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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STATE OF CALIFORNIA; et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT; et al.,

Defendants.

AND RELATED ACTIONS.

Case No. 3:17-cv-07186 WHO

Related to Case No. 3:17-cv-07187 WHO

INTERVENORS WESTERN ENERGY ALLIANCE AND INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

Filed Concurrently with: Declaration of Kathleen C. Schroder; Declaration of Kathleen M. Sgamma; [PROPOSED] ORDER

Judge:	Hon. William H. Orrick
Date:	Feb. 7, 2018
Time:	2:00 p.m.
Courtroom.:	2, 17th Floor
Trial Date:	None Set

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TABLE OF AUTHORITIES

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FEDERAL STATUTES

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TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Proposed-Intervenors WESTERN ENERGY ALLIANCE and INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA (collectively, "Proposed Intervenors") hereby oppose the Motions for Preliminary Injunction filed by Plaintiffs STATE OF CALIFORNIA; et al. (Doc. 3, Case No. 3:17-cv-07186 WHO) and by Plaintiffs SIERRA CLUB; et al. (Doc. 4, Case No. 3:17-cv-07187 WHO).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs invoke an extraordinary remedy and ask this Court to preliminarily enjoin a final rule validly issued by the Bureau of Land Management (BLM) (the "Suspension Rule").[1] The Suspension Rule reflects BLM's reasoned decision to relieve oil and natural gas operators from imminent compliance deadlines, and millions of dollars in compliance costs, while BLM reexamines its flawed 2016 Venting and Flaring Rule ("2016 Rule").

Plaintiffs paint the Suspension Rule as a politically-charged effort to stymie an element of President Obama's legacy. Plaintiffs, however, ignore that the 2016 Rule was hastily finalized in the waning days of the Obama Administration because of political expedience, that its costs vastly exceed its benefits, and that it exceeds BLM's statutory authority. For these reasons, United States District Court for the District of Wyoming has cast serious doubt about its legality. Turning a blind eye to these fundamental flaws, Plaintiffs now seek a new venue to immediately compel oil and natural gas operators to expend millions of dollars to comply with a rule that is in the process of being rewritten.

Plaintiffs fail to establish that the Suspension Rule will cause any direct harms to them, let alone the type of severe, immediate, and irreparable harms preliminary injunctions are intended to prevent. Plaintiffs contort logic by arguing the Court must upset the status quo and put the 2016 Rule back into effect to compel future methane reductions. Moreover, the methane reductions at

[1] Plaintiffs inaccurately characterize this rule as the "Suspension Rule" even though it postponed, rather than suspended, numerous compliance deadlines. For the Court's convenience, this brief uses the term "Suspension Rule."

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issue are effectively non-existent and have no discernable impact on global climate change or air quality. Because Plaintiffs have not demonstrated immediate and irreparable harm from the Suspension Rule or any of the other elements necessary for preliminary relief, this Court should deny the requested injunction.

II. OVERVIEW OF THE VENTING AND FLARING RULEMAKING

A. A Political Effort to Implement Climate Change Policy

At issue in this case is the latest step in an administrative rulemaking effort that began in 2013. Then, President Obama published a Climate Action Plan that set a target to reduce nationwide greenhouse gas emissions by 2020. *See* Declaration of Kathleen C. Schroder ("Schroder Decl."), Ex. A. In March 2014, the White House released its "Strategy to Reduce Methane Emissions" ("Methane Strategy"), which called on BLM to update its "standards to reduce venting and flaring from oil and gas production on public lands." *See* Schroder Decl., Ex. B. To implement the Methane Strategy, the White House announced a goal to "cut methane emissions from the oil and gas sector by 40–45 percent from 2012 levels by 2025." *See* Schroder Decl., Ex. C. This goal was only achievable by regulating existing, not just new and modified, oil and gas wells.[2]

