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

13 STATE OF CALIFORNIA, by and through
14 XAVIER BECERRA, Attorney General,
and the CALIFORNIA AIR RESOURCES
15 BOARD; and STATE OF NEW MEXICO,
16 by and through HECTOR BALDERAS,
Attorney General,

17 Plaintiffs,

18 v.

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

24 Defendants.

Case No. 4:18-cv-05712-YGR

(Consolidated With Case No. 4:18-cv-05984-YGR)

**STATE OF WYOMING'S BRIEF
REGARDING REMEDY**

Courtroom 1, 4th Floor
1301 Clay Street, Oakland, CA 94612

DOWNEY BRAND LLP

1 On March 4, 2020, this Court heard arguments related to the parties' pending motions for
 2 summary judgment in the above-referenced, consolidated cases. (*See* ECF_160). At the conclusion
 3 of the hearing, the Court directed the defendants to submit briefing on the issue of remedy within
 4 seven days. Consistent with this Court's instruction, Defendant-Intervenor State of Wyoming offers
 5 the following points regarding remedy.

6 Should this Court rule in favor of the plaintiff groups, the first consideration for this Court
 7 is the geographic scope of any injunction the Court may choose to impose. As the Honorable Judge
 8 Gilliam recognized in a recent hearing involving a challenge to the withdrawal of a similar
 9 nationwide rule promulgated by the Bureau of Land Management, it is an open question whether
 10 any remedy issued by the Northern District of California in a case such as this one should extend
 11 beyond California.¹ (*See* Exhibit A at 16). And even if this Court were to impose relief that extended
 12 beyond California, it is also an open question whether that relief should extend beyond the
 13 boundaries of the Court of Appeals for the Ninth Circuit. (*See id.*)² Indeed, as a recent Department
 14 of Justice memorandum makes clear, the application of nationwide injunctions in a case such as
 15 this one suffers from numerous problems.³

16 Should this Court rule in favor of the plaintiffs, Wyoming asks the Court to exercise restraint
 17 with regard to the geographic scope of the remedy. California and New Mexico wish to have the
 18 federal government regulate oil and gas operators within their borders. This Court can grant this
 19 relief by vacating the rule at issue in those states. Wyoming does not share this wish. Wyoming is
 20 doing a fine job on its own. (ECF_125 at 8-9); *Out in Front? State and Federal Regulation of Air*
 21 *Pollution Emissions from Oil and Gas Production Activities in the Western United States*, 55 Nat.

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 23 ¹ On January 22, 2020, Judge Gilliam heard arguments related to summary judgment motions in
 24 Case Nos. 18-cv-521-HSG and 18-cv-524-HSG. In those cases, plaintiffs challenged a regulation
 that withdrew the Bureau's rule related to hydraulic fracturing.

25 ² If this Court wished to impose relief in the Ninth Circuit *and* New Mexico, there is precedent for
 26 that. *Cal. ex rel. Lockyer v. United States Dep't of Agric.*, 710 F. Supp. 2d 916, 924 (N.D. Cal.
 2008) ("the balance of the equities weighs in favor of keeping the injunction in force in the Ninth
 Circuit as well as in the State of New Mexico.").

27 ³ *Litigation Guidelines for Cases Presenting the Possibility of Nationwide Injunctions*, Office of
 28 the Attorney General (Sept. 13, 2018), available at <https://www.justice.gov/opa/press-release/file/1093881/download>.

1 Res. J. 1 (Fall 2014) (“The [federal government] did not adopt emission standards for most oil and
 2 gas production activities until 2012, when it relied on Colorado and Wyoming as proving grounds
 3 for control technology.”). Wyoming asks this Court to leave it free to regulate the lands within its
 4 borders and to continue to be a proactive and nationwide leader in that field. California and New
 5 Mexico’s wish to have federal regulations apply in their states should not result in unnecessary and
 6 duplicative regulatory burdens on businesses in Wyoming.

7 As this Court is aware, if this Court *does* issue a nationwide injunction, Wyoming and others
 8 will return to the United States District Court for the District of Wyoming to challenge the legality
 9 of the 2016 rule, which is highly suspect. (ECF_125 at 14-15). Indeed, Wyoming’s challenge to
 10 that rule is still active (though currently stayed) and significant progress has already been made
 11 with regard to briefing on the merits.⁴ Should this Court issue a nationwide injunction, the Court
 12 should stay the effectiveness of that injunction until the Wyoming court can issue a ruling on the
 13 still-pending Petitions for Review of the 2016 rule. Given the passage of time, Judge Skavdahl may
 14 wish to order supplemental briefing from the parties, and he deserves the time necessary to do that
 15 and to reach a well-reasoned merits decision. Because substantial progress has already made on
 16 merits briefing, there is simply no reason to force Judge Skavdahl to address the legality of the
 17 2016 rule through the extraordinary remedy of an injunction.

18 This Court should also consider the impacts to industry from a nationwide injunction. If this
 19 Court issues an injunction without a stay, the entire industry is likely to be in noncompliance with
 20 the 2016 rule, which has not been in effect for years. This will cause unnecessary problems for both
 21 the Bureau of Land Management and industry. There is no reason to cause such problems, when a
 22 stay of the injunction until Judge Skavdahl rules on the merits of the 2016 rule would avoid them.

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 27 _____
 28 ⁴ Order Granting Motions to Stay Proceedings, (ECF_261 at 14-15), *State of Wyoming, et al. v. Interior, et al.*, Case No. 16-cv-285-SWS (D. Wyo.) (attached as Exhibit B).

1 Respectfully submitted this 11th day of March 2020.

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