
19 high.” *Id.* at 83,009-10, 83,015.

20 3. In 2016, BLM estimated that the Rule would have substantial annual benefits,  
21 including capturing and putting to use up to 41 billion cubic feet of otherwise-wasted natural gas,  
22 eliminating 175,000–180,000 tons of methane emissions, cutting emissions of volatile organic  
23 compounds by 250,000–267,000 tons, reducing toxic air pollutants by 1,860–2,030 tons, and  
24 generating up to \$14 million in additional royalties. *Id.* at 83,014. The Rule became effective on  
25 January 17, 2017.

26 4. Soon after the change in Presidential administration in January 2017, BLM initiated a  
27 series of illegal attempts to prevent implementation of the Rule. First, the agency purported to  
28 postpone certain compliance dates of the Rule even though it had already gone into effect—an

1 illegal action that was vacated by this Court. *State of California v. U.S. Bureau of Land Mgmt.*,  
2 277 F. Supp. 3d 1106 (N.D. Cal. 2017). Then, BLM finalized a rule to suspend certain  
3 requirements of the Rule pending its reconsideration. Again, this Court found the agency’s action  
4 unlawful, holding that BLM had failed to provide any reasoned basis for its action or adequate  
5 notice and comment as required by the APA. *State of California v. Bureau of Land Mgmt.*, 286  
6 F. Supp. 3d 1054 (N.D. Cal. 2018).

7 5. On September 18, 2018, BLM issued a final rule repealing the key requirements of  
8 the Waste Prevention Rule (“Waste Rule Repeal”). In doing so, BLM failed to offer a reasoned  
9 explanation for repealing requirements that, just two years ago, the agency determined were  
10 necessary to fulfill its statutory mandates. The rationale that BLM does provide—that the Waste  
11 Prevention Rule would “unnecessarily encumber energy production, constrain economic growth,  
12 and prevent job creation”—lacks merit and is directly contradicted by the record. BLM’s new  
13 assertion that the costs of the Waste Prevention Rule now exceed its benefits is based on an  
14 “interim domestic social cost of methane” metric that is arbitrary and not supported by the best  
15 available science. Furthermore, BLM’s new definition of “waste of oil or gas” is contrary to the  
16 language of the Mineral Leasing Act and is arbitrary and unworkable. Finally, BLM’s  
17 perfunctory conclusion that the Waste Rule Repeal would result in no significant environmental  
18 impacts violates the requirements of NEPA.

19 6. Accordingly, Plaintiffs seek a declaration that Defendants’ issuance of the Waste  
20 Rule Repeal violated the APA, the MLA, and NEPA, and request that the Court vacate and set  
21 aside the Waste Rule Repeal, so that the Waste Prevention Rule is reinstated in its entirety.

## 22 JURISDICTION AND VENUE

23 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the  
24 laws of the United States), 28 U.S.C. § 1361 (action to compel officer or agency to perform duty  
25 owed to Plaintiffs), and 5 U.S.C. §§ 701–706 (Administrative Procedure Act). An actual  
26 controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court  
27 may grant declaratory relief, injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201–  
28 2202 and 5 U.S.C. §§ 705–706.

1 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) because this is  
2 the judicial district in which Plaintiffs State of California and the California Air Resources Board  
3 reside, and this action seeks relief against federal agencies and officials acting in their official  
4 capacities.

5 **INTRADISTRICT ASSIGNMENT**

6 9. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), there is no basis for assignment of  
7 this action to any particular location or division of this Court. However, this case is related to  
8 Case No. 3:17-cv-07186-WHO, which challenged BLM’s previous attempt to suspend the Waste  
9 Prevention Rule and is currently pending in the San Francisco Division. Pursuant to Civil Local  
10 Rule 3-12(b), Plaintiffs intend to promptly file an Administrative Motion to Consider Whether  
11 Cases Should Be Related.

12 **PARTIES**

13 10. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney  
14 General Xavier Becerra. The Attorney General is the chief law enforcement officer of the State  
15 and has the authority to file civil actions in order to protect public rights and interests, including  
16 actions to protect the natural resources of the State. Cal. Const., art. V, § 13; Cal. Gov. Code §§  
17 12600-12612. This challenge is brought in part pursuant to the Attorney General’s independent  
18 constitutional, statutory, and common law authority to represent the public interest.

19 11. Plaintiff CALIFORNIA AIR RESOURCES BOARD (“CARB”) is a public agency of  
20 the State of California within the California Environmental Protection Agency. The mission of  
21 CARB is to promote and protect public health, welfare, and ecological resources of California’s  
22 citizens through the monitoring and protection of air quality. CARB’s major goals include  
23 providing safe, clean air to all Californians, reducing California’s emission of greenhouse gases,  
24 and providing leadership and innovative approaches for implementing air pollution controls. In  
25 addition to developing statewide rules, CARB works with local California air districts, many of  
26 which regulate oil and gas pollution at the regional or county level.