Following release of the Methane Strategy in 2014, BLM began holding workshops to develop the rule. *See* 81 Fed. Reg. 6,616, 6,617 (Feb. 8, 2016). BLM released the draft 2016 Rule in early 2016 and, after receiving approximately 1,000 unique comments, released a final rule that November. 81 Fed. Reg. 83,008, 83,010 (Nov. 18, 2016). The outcome of the presidential election appears to have prompted BLM to expedite the final rule. BLM hastily published the final rule in the Federal Register a mere ten days after Election Day, with numerous typographical errors. *See id.* at 83,008; 81 Fed. Reg. 88,634 (Dec. 8, 2016) (errata). The 2016 Rule took effect

[2] *See, e.g.*, Adela Jones & Andres Restrepo, *Defending the EPA's Methane Rule from Industry Legal Challenges*, Sierra Club (Aug. 22, 2016), at https://www.sierraclub.org/planet/2016/08/defending-epa-s-methane-rule-industry-legal-challenges-0 (EPA's rule "limiting emissions from new sources is not nearly sufficient to meet . . . the 40-45 percent emission reduction target . . . . [T]he next target for pollution safeguards must be existing oil and gas equipment").

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on January 17, 2017—three days before the presidential inauguration.

B. The 2016 Rule Regulates Air Quality

The 2016 Rule's title as a "waste prevention" rule is BLM's attempt to tether the rule to a historical principal of oil and gas conservation.[3] Despite its title, the 2016 Rule has three distinct objectives with little if any relationship to waste prevention. First, the 2016 Rule regulates methane emissions from all oil and gas facilities developing federal and Indian leases by limiting the venting and flaring of production, and fugitive air emissions. 43 C.F.R. pt. 3170, subpart 3179. Second, the 2016 Rule allows BLM to adjust the royalty rate on new federal oil and gas leases. 43 C.F.R. § 3103.3-1. Finally, the 2016 Rule defines when operators may use oil and natural gas from federal leases for production activities without incurring a royalty obligation. 43 C.F.R. pt. 3170, subpart 3178.

Subpart 3179 regulating methane emissions generated the most controversy because these provisions are, at their core, air quality regulations solely within the purview of the Environmental Protection Agency (EPA). The 2016 Rule most conspicuously regulates air quality by applying EPA's regulations at 40 C.F.R. part 60, subpart OOOOa ("Quad Oa"), which address methane emissions from new and modified oil and natural gas facilities, to existing facilities on federal and Indian leases. As with Quad Oa, the 2016 Rule requires oil and natural gas operators to limit emissions during well completions, implement a leak detection and repair (LDAR) program to identify and address leaks of fugitive emissions from certain production equipment, replace pneumatic controllers and pneumatic diaphragm pumps with equipment meeting the rule's specifications, and control gas from storage tanks. *See* 43 C.F.R. §§ 3179.102, 3179.201–3179.203, 3179.301–3179.305. BLM recognized these are established air quality control requirements within the oil and natural gas industry. *See, e.g.*, 81 Fed. Reg. at 83,012 (explaining that the subpart 3179 requirements are based on Colorado, Wyoming, and other state and federal air quality regulations).

[3] The concept of waste appears in passing in the Mineral Leasing Act of 1920, as amended (MLA); it directs federal oil and gas lessees to "use all reasonable precautions to prevent waste of oil and gas" and follow rules "for the prevention of waste." 30 U.S.C. §§ 187, 225.

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In addition, the 2016 Rule limits the natural gas that operators may vent and flare from oil and gas facilities. The 2016 Rule directs operators to capture specified percentages of the natural gas they produce from federal and Indian leases either on a lease, unit, or communitized area[4] basis or averaged within a state or county; these percentages increase gradually over time, beginning with 85 percent in 2018 and increasing to 98 percent after 2026. 43 C.F.R. § 3179.7(b). The 2016 Rule also prohibits all venting of natural gas from oil and gas facilities, except in limited, defined circumstances. *Id.* § 3179.6(a).

