Nos. 18-8027 & 18-8029

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

STATE OF WYOMING, et al.,
Petitioner-Appellees,

&

STATE OF NORTH DAKOTA, et al.,
Petitioner-Intervenor-Appellees,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,
Respondent-Appellees,

&

WYOMING OUTDOOR COUNCIL, et al.,
Respondent-Intervenor-Appellants,

&

STATE OF CALIFORNIA, et al.,
Respondent-Intervenor-Appellants.

On Appeal from the United States District Court for the District of Wyoming
Civil Action Nos. 2:16-CV-00285-SWS & 2:16-CV-00280-SWS
Hon. Scott W. Skavdahl

CITIZEN GROUPS' REPLY IN SUPPORT OF MOTION FOR STAY PENDING APPEAL

Robin Cooley
Joel Minor
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
Phone: (303) 623-9466
Facsimile: (303) 623-8083
rcooley@earthjustice.org
jminor@earthjustice.org

Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1111 14th St. NW, Suite 510A
Washington, DC 20005
Phone: (202) 569-3818
susannah@donahuegoldberg.com

Additional counsel listed on signature page

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INTRODUCTION

After finding that it was unwise to exercise jurisdiction over this case, the district court committed legal error by halting implementation of a nationally-applicable final regulation without concluding that the four prerequisites for preliminary injunctive relief had been met. Appellees have no response to the overwhelming body of case law—including this Court's binding precedent—holding that a district court cannot preliminarily enjoin or stay a final regulation without concluding that these four prerequisites are satisfied. Nor do they have any explanation for the district court's departure from this Court's recent ruling in *Wyoming v. Zinke*, 871 F.3d 1133, 1146 (10th Cir. 2017), that dismissal of the underlying action is the appropriate course if the court determines the case is prudentially unripe.

Ignoring relevant precedent, Appellees complain that they should be excused from complying with and enforcing the Waste Prevention Rule because the Bureau of Land Management ("BLM") plans to change it in the future. But an agency's decision to reconsider a regulation is not enough to halt it. Under the Administrative Procedure Act ("APA"), a final regulation must be revised or rescinded in the same way it was promulgated—through careful examination of the statute and factual record. A federal court has twice rejected BLM's attempts to suspend the Rule without observing these requirements. The district court has now

bypassed the relevant legal standard for setting aside agency action—including consideration of the likelihood of success on the merits—to achieve the same end. This Court should reject this attempt to create a novel and standardless approach to enjoining agency action.

Regardless of what Appellees speculate will happen with the Waste Prevention Rule in the future, immediate compliance will provide Citizen Groups and the public with the significant benefits the Rule promised, including reduced waste, increased royalty payments to states and local governments, and decreased air pollution. Because the district court's Order takes away these benefits, causing immediate and irreparable harm to Citizen Groups' members, this Court should grant a stay.

STANDARD OF REVIEW

To grant a stay pending appeal, this Court must consider the factors laid out in 10th Circuit Rule 8.1.[1] Industry alone contends that Citizen Groups must meet a higher burden for a "mandatory preliminary injunction" because, they allege, a stay

[1] BLM's assertion, Fed. Resp'ts-Appellees' Opp'n to Mots. for Stay Pending Appeal 7-9 (Apr. 30, 2018) ("BLM Br."), that Citizen Groups failed to comply with Rule 8.1 is irrelevant because the district court has denied Citizen Groups' motion, ECF 234. It is also incorrect because Citizen Groups moved first before the district court and, despite suffering irreparable harm every day, waited two weeks for a decision before filing in this Court. No more is required. *See* Citizen Groups' Mot. for Stay Pending Appeal 8-9 (Apr. 20, 2018) ("Citizen Groups' Mot.").

would disrupt the status quo. WEA & IPAA's Joint Resp. to Appellants' Mots. for Stay Pending Appeal 8-9 (Apr. 30, 2018) ("Industry Br."). Industry is wrong. Citizen Groups' motion would *preserve* the status quo. The Waste Prevention Rule went into effect on January 17, 2017, and, despite BLM's two unlawful attempts to suspend it, was in full force and effect when the district court issued its Order, as Industry itself concedes.[2] Staying the Order would simply revert back to BLM's final regulation.