27 12. California contains millions of acres of federal and tribal lands that are managed by  
28 Defendants for energy production. These lands contain approximately 600 producing oil and gas

1 leases covering more than 200,000 acres and 7,900 usable oil and gas wells. California is a  
2 leading state in terms of fossil fuel extraction on public lands—producing about 9.3 million  
3 barrels of oil and 12.91 billion cubic feet of natural gas in 2017.

4 13. Plaintiff STATE OF NEW MEXICO brings this action by and through Attorney  
5 General Hector Balderas. The Attorney General of New Mexico is authorized to prosecute in any  
6 court or tribunal all actions and proceedings, civil or criminal, when, in his judgment, the interest  
7 of the state requires such action. N.M. Stat. Ann. § 8-5-2.

8 14. More than one-third of New Mexico's land is federally administered, and New  
9 Mexico is the second-highest state in the nation in the number of producing oil and natural gas  
10 leases on federal land. In 2017, New Mexico produced approximately 801 billion cubic feet of  
11 natural gas and 89 million barrels of crude oil on federal lands. New Mexico has the third highest  
12 volume of flared oil-well gas among all states.

13 15. Plaintiffs have a clear monetary stake in Defendants' decision to repeal certain  
14 provisions of the Waste Prevention Rule because wasting natural resources deprives states of  
15 royalty revenue. In 2017, California received \$57.8 million in royalties from federal mineral  
16 extraction within the State. Royalties from federal oil and gas development in California are  
17 deposited into the State School Fund, which supports public education. New Mexico received  
18 \$988 million in federal mineral extraction royalties in 2017. New Mexico, whose per-pupil  
19 education spending is below the national average, uses its federal mineral leasing royalty  
20 payments for educational purposes. One study estimates that New Mexico lost between \$39  
21 million and \$46 million in royalties from venting and flaring between 2010 and 2015. This figure  
22 does not include lost royalties from leaks. Thus, minimizing waste of natural gas in order to  
23 maximize royalty recovery in California and New Mexico serves vital societal interests.

24 16. Plaintiffs further have a strong interest in preventing adverse air quality impacts from  
25 the production of fossil fuels in their States. More than 95 percent of federal drilling in California  
26 occurs in Kern County, parts of which are in nonattainment with the 2008 federal 8-hour ozone  
27 standard and federal fine particulate matter standards, as well as numerous state ambient air  
28 quality standards. Excess pollution in this part of California—including methane, particulate

1 matter, volatile organic compounds (“VOCs”), and toxic air pollution from the oil and gas  
2 industry—significantly increases rates of asthma, heart disease, and lung disease, and raises  
3 cancer risk. While California has state regulations issued by CARB and local air districts, certain  
4 provisions of CARB’s oil and gas regulations do not require compliance until 2019. Further, the  
5 Waste Prevention Rule provides an additional federal layer of regulation and enforcement that  
6 addresses the air pollution issues related to oil and gas production on federal lands within  
7 California and provides a regulatory floor for natural resource extraction across multiple states.

8 17. In New Mexico, the San Juan Basin in the Four Corners region is the home of the  
9 nation’s largest methane “cloud” resulting from extensive oil and gas development in that region.  
10 VOC emissions from oil and gas development have led to high ozone concentrations, resulting in  
11 an “F” grade for San Juan County from the American Lung Association in 2016. Because BLM  
12 leases in New Mexico represent a disproportionately large share of federal and tribal natural gas  
13 emissions, BLM’s repeal of the Rule will result in thousands of additional tons of VOCs being  
14 emitted in New Mexico. New Mexico does not have state regulations in place to adequately  
15 address venting, flaring, and leaks from oil and gas production, and lacks authority to regulate  
16 cross-border emissions from neighboring states that impact the health and safety of its residents.

17 18. Plaintiffs also have a strong interest in preventing and mitigating harms that climate  
18 change poses to human health and the environment, including increased heat-related deaths,  
19 damaged coastal areas, increased wildfire risk, disrupted ecosystems, more severe weather events,  
20 and longer and more frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007).  
21 Methane is an extremely potent greenhouse gas, with climate impacts roughly 86 times those of  
22 carbon dioxide when measured over a 20-year period, or 25 times when measured over a 100-  
23 year period.

24 19. California is already experiencing the adverse effects of climate change, including  
25 increased risk of wildfires, a decline in the average annual snowpack that provides approximately  
26 35 percent of the State’s water supply, increased erosion of beaches and low-lying coastal  
27 properties from rising sea levels, and increased formation of ground-level ozone (or smog), which  
28 is linked to asthma, heart attacks, and pulmonary problems, especially in children and the elderly.