Although the final 2016 Rule took effect on January 17, 2017, 81 Fed. Reg. at 83,008, the rule imposed a compliance deadline of January 17, 2018 for provisions that required significant new equipment and infrastructure, including most of the requirements in subpart 3179. *See* 81 Fed. Reg. at 83,082–87 (43 C.F.R. §§ 3179.7(b), 3179.9(b)(1), 3179.201(d), 3179.202(h), 3179.203(c), 3179.301(f)).

C. Litigation in the District of Wyoming

Subpart 3179 of the final 2016 Rule suffers multiple fundamental flaws. Most significant, the 2016 Rule usurps EPA's exclusive authority to regulate air quality. Although BLM cited a smattering of federal statutes as authority for the 2016 Rule, *see* 81 Fed. Reg. at 83,019, BLM principally relied on the MLA's dictate to manage waste associated with federal oil and gas development. *See id.* at 83,019–20. Hidden in the mousehole of the MLA's century-old directive that lessees "use all reasonable precautions to prevent waste,"[5] BLM found sweeping new authority to regulate methane emissions from all new, modified, and existing oil and natural gas facilities on federal and Indian leases.

BLM's regulation of air quality at existing facilities in lieu of EPA doing so is not simply an issue of form over substance. Section 111(d) of the Clean Air Act requires EPA to follow

[4] Unitization and communitization allow multiple leases to be aggregated and efficiently developed as a single lease. *See* 43 C.F.R. pt. 3100, subparts 3105 and 3180 (2017).

[5] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

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rigorous procedures before it can regulate existing sources. Most significant here, the Clean Air Act's procedures would have required EPA to consider the costs of imposing emission controls during the remaining useful life of the 96,000 existing oil and natural gas wells subject to the rule, 85 percent of which are barely economic, marginal producing wells. *See* 42 U.S.C. § 7411(d); 40 C.F.R. §§ 60.22(b)(3), (5) (2017); 81 Fed. Reg. at 83,009. Section 111(d) of the Clean Air Act also would have allowed the states to tailor any standard to suit their purposes. These are critical considerations. Imposing air quality controls at existing facilities is "inherently different than for new sources, because controls cannot be included in the design of an existing facility and because physical limitations may make installation of particular control systems impossible or unreasonably expensive in some cases." 40 Fed. Reg. 53,340, 53,344 (Nov. 17, 1975).

BLM, however, elected to bypass the Clean Air Act's process for regulating existing sources, citing the "length of [that] process and uncertainty regarding the final outcome." 81 Fed. Reg. at 83,019. As a result, BLM never meaningfully considered the costs of the 2016 Rule on existing oil and gas facilities, including whether such costs were justified over the remaining useful life of these older facilities. BLM did not calculate the per-well costs of the rule, which is the only metric that could inform whether the requirements being imposed are cost effective.[6] *See id*. at 83,068–69. Nor did BLM provide states the function the Clean Air Act requires. BLM's decision to usurp EPA's Clean Air Act authority and regulate emissions from existing oil and natural gas facilities is unlawful and directly affected the rule's substantive outcome.

The 2016 Rule also is inconsistent with BLM's authority to manage waste under the MLA. Although the MLA does not define "waste" and definitions vary slightly, waste is generally considered to be a "preventable loss [of oil and gas] the value of which exceeds the cost of avoidance.[7] Howard R. Williams & Charles J. Meyers, *Manual of Oil and Gas Terms* 1135

[6] Instead, BLM calculated an average cost per operator; a meaningless metric given the wide range of operators affected. *See* 81 Fed. Reg. at 83,013. Western Energy Alliance calculated the per-well cost of compliance to be $110,000. *See* Schroder Decl., Ex. E.

[7] Embedded in this definition is the principle that not all lost gas is waste. Thus, BLM is not obligated to "prevent" all waste, nor has the agency ever attempted to do so. *See* 30 U.S.C. §§ 187, 225.