ARGUMENT

I. Citizen Groups Are Likely To Succeed On The Merits Of The Appeal.

A. The district court erred by enjoining the Waste Prevention Rule without determining the prerequisites for such relief were satisfied.

Appellees do not controvert the uniform case law holding that to grant preliminary injunctive relief under 5 U.S.C. § 705, courts must conclude that the four prerequisites are met. *See* Citizen Groups' Mot. 13-14 & n.5. Indeed, Appellees do not mention this Court's binding precedent in *Associated Securities Corp. v. SEC*, 283 F.2d 773, 774-75 (10th Cir. 1960). Nor do they rebut the

[2] BLM and the States assert that the injunction of the Suspension Rule "arguably" reinstated the Waste Prevention Rule, without explaining what is "arguable" about it. BLM Br. 5-6; WY & MT's Resp. to Appellants' Mots. for Stay Pending Appeal 4 (Apr. 30, 2018) ("States Br."). Industry correctly explains that the injunction of the Suspension Rule put "the Waste Prevention Rule back into full force and effect." Industry Br. 5.

Supreme Court's statement in *Sampson v. Murray* that § 705 "was primarily intended to reflect existing law … and not to fashion new rules of intervention for District Courts." 415 U.S. 61, 68 n.15 (1974). Indeed, BLM suggests this Court should delay deciding this motion to allow the district court to "address the four equitable factors." BLM Br. 9. But the district court already concluded the four prerequisites were *not* met, *Wyoming v. U.S. Dep't of the Interior*, No. 2:16-cv-0285-SWS, 2017 WL 161428, at *12 (D. Wyo. Jan. 16, 2017), and, since BLM's response here, has declined to address them again, ECF 234.[3]

Only the States attempt to defend the Order under § 705. But they ignore the uniform judicial precedent and legislative history demonstrating that Congress did not intend to create new or expanded authority for courts to enjoin agency action upon some lesser showing. Citizen Groups' Mot. 17-18. Instead, they point to two bills "not adopted by Congress," and which therefore "do[] not give a clear indication of Congressional intent." *Settles v. Golden Rule Ins. Co.*, 927 F.2d 505, 510 (10th Cir. 1991). While these bills described a range of actions courts could take, States Br. 10, the listed actions likewise require satisfying the four prerequisites. *See, e.g., RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208-09 (10th

[3] All cited administrative record documents, docket entries, and declarations are attached in a consecutively paginated Addendum. All ECF docket citations are to Case No. 16-cv-0285-SWS. All declarations were initially submitted as Exhibit C to Citizen Groups' Motion for Stay Pending Appeal.

Cir. 2009) (mandatory injunctions); *Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001) (stays); *Briscoe v. Sebelius*, 927 F. Supp. 2d 1109, 1114 (D. Colo. 2013) (temporary restraining orders).

The States contend that § 705 "would serve little purpose" if it codified existing authority. States Br. 10. But the APA "has been widely interpreted as being merely declaratory of the common law of reviewability … existing at the time of the statute's enactment." *Peoples Gas, Light & Coke Co. v. U.S. Postal Serv.*, 658 F.2d 1182, 1191 (7th Cir. 1981) (citing cases). Congress acted to codify the courts' authority to stay agency action pending review after parties in *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4 (1942), argued that "Congress's failure expressly to confer the authority in a statute" should be construed as an "implicit denial of that power." *Nken v. Holder*, 556 U.S. 418, 426 (2009). The *Scripps-Howard* court rejected that contention. 316 U.S. at 9-10. And while *Scripps-Howard* did not explicitly discuss the test, it recognized that a stay "is not a matter of right," *id*., and the Supreme Court has since explained that the "'four-factor test' is the 'traditional one'" for stays pending judicial review, *Nken*, 556 U.S. at 433. Indeed, preliminary injunctions would be rendered meaningless in cases challenging agency action if a court could issue the same relief under § 705 upon a lesser, undefined showing by simply labeling it a "stay."