1 California law establishes targets to reduce the State's greenhouse gas emissions to 1990 levels  
2 by 2020 and 40 percent below 1990 levels by 2030, and to achieve 100 percent of electricity sales  
3 from renewable energy and zero-carbon resources by 2045. California has committed to reducing  
4 greenhouse gas emissions, including through the development of methane-curbing regulations for  
5 oil and gas operations and pipelines.

6 20. As a state in the arid Southwest, New Mexico is also experiencing the adverse effects  
7 of climate change and will suffer additional impacts in the future. Average temperatures in New  
8 Mexico have been increasing 50 percent faster than the global average over the past century,  
9 streamflow totals in the Rio Grande and other rivers in the Southwest are declining, and  
10 projections of further reduction of late-winter and spring snowpack pose increased risks to water  
11 supplies needed to maintain cities, agriculture, and ecosystems. Further, drought and increased  
12 temperatures due to climate change have contributed to extensive tree death across the Southwest.

13 21. The Waste Rule Repeal will adversely impact Plaintiffs by increasing emissions of  
14 hazardous air pollutants and greenhouse gases, reducing royalty collections, and wasting fossil  
15 fuel resources that belong to the public. Consequently, Plaintiffs have suffered a legal wrong as a  
16 result of Defendants' action and have standing to bring this suit.

17 22. Defendant RYAN ZINKE is the Secretary of the United States Department of the  
18 Interior, and is sued in his official capacity. Mr. Zinke has responsibility for implementing and  
19 fulfilling the duties of the United States Department of the Interior, including the development of  
20 fossil fuel resources on public lands, and bears responsibility, in whole or in part, for the acts  
21 complained of in this Complaint.

22 23. Defendant JOSEPH R. BALASH is the Assistant Secretary for Land and Minerals  
23 Management, United States Department of the Interior, and is sued in his official capacity. Mr.  
24 Balash signed the Waste Rule Repeal and bears responsibility, in whole or in part, for the acts  
25 complained of in this Complaint.

26 24. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT is an agency  
27 within the United States Department of the Interior that is charged with managing the federal  
28

1 onshore oil and gas program and bears responsibility, in whole or in part, for the acts complained  
2 of in this Complaint.

3 25. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is an executive  
4 branch department of the U.S. government that is the parent agency of BLM and bears  
5 responsibility, in whole or in part, for the acts complained of in this Complaint.

## 6 STATUTORY BACKGROUND

### 7 I. FEDERAL LAND MANAGEMENT STATUTES.

8 26. Defendants' duties to minimize waste and to regulate royalties from oil and gas  
9 operations on federal and Indian lands are established by several federal statutes. The Secretary  
10 of the Interior has delegated these statutory responsibilities to BLM. First, the Mineral Leasing  
11 Act of 1920 ("MLA"), 30 U.S.C. § 181 *et seq.*, instructs BLM to require oil and gas lessees to  
12 observe "such rules ... for the prevention of undue waste as may be prescribed by [the]  
13 Secretary," to protect "the interests of the United States," and to safeguard "the public welfare."  
14 *Id.* § 187. The MLA specifically requires BLM to ensure that "[a]ll leases of lands containing oil  
15 or gas ... shall be subject to the condition that the lessee will ... use all reasonable precautions to  
16 prevent waste of oil or gas developed in the land ... ." *Id.* § 225.

17 27. Pursuant to the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a–396g, and the  
18 Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–08, BLM has authority to regulate  
19 oil and gas development on 56 million acres of Indian mineral estate held in trust by the federal  
20 government. *See, e.g.*, 25 U.S.C. § 396d (oil and gas operations on Indian lands subject "to the  
21 rules and regulations promulgated by the Secretary"). As stated by BLM, the Waste Prevention  
22 Rule "helps to meet the Secretary's statutory trust responsibilities with respect to the development  
23 of Indian oil and gas interests" because it "will help ensure that the extraction of natural gas from  
24 Indian lands results in the payment of royalties to Indian mineral owners, rather than the waste of  
25 owners' mineral resources." 81 Fed. Reg. at 83,020. The Rule also meets these responsibilities  
26 because "tribal members and individual Indian mineral owners who live near Indian oil and gas  
27 development will realize environmental benefits as a result of this rule's reductions in flaring and  
28 air pollution from Indian oil and gas development." *Id.* at 83,021.

1           28. BLM has authority to regulate royalty payments pursuant to the Federal Oil and Gas  
2 Royalty Management Act of 1982 (“FOGRMA”), 30 U.S.C. § 1701 *et seq.* In FOGRMA,  
3 Congress reiterated its concern about waste of public resources by providing that: “Any lessee is  
4 liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste  
5 is due to negligence on the part of the operator of the lease, or due to the failure to comply with  
6 any rule or regulation, order or citation issued under this chapter or any mineral leasing law.” *Id.*  
7 § 1756.

8           29. The Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*,  
9 provides BLM with broad authority to regulate “the use, occupancy, and development of the  
10 public lands” under the principles of “multiple use and sustained yield.” *Id.* § 1732. Among  
11 other requirements, FLPMA mandates that BLM manage public lands “in a manner that will  
12 protect the quality of ... ecological, environmental, [and] air and atmospheric ... values,” *id.* §  
13 1701(a)(8), and provides that BLM “shall, by regulation or otherwise, take any action necessary  
14 to prevent unnecessary or undue degradation of the lands.” *Id.* § 1732(b).

## 15 **II. ADMINISTRATIVE PROCEDURE ACT.**

16           30. The Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, governs the procedural  
17 requirements for agency decision-making, including the agency rulemaking process. Under the  
18 APA, a “reviewing court shall ... hold unlawful and set aside” agency action found to be  
19 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.  
20 § 706. An agency action is arbitrary and capricious under the APA where the agency (i) has  
21 relied on factors which Congress has not intended it to consider; (ii) entirely failed to consider an  
22 important aspect of the problem; (iii) offered an explanation for its decision that runs counter to  
23 the evidence before the agency; or (iv) is so implausible that it could not be ascribed to a  
24 difference of view or the product of agency expertise. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v.*  
25 *State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (“*State Farm*”). An agency does  
26 not have authority to adopt a regulation that is “manifestly contrary to the statute.” *Chevron*  
27 *U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

28

1           31. If an agency reverses course by repealing a fully-promulgated regulation, it is  
2 “obligated to supply a reasoned analysis for the change.” *State Farm*, 463 U.S. at 42. Further, an  
3 agency must show that “there are good reasons” for the reversal and that its new policy is  
4 “permissible under the statute.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515  
5 (2009). An agency must “provide a more detailed justification than what would suffice for a new  
6 policy created on a blank slate” when “its new policy rests upon factual findings that contradict  
7 those which underlay its prior policy.” *Id.* Moreover, an agency cannot suspend a validly  
8 promulgated rule without first “pursu[ing] available alternatives that might have corrected the  
9 deficiencies in the program which the agency relied upon to justify the suspension.” *Public*  
10 *Citizen v. Steed*, 733 F.2d 93, 103 (D.C. Cir. 1984).

### 11 **III. NATIONAL ENVIRONMENTAL POLICY ACT.**

12           32. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, is the “basic  
13 national charter for the protection of the environment.” 40 C.F.R. § 1500.1. The fundamental  
14 purposes of the statute are to ensure that “environmental information is available to public  
15 officials and citizens before decisions are made and before actions are taken,” and that “public  
16 officials make decisions that are based on understanding of environmental consequences, and take  
17 actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(b)-(c).

18           33. To achieve these purposes, NEPA requires the preparation of a detailed  
19 environmental impact statement (“EIS”) for any “major federal action significantly affecting the  
20 quality of the human environment.” 42 U.S.C. § 4332(2)(C). A “major federal action” may  
21 include “new or revised agency rules [and] regulations.” 40 C.F.R. § 1508.18(a). As a  
22 preliminary step, an agency may first prepare an environmental assessment (“EA”) to determine  
23 whether the effects of an action may be significant. 40 C.F.R. § 1508.9. If an agency decides not  
24 to prepare an EIS, it must supply a “convincing statement of reasons” to explain why a project’s  
25 impacts are insignificant. *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th  
26 Cir. 2001). However, an EIS must be prepared if “substantial questions are raised as to whether a  
27 project ... may cause significant degradation of some human environmental factor.” *Idaho*  
28 *Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998).



1 from BLM-administered leases or enough natural gas to supply 1.5 million households for a year.  
2 *Id.* at 83,010. BLM found that leaks are the second largest source of vented gas from Federal and  
3 Indian leases, accounting for about 4 Bcf of the natural gas lost in 2014. *Id.* at 83,011.

4 37. Prior to 2016, BLM’s regulatory scheme governing the minimization of resource  
5 waste had not been updated in over three decades. *Id.* at 83,008. Several oversight reviews,  
6 including those by the Government Accountability Office (“GAO”) and the Department of the  
7 Interior’s Office of the Inspector General, specifically called on BLM to update its “insufficient  
8 and outdated” regulations regarding waste and royalties. *Id.* at 83,009-10. The reviews  
9 recommended that BLM require operators to augment their waste prevention efforts and clarify  
10 policies regarding royalty-free, on-site use of oil and gas. *Id.*

11 38. In 2014, BLM responded to these reports by initiating the development of a rule to  
12 update 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 39. BLM issued the final Waste Prevention Rule in November 2016. *Id.* at 83,008. In  
19 the final Rule, BLM refined many of the provisions of the Proposed Rule based on public  
20 comments to ensure both that compliance was feasible for operators, and that the Rule achieved  
21 its waste prevention objectives. *Id.* at 83,022–23.