The States rely exclusively on *Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin*, 506 F. Supp. 2d 207 (W.D.N.Y. 2007). But that court conceded that the "standards for granting … relief [under § 705] are onerous," and granted a short stay by applying a "sliding scale" to the four factors. *Id.* at 210, 214. This Court has explicitly deemed such a sliding-scale test "impermissible." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016).

Contrary to the plain language of the Order, BLM and Industry argue that the district court did not rely on § 705. *Compare* BLM Br. 19-22, *and* Industry Br. 20-21, *with* ECF 215 at 9-10, *and* ECF 234 at 2-5. Regardless of the source of the district court's authority, however, it cannot preliminarily enjoin or stay a regulation without concluding that the four prerequisites are satisfied. Citizen Groups' Mot. 14-15. Halting the Rule without such consideration usurps BLM's responsibilities, even if the operative effect serves BLM's new policy goals. *See Nken*, 556 U.S. at 434 (explicitly tethering courts' "discretion" to "consideration of the four factors," and noting the "concerns" that arise "whenever a court may allow or disallow an anticipated action before the legality of that action has been conclusively determined"). The cases BLM and Industry cite for unbounded district court discretion are all inapposite because they involved equitable remedies imposed only *after* a decision on the merits. BLM Br. 21 (citing *United States v.*

Criden, 648 F.2d 814 (3d Cir. 1981); *Harjo v. Andrus*, 581 F.2d 949 (D.C. Cir. 1978)); Industry Br. 20 (citing *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324 (10th Cir. 1982)).

It is ironic that while stressing that *this* Court is bound by the traditional factors in considering Citizen Groups' request, Appellees urge that the district court was not similarly bound. *See* BLM Br. 7, 10; Industry Br. 8-9. The district court abused its discretion when it preliminarily enjoined the Rule based on an erroneous interpretation of law.

B. The district court erred when it granted "[r]elief pending review" and then effectively ended that review.

Appellees have no response to Citizen Groups' argument that courts' § 705 authority to stay agency actions "pending review" may not be used to stay agency actions pending a new rulemaking. To the contrary, they affirm that the district court's Order is not tied to the "court['s] issu[ance of] a final decision," but instead is "closely tied to … the Revision Rule." BLM Br. 22. But § 705 is not titled "Relief Pending Reconsideration." It is titled "Relief Pending Review." The district court's determination that it could use § 705 for this improper purpose is an abuse of discretion.

C. The district court erred by finding this case prudentially unripe and prudentially moot and then exercising jurisdiction to grant substantive relief.

Appellees do not dispute this Court's recent precedent that when a court concludes a case is prudentially unripe, it should stay its hand. Citizen Groups' Mot. 20-22 (citing *Zinke*, 871 F.3d 1133). Nor do they point to any case in which a court has previously enjoined a regulation after finding a case prudentially unripe.

BLM contends in a footnote that *Zinke* left open the possibility that, even if a case is prudentially unripe, a court could fashion "some narrower form of injunctive relief." BLM Br. 22 n.7. But that quote appears nowhere in *Zinke*. Rather, it appears to come from *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1240 (10th Cir. 2017), which discussed the appropriate remedy following a finding that BLM acted arbitrarily and capriciously. It has no relevance here.

The States contend that the district court did *not* conclude the case was prudentially moot. States Br. 6 n.2. Yet, despite urging from Citizen Groups and North Dakota and Texas to reach the merits, ECF 209 at 5-7, the district court concluded that it should not because of "prudential ripeness and mootness concerns," Order at 7-10. Indeed, if the case is not prudentially unripe or moot, the district court erred in not heeding its "virtually unflagging" obligation to decide the almost-fully-briefed case before it. *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2347 (2014).

Industry further contends that if the case is prudentially moot, the appropriate course is to remove the Waste Prevention Rule from the Code of Federal Regulations. Industry Br. 22-23. Nothing in the APA, which authorizes courts to "set aside" agency actions only under specific circumstances, 5 U.S.C. § 706(2), nor any case law supports Industry's extraordinary position. Indeed, Industry ignores that in the most analogous case—*Zinke*—this Court did not vacate the underlying regulation. 871 F.3d at 1145-46. Instead, Industry cites a series of inapposite cases involving the constitutional mootness of adjudicatory orders, not prudential mootness of challenges to agency regulations. *E.g.*, *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961).

The district court abused its discretion in declining to stay its hand.

II. Citizen Groups Will Be Irreparably Harmed Absent A Stay.

Appellees chiefly argue that Citizen Groups cannot be harmed because the emissions that will result from the Order have been ongoing for years. That is irrelevant. No party disputes that the Order allows emissions of smog-forming volatile organic compounds ("VOCs"), hazardous air pollutants ("HAPs"), and methane that would otherwise be prevented.

In detailed declarations from their members and experts, Citizen Groups established the harms they will suffer from *this* Order. Appellees present no evidence controverting these declarations. They do not dispute that the Order will

allow additional HAP emissions, including carcinogenic benzene, for which there "is no safe level of human exposure," in communities near BLM-managed oil and gas development. *See* McVay/Hull Decl. ¶ 8; Craft Decl. ¶ 21. These additional HAP emissions directly impact Citizen Groups' members like Don Schreiber, who has personally observed BLM-managed wells leaking natural gas within 1/3 mile of his home. Schreiber Decl. ¶ 13.

Appellees likewise do not dispute that the Order will allow 129,300 additional tons of VOCs, which are critical to forming harmful ground-level ozone. McVay/Hull Decl. ¶ 7 (drawing directly from BLM's own estimate). Industry argues it is "impossible to infer" that 129,300 tons of VOCs—more than the entire oil and gas sector in Colorado emits each year[4]—will impact ozone levels. *See* Industry Br. 18. Citizen Groups, however, cited numerous studies documenting the impact that VOCs emitted by oil and gas production have in increasing ozone levels. Craft Decl. ¶¶ 14-15. Moreover, Dr. McVay identifies more than 6,000 BLM-managed wells in areas that already have unhealthy ozone levels, and

[4] EPA, *2014 National Emissions Inventory (NEI) Data*, https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data (last updated Feb. 16, 2018).

explains that these wells will emit 2,089 tons of VOCs annually if just the leak repair requirements remain stayed. McVay/Hull Decl. ¶ 19.[5]

For its contention that this ozone formation is "too speculative" and requires "photochemical modeling," Industry cites only *Chemical Weapons Working Group, Inc. v. U.S. Department of the Army*, 963 F. Supp. 1083, 1096 (D. Utah 1997). Industry Br. 18. The *Chemical Weapons* court, however, found that there was not a "significant degree of scientific confidence" that emissions of a nerve agent would occur *at all*. 963 F. Supp. at 1096. No party here disputes that emissions of methane, VOCs, and HAPs that would have been prevented by the Rule *will occur* because of the Order, nor the numerous scientific studies linking those emissions to health-harming ozone.

Rather than argue that the Order will not result in methane emissions, both Industry and BLM argue that 176,000 tons of methane emissions is too small to constitute irreparable harm. Industry Br. 15-16; BLM Br. 11-12. Courts have rejected similar arguments. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1223 (9th Cir. 2008) ("[I]t is hardly 'self-evident'

[5] Dr. McVay also identifies 87,000 BLM-managed wells subject to the Rule, but not subject to any other leak repair standards. McVay/Hull Decl. ¶¶ 9-14. This, along with the finding in the Waste Prevention Rule that "neither EPA nor State and tribal requirements obviate the need for this rule," 81 Fed. Reg. 83,008, 83,010 (Nov. 18, 2016), belies the States' assertion that EPA and state regulations suffice to prevent irreparable harm from the Order, *see* States Br. 14.

that a 0.2 percent decrease in carbon emissions … is not significant."); *cf.* *Massachusetts v. EPA*, 549 U.S. 497, 524-26 (2007) (rejecting "erroneous assumption" that a failure to take a "small incremental step" to address greenhouse gas emissions cannot cause injury and noting a "reduction in domestic emissions would slow the pace of global emissions increases"). Especially when considered alongside the toxic and smog-forming pollution the Order allows, these additional methane emissions strengthen Citizen Groups' showing of irreparable harm.