22 40. The Rule addressed each major source of natural gas waste from oil and gas  
23 production—venting, flaring, and equipment leaks—through different requirements. *Id.* at  
24 83,010–13. In particular, the Rule prohibited venting except under specified conditions, and  
25 required updates to existing equipment. *Id.* at 83,011–13. The Rule’s flaring regulations reduced  
26 waste by requiring gas capture percentages that increased over time, providing exemptions that  
27 are scaled down over time, and requiring operators to submit Waste Minimization Plans. *Id.* at  
28

1 83,011. Leak detection provisions required semi-annual inspections for well sites and quarterly  
2 inspections for compressor stations. *Id.*

3 41. In promulgating the Rule, BLM stated that it was advancing the mandates placed on  
4 the agency by Congress to oversee federal oil and gas activities, and to ensure that lessees use all  
5 reasonable precautions to prevent waste of public resources. *Id.* at 83,009-10. BLM found that  
6 the Rule “is a necessary step in fulfilling its statutory mandate to minimize waste of the public’s  
7 and tribes’ natural gas resources.” *Id.* at 83,010.

8 42. BLM determined that the Rule’s benefits outweighed its costs “by a significant  
9 margin.” *Id.* at 83,014. Using a peer-reviewed model known as the “social cost of methane,”  
10 BLM measured the benefits of the Rule by considering “the cost savings that the industry would  
11 receive from the recovery and sale of natural gas and the environmental benefits of reducing the  
12 amount of methane (a potent GHG) and other air pollutants released into the atmosphere.” *Id.*  
13 BLM estimated that the Rule would result in monetized benefits of \$209–\$403 million annually,  
14 including the monetized benefits of reducing methane emissions by roughly 35 percent, and  
15 would improve air quality and overall quality of life for residents living near oil and gas wells. *Id.*  
16 The Rule’s costs, on the other hand, would be minimal—between \$114 and \$275 million per year  
17 industry-wide—which even for small operators would result in an average reduction in profit  
18 margin of just 0.15 percentage points. *Id.* at 83,013-14. BLM acknowledged that these cost  
19 estimates could be overstated because they did not take into account operators that were already  
20 in compliance with the requirements of the Rule. *Id.* at 83,013.

21 43. The Rule was immediately challenged by two industry groups and the States of  
22 Wyoming and Montana (later joined by North Dakota and Texas) (collectively, “Petitioners”) in  
23 U.S. District Court for the District of Wyoming, on the alleged basis that BLM did not have  
24 statutory authority to regulate air pollution, and that the Rule was arbitrary and capricious.  
25 *Western Energy Alliance v. Jewell*, No. 2:16-cv-00280-SWS (D. Wyo. petition filed Nov. 16,  
26 2016); *State of Wyoming v. Jewell*, No. 2:16-cv-00285-SWS (D. Wyo. petition filed Nov. 18,  
27 2016) (collectively, the “Wyoming Litigation”). The Petitioners then moved for a preliminary  
28 injunction. The California Attorney General’s Office, on behalf of the California Air Resources

1 Board, and the State of New Mexico, intervened in December 2016 on the side of BLM to defend  
2 the Rule. Several environmental organizations also intervened on the side of BLM to defend the  
3 Rule. On January 16, 2017, the Wyoming district court denied Petitioners' motions for a  
4 preliminary injunction, finding that Petitioners had failed to establish a likelihood of success on  
5 the merits or irreparable harm in the absence of an injunction.

6 44. The Rule became effective on January 17, 2017.

7 45. On March 28, 2017, President Donald Trump issued Executive Order 13783, entitled  
8 "Promoting Energy Independence and Economic Growth." 82 Fed. Reg. 16,093 (Mar. 31, 2017).  
9 Section 7 of that Executive Order, entitled "Review of Regulations Related to United States Oil  
10 and Gas Development," specifically called on the Secretary of the Interior to review and "as soon  
11 as practicable, suspend, revise, or rescind" the Waste Prevention Rule. *Id.* at 16,096.

12 46. The following day, Secretary of the Interior Ryan Zinke issued Secretarial Order  
13 3349, which provided that within 21 days, BLM would review the Rule and issue an internal  
14 report as to "whether the rule is fully consistent with the policy set forth in Section 1 of the March  
15 28, 2017 E.O." BLM published the results of its review on October 24, 2017. *See* 82 Fed. Reg.  
16 50,532 (Nov. 1, 2017). This review consisted of less than a single page where BLM concluded,  
17 without any rationale or justification, that "the 2016 final rule poses a substantial burden on  
18 industry, particularly those requirements that are set to become effective on January 17, 2018."  
19 *Id.* at 50,535.