Finally, BLM suggests Citizen Groups' harms are not redressable because even if this Court stays the Order, operators will not comply with, and BLM may not enforce, the Waste Prevention Rule. BLM Br. 13; *see also* Industry Br. 12-13.[6] Essentially, BLM threatens, despite multiple court orders finding its actions to avoid implementing the Rule unlawful, that it will not implement the Rule even if this Court stays the Order. This Court should not credit this representation of bad faith, nor reward BLM for its continued failure to comply with the APA by allowing it to hide behind its enforcement discretion.

[6] BLM repeatedly attempts to characterize the Order as a "four-month stay." *See, e.g.*, BLM Br. 11. The Order itself is not so limited. While BLM "expects to publish the final [Rescission] rule in August of 2018," *id.* at 1, that commitment both presupposes the outcome of the ongoing rulemaking, and ignores that agencies routinely underestimate the time necessary to promulgate regulations. Moreover, compliance now will yield lasting benefits. Once a wasteful component is replaced with a non-wasteful one, the benefits will last for the life of the component.

III. Granting A Stay Will Not Substantially Harm Appellees.

Extensive record evidence shows that the compliance costs associated with the provisions stayed by the Order are reasonable, comprising only 0.15 percent of small companies' annual profits, VF_0000575-76, with many costs offset by operators capturing and selling additional gas, VF_0000451-52. The Rule also contains many economic exemptions, which Industry does not mention, and Appellees cite no actual evidence to suggest these exemptions are unworkable. *See* BLM Br. 17. The record evidence belies Industry's assertions about harm, including alleged shut-ins, Industry Br. 11, for which Industry makes generalized and unsubstantiated claims without disclosure of methodology, assumptions, or underlying data, ECF 173 at 22-23; ECF 173-1.

Industry is not substantially harmed by expending a fraction of a percent of its profits to comply with a final regulation. *See A.O. Smith Corp. v. FTC*, 530 F.2d 515, 527 (3d Cir. 1976) ("Any time a corporation complies with a government regulation that requires corporation action, it spends money and loses profits; yet it could hardly be contended that proof of such an injury, alone, would satisfy the requisite for a preliminary injunction."). Industry misreads *Chamber of Commerce of the U.S. v. Edmondson*, 594 F.3d 742 (10th Cir. 2010). *Edmondson* did not find that a mere $1,000 in compliance costs would support irreparable harm. *See* Industry Br. 10. Rather, it found the threat of enforcement litigation,

"debarment from public contracts," and "other consequences" of violating an *unconstitutional* state law constituted irreparable harm. 594 F.3d at 771; *see also Planned Parenthood of Kan. & Mid-Mo. v. Moser*, 747 F.3d 814, 833 & n.4 (10th Cir. 2014) (recognizing that *Edmondson* involved more than mere compliance costs).

BLM similarly misconstrues this Court's precedent when it suggests that any economic harm should outweigh environmental harm. BLM Br. 16. The cases BLM cites stand only for the unremarkable proposition that courts consider both economic and environmental harms when balancing the equities in a preliminary injunction analysis. BLM does not explain why the modest compliance costs here should outweigh the Order's significant harms.[7]

Industry speculates that because of BLM's repeated unlawful attempts to suspend the Rule, compliance is now "not possible" for some operators. Industry Br. 12-13. Critically, Industry *never* asked the district court to give operators additional time to comply in light of BLM's unlawful suspensions, but has instead

[7] BLM seeks to minimize Citizen Groups' harms by relying on the allegedly limited timing and scope of the Order, BLM Br. 11-13, while simultaneously inflating industry costs by citing non-record estimates from its Suspension rulemaking that are not similarly limited, *id.* at 15 (presenting annual costs for all standards, including those unaffected by the Order). Regardless, even BLM's newest proposed estimates show that rescinding the Rule would only yield small companies an increase of 0.19 percent of annual profits. 83 Fed. Reg. 7,924, 7,940 (Feb. 22, 2018).

sought to avoid compliance altogether. Industry cites *Missouri Pacific Railroad Co. v. City of Omaha*, 235 U.S. 121, 132 (1914), in which the Supreme Court upheld the *denial* of injunctive relief from a regulation, thus requiring compliance. Industry Br. 13, 20. There, the Court merely noted that should compliance prove "physically impossible" in the original timeframe, as alleged, and defendant seek "unwarranted penalties," the petitioner could seek further equitable relief. *Mo. Pac. R.R.*, 235 U.S. at 132. Industry's failure to seek a reasonable accommodation here renders meaningless all of their arguments about harms allegedly caused by not having sufficient time to come into compliance.[8] And while Industry further speculates that BLM "cannot enable operators to comply," Industry Br. 12, BLM itself has never indicated that it lacks the technical ability to implement the Rule, only that it would prefer not to.[9]

Nor is BLM harmed by implementing the Rule. *Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir. 1992) ("[A]n

[8] To the extent an operator pays royalties or faces sanctions it deems improper, Industry Br. 13, these can be recovered from the agency. 30 U.S.C. § 1721a.

[9] The States argue that the compliance costs here are not "ordinary" because BLM is reconsidering the Rule. States Br. 15 (citing *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011)). *Portland Cement* is inapposite. There, the court stayed a requirement only after finding the agency's regulation "arbitrary and capricious." 665 F.3d at 189. Just last year, the D.C. Circuit *rejected* an argument that active reconsideration should affect the status of a final regulation. *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked."). BLM twice chose to expend its "limited agency resources," BLM Br. 15, to unlawfully suspend the standards, which undermines the agency's claim that it lacks the resources needed to implement the Rule.

IV. The Public Interest Demands A Stay.

The public interest in the rule of law and the concrete benefits that will accrue to the public from implementation of the Waste Prevention Rule demand a stay of the Order pending appeal.

Appellees incorrectly portray BLM's multiple unlawful attempts to suspend the Rule, and the Order granting substantially the same relief without considering the required factors, as commonsense steps while BLM reconsiders the Rule. But these actions are not legal, and they undermine the public interest in the rule of law and regulatory certainty.[10] When it issued the Waste Prevention Rule, BLM went through an extensive public process, as the APA requires, and based it on a vast record. The public and regulated entities are entitled to rely on such a duly-promulgated regulation until it is lawfully revised by an agency through the same

[10] BLM cites an EPA filing in ongoing litigation listing instances in which federal agencies have allegedly changed implementation dates pending reconsideration. BLM Br. 5 n.2. Notably, BLM omitted the response to that filing, which demonstrates it is virtually unprecedented for an agency to stay a regulation based only on initial "concerns" and its desire to reconsider the regulation. *See* Pet'rs' Resp. to Court Order, *Air All. Houston v. EPA*, No. 17-1155 (D.C. Cir. Apr. 16, 2018), ECF No. 1726849 (Attached).

process, or set aside by a court after it is found unlawful. *See Clean Air Council*, 862 F.3d at 9. The Order undermines that public interest in certainty by halting a final regulation without finding it unlawful.

A stay of the Order has concrete benefits for the public—it reduces the waste of publicly-owned natural gas, increases royalties, and cuts harmful emissions. These are not "needless[] investment[s]," States Br. 1, but benefits that fulfill the Mineral Leasing Act's purpose of safeguarding the public welfare and preventing waste by promoting "[c]onservation through control," *Boesche v. Udall*, 373 U.S. 472, 481 (1963); 30 U.S.C. §§ 189, 225.[11] The Order forfeits these public benefits in exchange for minor impacts to private entities' profitability merely because BLM may revise the regulation in the future.

CONCLUSION

Because Citizen Groups have satisfied the factors for such relief, this Court should grant Citizen Groups' motion for a stay pending appeal.