20 47. Concurrently, various states and industry groups lobbied members of Congress to  
21 repeal the Waste Prevention Rule using the Congressional Review Act. On May 10, 2017, the  
22 United States Senate voted to reject this effort, leaving the Rule in effect.

23 48. On June 15, 2017, BLM published a notice in the Federal Register purporting to  
24 postpone certain compliance dates of the Rule subject to APA Section 705, 5 U.S.C. § 705. 82  
25 Fed. Reg. 27,430 ("Postponement Notice"). Plaintiffs challenged this unlawful action on July 5,  
26 2017 in the U.S. District Court for the Northern District of California. On October 4, 2017, the  
27 Court ruled that Section 705 did not apply to an already-effective rule, and that BLM had failed to  
28 comply with the APA's notice and comment procedures. *State of California v. United States*

1 *Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106, 1121 (N.D. Cal. 2017). The Court also found that  
2 BLM's failure to consider foregone benefits rendered their action arbitrary and capricious in  
3 violation of the APA. *Id.* at 1123. Thus, the Court vacated the Postponement Notice, and the  
4 Rule went back into effect. *Id.* at 1127.

5 49. On December 8, 2017, BLM issued a final rule suspending key requirements of the  
6 Waste Prevention Rule. 82 Fed. Reg. 58,050 (Dec. 8, 2017) ("Suspension"). To justify the  
7 Suspension, BLM stated it had "concerns regarding the statutory authority, cost, complexity,  
8 feasibility, and other implications" of the Rule, and therefore sought to suspend "requirements  
9 that may be rescinded or significantly revised in the near future." *Id.* The States of California  
10 and New Mexico challenged this second unlawful action in the U.S. District Court for the  
11 Northern District of California and moved for a preliminary injunction. This Court ruled in favor  
12 of Plaintiffs once again, finding that BLM had failed to provide a reasoned analysis for the  
13 Suspension or factual support for the concerns which allegedly justified this action. *State of*  
14 *California v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1068 (N.D. Cal. 2018). The Court  
15 also found that Suspension was likely to result in "concrete harms that BLM's own data suggests  
16 are significant and imminent," such as significant emissions of methane, VOCs, and other  
17 hazardous pollutants. *Id.* at 1073-75. Consequently, the Court enjoined the Suspension. *Id.* at  
18 1076.

19 50. On February 22, 2018, BLM published a proposed "Rescission or Revision of Certain  
20 Requirements" of the Waste Prevention Rule, 83 Fed. Reg. 7,924 ("Proposed Repeal"), in which  
21 the agency proposed to repeal the majority of the Rule's provisions. *Id.* at 7,928. BLM offered  
22 three primary justifications for the Proposed Repeal: 1) the agency had reconsidered the balance  
23 of the Rule's burdens and benefits, 2) the Rule overlapped with other federal and state  
24 requirements, and 3) the Rule would have an undue impact on marginal or low-producing wells.  
25 *Id.* at 7,924. The agency also requested comment on "whether the 2016 Rule is consistent with  
26 [BLM's] statutory authority." *Id.* at 7,927. Plaintiffs submitted comments on the Proposed  
27 Repeal on April 23, 2018, urging BLM to preserve the Waste Prevention Rule's important  
28

1 requirements to prevent waste, protect public resources, boost royalty receipts for American  
2 taxpayers, and ensure the safe and responsible development of oil and gas resources.

3 51. On April 4, 2018, the Wyoming District Court issued an Order enjoining  
4 implementation of all of the Waste Prevention Rule's provisions with January 2018 compliance  
5 deadlines. That Order has been appealed to the Tenth Circuit Court of Appeals.

6 52. On September 18, 2018, BLM released a final rule entitled "Waste Prevention,  
7 Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain  
8 Requirements." The Waste Rule Repeal rescinded key provisions of the Waste Prevention Rule,  
9 including: 1) waste minimization plans, 2) gas-capture percentages, 3) well drilling requirements,  
10 4) well completion and related operations requirements, 5) pneumatic controller requirements, 6)  
11 pneumatic diaphragm pump requirements, 7) storage vessel requirements, and 8) leak detection  
12 and repair requirements. The Waste Rule Repeal also modified requirements related to gas  
13 capture, downhole well maintenance and liquids unloading, and measuring and reporting volumes  
14 of flared and vented gas—effectively reverting to regulatory requirements that preceded the Rule.  
15 BLM's justifications for the Waste Rule Repeal largely tracked those offered for the Proposed  
16 Repeal: that the Waste Prevention Rule "added regulatory burdens that unnecessarily encumber  
17 energy production, constrain economic growth, and prevent job creation"; that the Rule would  
18 have "imposed compliance costs well in excess of the value of the resource (natural gas) that  
19 would have been conserved," especially with regard to marginal wells; and that the Rule  
20 overlapped with EPA and state requirements for oil and gas operations. Further, BLM argued  
21 that the Rule "exceeded the BLM's statutory authority to regulate the prevention of 'waste,'" and  
22 it revised the regulatory definition of "waste of oil or gas" so that it would only apply "where  
23 compliance costs are not greater than the monetary value of the resources they are expected to  
24 conserve."