[11] While BLM claims that the Order serves the public interest by "promoting energy production, jobs, and economic growth," BLM's own analysis, cited in support of that claim, shows the Order will decrease natural gas production. BLM Br. 18 (citing 82 Fed. Reg. 58,050, 58,050 (Dec. 8, 2017)); McVay/Hull Decl. ¶ 7.

Respectfully submitted this 7th day of May, 2018,

/s/ Robin Cooley
Robin Cooley, CO Bar # 31168
Joel Minor, CO Bar # 47822
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
Phone: (303) 623-9466
Facsimile: (303) 623-8083
rcooley@earthjustice.org
jminor@earthjustice.org

Attorneys for Intervenor-Respondent-Appellants Natural Resources Defense Council, Sierra Club, The Wilderness Society, and Western Organization of Resource Councils

Susannah L. Weaver, DC Bar # 1023021
Donahue, Goldberg & Weaver, LLP
1111 14th Street, NW, Suite 510A
Washington, DC 20005
Phone: (202) 569-3818
susannah@donahuegoldberg.com

Peter Zalzal, CO Bar # 42164
Rosalie Winn, CA Bar # 305616
Samantha Caravello, CO Bar # 48793
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
Phone: (303) 447-7214 (Mr. Zalzal)
Phone: (303) 447-7212 (Ms. Winn)
Phone: (303) 447-7221 (Ms. Caravello)
pzalzal@edf.org
rwinn@edf.org
scaravello@edf.org

Attorneys for Intervenor-Respondent-Appellant Environmental Defense Fund

Laura King, MT Bar # 13574
Shiloh Hernandez, MT Bar # 9970
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
Phone: (406) 204-4852
king@westernlaw.org
hernandez@westernlaw.org

Erik Schlenker-Goodrich, NM Bar # 03-196
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, NM 87571
Phone: (575) 613-4197
eriksg@westernlaw.org

Attorneys for Intervenor-Respondent-Appellants Center for Biological Diversity, Citizens for a Healthy Community, Diné Citizens Against Ruining Our Environment, Earthworks, Montana Environmental Information Center, National Wildlife Federation, San Juan Citizens Alliance, WildEarth Guardians, Wilderness Workshop, and Wyoming Outdoor Council

Darin Schroeder, KY Bar # 93282
Ann Brewster Weeks, MA Bar # 567998
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
Phone: (617) 624-0234
dschroeder@catf.us
aweeks@catf.us

Attorney for Intervenor-Respondent-Appellant National Wildlife Federation

Scott Strand, MN Bar # 0147151
Environmental Law & Policy Center
15 South Fifth Street, Suite 500
Minneapolis, MN 55402
Phone: (312) 673-6500
sstrand@elpc.org

Rachel Granneman, IL Bar # 6312936
Environmental Law & Policy Center
35 E. Wacker Drive, Suite 1600
Chicago, IL 60601
Phone: (312) 673-6500
rgranneman@elpc.org

Attorneys for Intervenor-Respondent-Appellant Environmental Law & Policy Center

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2018 I electronically filed the foregoing **CITIZEN GROUPS' REPLY IN SUPPORT OF MOTION FOR STAY PENDING APPEAL** using the court's CM/ECF system which will send notification of such filing to all counsel of record.

Date: May 7, 2018

/s/ Robin Cooley
Robin Cooley
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 623-9466
rcooley@earthjustice.org

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5; and

(2) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Sophos Endpoint Advanced, Version 10.8.1.2, May 7, 2018 and according to the program are free of viruses.

Date: May 7, 2018

/s/ Robin Cooley
Robin Cooley
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 623-9466
rcooley@earthjustice.org

CERTIFICATE OF COMPLIANCE

I certify with respect to the foregoing that:

(1) This document complies with the type-volume limitation of the Court's May 4, 2018 Order, because it contains 4085 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

(2) This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word 2016 in 14 point font size and Times Roman.

/s/ Robin Cooley
Robin Cooley
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 623-9466
rcooley@earthjustice.org