25 53. The Waste Rule Repeal relies upon a Regulatory Impact Analysis that, unlike the  
26 2016 Rule, concludes that the costs of the Rule's requirements outweigh the benefits by utilizing  
27 an "interim domestic social cost of methane" metric that excludes the "global" costs resulting  
28 from increased methane emissions. BLM also prepared a Final Environmental Assessment

1 (“EA”) and Finding of No Significant Impact (“FONSI”), concluding that the Waste Rule Repeal  
2 would have no significant impacts on the environment.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of the APA, 5 U.S.C. § 706)**

5 54. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

6 55. An “agency changing its course by rescinding a rule is obligated to supply a reasoned  
7 analysis for the change.” *State Farm*, 463 U.S. at 42. The Supreme Court has clarified that while  
8 an agency need not show that a new rule is better than the rule it replaced, it must demonstrate  
9 that “there are good reasons” for the replacement and that the new policy is “permissible under  
10 the statute.” *Fox*, 556 U.S. at 515; see *Humane Soc’y of U.S. v. Locke*, 626 F.3d 1040, 1052 (9th  
11 Cir. 2010) (without providing any reasoned explanation, a court “cannot ascertain whether [the  
12 agency] has complied with its statutory mandate”). However, an agency must “provide a more  
13 detailed justification than what would suffice for a new policy created on a blank slate” when “its  
14 new policy rests upon factual findings that contradict those which underlay its prior policy.” *Fox*,  
15 556 U.S. at 515. Any “unexplained inconsistency” between a rule and its repeal is “a reason for  
16 holding an interpretation to be an arbitrary and capricious change.” *Nat’l Cable & Telecomms.*  
17 *Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

18 56. Here, Defendants have failed to provide a reasoned analysis for repealing the Waste  
19 Prevention Rule based on a nearly identical factual record that was before the agency during the  
20 multi-year rulemaking proceeding that resulted in that Rule’s adoption. Defendants have further  
21 failed to adequately explain inconsistencies between their new findings and those which, two  
22 years ago, they deemed to necessitate promulgation of the Waste Prevention Rule.

23 57. Defendants have failed to provide a reasoned explanation regarding how the Waste  
24 Rule Repeal will achieve their statutory mandates to prevent waste, ensure the adequate payment  
25 of royalties, protect “the interests of the United States,” safeguard “the public welfare” in federal  
26 mineral leases, protect air and atmospheric values, prevent unnecessary or undue degradation of  
27 the lands, or fulfill their statutory trust responsibilities on tribal lands. And Defendants have not  
28 explained how the regulations and authorities that were in existence at the time that they

1 promulgated the Waste Prevention Rule, and to which they are now reverting, are sufficient to  
2 address these mandates.

3 58. Moreover, the justifications that Defendants do provide for the Waste Rule Repeal  
4 are contradicted by evidence in the record. For example, while Defendants cite newfound  
5 concerns about compliance costs, Defendants previously found that marginal or low-producing  
6 wells would *not* be overburdened by the Rule because, *inter alia*, the Rule contains a provision  
7 allowing operators to propose a less costly alternative where compliance with the Rule would be  
8 “so costly as to cause the operator to cease production and abandon significant recoverable oil or  
9 gas reserves under a lease.” 81 Fed. Reg. at 83,030. In addition, Defendants do not explain why  
10 they now consider the Rule to be duplicative of state and federal laws and regulations that were  
11 largely already on the books when the Waste Prevention Rule was finalized.

12 59. In addition, Defendants’ reliance on an “interim domestic social cost of methane”  
13 model is arbitrary and capricious for multiple reasons, including that it is outcome-seeking; fails  
14 to take into account the best available science; undervalues the benefits of the Rule (including  
15 benefits to public health and safety), apparently to justify repeal; fails to adequately address risk  
16 and uncertainty; and ignores significant climate impacts. Moreover, Defendants have failed to  
17 justify why their newly estimated administrative burdens posed by the Rule are far higher than  
18 what the agency calculated in 2016.

19 60. Finally, Defendants failed to consider alternatives to repealing the Rule’s key  
20 requirements. Defendants did not even explore the possibility of addressing any alleged  
21 deficiencies with the Rule or allegedly-unreasonable burdens on regulated entities through, for  
22 example, narrowly-tailored changes or exemptions.

23 61. Accordingly, Defendants acted in a manner that was arbitrary, capricious, an abuse of  
24 discretion, not in accordance with law, and in excess of their statutory authority. Such action is in  
25 violation of the APA. 5 U.S.C. § 706. Consequently, the Waste Rule Repeal should be held  
26 unlawful and set aside.

27 ///

28 ///

**SECOND CAUSE OF ACTION**

**(Violation of the MLA and the APA;**

**30 U.S.C. §§ 187, 225; 5 U.S.C. § 706)**

62. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

63. The MLA requires oil and gas lessees to observe “such rules ... for the prevention of undue waste as may be prescribed by [the] Secretary,” to protect “the interests of the United States,” and to safeguard “the public welfare.” 30 U.S.C. § 187. The MLA also requires BLM to ensure that “[a]ll leases of lands containing oil or gas ... shall be subject to the condition that the lessee will ... use all reasonable precautions to prevent waste of oil or gas developed in the land ... .” *Id.* § 225.

64. Defendants’ new definition of “waste of oil or gas,” which would limit such waste to acts “where compliance costs are not greater than the monetary value of the resources they are expected to conserve,” is contrary to law. Under the Mineral Leasing Act, BLM must enforce leaseholders’ use of “all reasonable precautions to prevent waste of oil or gas developed in the land,” 30 U.S.C. § 225, and require leaseholders to comply with rules “for the prevention of undue waste,” 30 U.S.C. § 187. The statutory language makes clear that BLM must require leaseholders to prevent waste irrespective of such cost considerations. Identifying “waste” only when resource value exceeds compliance costs effectively nullifies these statutory provisions and is contrary to law. *See, e.g., King v. Burwell*, 135 S. Ct. 2480, 2498 (2015), Scalia, J., dissenting (“the rule against treating [a term] as a nullity is as close to absolute as interpretive principles get”).

65. Furthermore, BLM’s new definition of “waste of oil or gas” is arbitrary and capricious. This definition completely ignores BLM’s statutory mandates to ensure that the American public receives a fair return on publicly-owned resources, as well as BLM’s duty to protect public health and the environment. This new definition is also contrary to the existing definition of “waste” found elsewhere in BLM’s regulations, is incoherent given the variability in the size of operators and oil and gas price fluctuations, and constitutes an unexplained and unsupported change in position.



1 billions of cubic feet of natural gas. As the BLM states in the Waste Rule Repeal, “the final rule  
2 will remove almost all of the requirements in the 2016 rule that we previously estimated would ...  
3 generate benefits of gas savings or reductions in methane emissions.”

4 71. However, in the EA and FONSI, BLM failed to take a “hard look” at these impacts,  
5 and improperly concluded that all impacts of the Waste Rule Repeal are not significant.

6 72. Defendants’ determination that the Waste Rule Repeal would result in no significant  
7 impacts, and its reliance on a FONSI and failure to prepare an EIS, constitutes agency action  
8 unlawfully or unreasonably withheld or delayed, in violation of the requirements of the APA and  
9 NEPA. 5 U.S.C. § 706(1); 42 U.S.C. § 4332(2)(C). Defendants’ failure to take a “hard look” at  
10 the direct, indirect, and cumulative impacts of the Waste Rule Repeal, including impacts related  
11 to air pollution, public health, and climate change harms, is also arbitrary and capricious, an abuse  
12 of discretion, and contrary to the requirements of the APA and NEPA. 5 U.S.C. § 706(2); 42  
13 U.S.C. § 4332(2)(C).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that this Court:

- 16 1. Issue a declaratory judgment that Defendants acted arbitrarily, capriciously, contrary  
17 to law, abused their discretion, and failed to follow the procedure required by law in their  
18 promulgation of the Waste Rule Repeal, in violation of the MLA, NEPA, and the APA;
- 19 2. Issue an order vacating Defendants’ unlawful issuance of the Waste Rule Repeal so  
20 that the Waste Prevention Rule is automatically reinstated in its entirety;
- 21 3. Award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and
- 22 4. Award such other relief as the Court deems just and proper.
- 23  
24  
25  
26  
27  
28

1 Dated: September 18, 2018

Respectfully Submitted,

2 XAVIER BECERRA  
3 Attorney General of California  
4 DAVID A. ZONANA  
5 Supervising Deputy Attorney General

6 /s/ Mary S. Tharin  
7 MARY S. THARIN  
8 GEORGE TORGUN  
9 CONNIE P. SUNG  
10 Deputy Attorneys General

11 *Attorneys for Plaintiff*  
12 *State of California, by and through Xavier*  
13 *Becerra, Attorney General, and the*  
14 *California Air Resources Board*

15 HECTOR BALDERAS  
16 Attorney General of New Mexico

17 /s/ Ari Biernoff  
18 ARI BIERNOFF  
19 BILL GRANTHAM  
20 Assistant Attorneys General

21 *Attorneys for Plaintiff*  
22 *State of New Mexico, by and through Hector*  
23 *Balderas, Attorney General*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.