(Patrick H. Martin & Bruce M. Kramer eds., 16th ed. 2015). The 2016 Rule, however, disregards the costs/benefit analysis implicit in the concept of waste. According to BLM, the 2016 Rule will impose annual costs ranging between $110 million and $279 million on operators, yet only will result in the additional capture of gas valued between $20 million and $157 million per year. *See* Schroder Decl., Ex. D. Additionally, the 2016 Rule will waste 112 million barrels of developable oil by causing wells to be prematurely shut in. *See* Schroder Decl., Ex. E. Thus, the 2016 Rule fails to manage waste as contemplated by the MLA.

Finally, the 2016 Rule reflects arbitrary and capricious decision-making because its costs vastly outweigh its *de minimis* benefits. Because in pure "waste" terms the 2016 Rule is nowhere close to cost-effective, BLM could only justify the rule by using the "social cost of methane" to estimate "global" benefits.[8] In other words, only by quantifying air quality "benefits" and then extrapolating them globally could BLM justify the costs of the 2016 Rule. This is an inherently arbitrary use of BLM's MLA waste management authority.

Because of these (and other) fundamental flaws, Proposed-Intervenors Western Energy Alliance and the Independent Petroleum Association of America, the States of North Dakota and Texas, and the States of Wyoming and Montana filed motions for preliminary injunction in the District of Wyoming to prevent the 2016 Rule from taking effect. *See* Schroder Decl., Ex. F (Order on Mots. for Prelim. Inj., *Wyoming v. U.S. Dep't of the Interior*, Nos. 2:16-cv-0285-SWS, 2:16-cv-0280-SWS, 2017 WL 161428 (D. Wyo. Jan. 16, 2017) ("Wyo. Prelim. Inj. Order")) at *2.

The District of Wyoming court viewed the 2016 Rule critically, observing that it "upends the CAA's cooperative federalism framework and usurps the authority Congress expressly delegated under the CAA to the EPA, states, and tribes to manage air quality," and "conflicts with the statutory scheme under the CAA for regulating air emissions from oil and natural gas sources, particularly by extending its application of overlapping air quality provisions to existing facilities,

[8] The "social cost of methane" is a variation on the "social cost of carbon," which attempts to estimate the global "economic damages associated with a small increase in carbon dioxide." Schroder Decl., Ex. G; *but see* Exec. Order No. 13,783 of March 28, 2017, Promoting Energy Independence and Economic Growth, 82 Fed. Reg. 16,093 § 4 (Mar. 31, 2017) (withdrawing guidance on use of social cost of methane in regulatory impact analyses).

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which the EPA itself has not yet done." *See* Schroder Decl., Ex. F (Wyo. Prelim. Inj. Order) at *17, *18. The court characterized BLM as "arrogantly" justifying its attempt to impose air quality regulation on existing sources "by expressing its dissatisfaction with the length of the CAA process and the uncertainty of the resulting outcome." *Id.* at *19 n.10. The court also observed that by relying on the social cost of methane to quantify the benefits of the 2016 Rule, BLM "appears to be propping up the benefits of the [2016 Rule] in air quality terms." *Id.* at *20–21.

Although noting "there are undoubtedly certain and significant compliance costs attached to the Rule," the court declined to preliminarily enjoin the 2016 Rule. The court determined that any expenses were not immediate enough to constitute irreparable harm. *See* Schroder Decl., Ex. F (Wyo. Prelim. Inj. Order) at *25. Further, the Court determined that, at such a preliminary stage of litigation, the Petitioners had not established an unequivocal right to relief. *Id.* at *22.

Since June, merits briefing has been delayed to accommodate BLM's efforts to suspend and revise the 2016 Rule. *See* Schroder Decl., Ex. H (Order Granting Mot. or Extension of the Merits Briefing Deadline, *Wyoming v. U.S. Dep't of the Interior*, Nos. 2:16-cv-0285-SWS, 2:16-cv-0280-SWS, at 2, 4 (D. Wyo. Oct. 30, 2017). Following release of the final Suspension Rule, this litigation is currently stayed. *See* Schroder Decl., Ex. I (Order Granting Joint Mot. to Stay, *Wyoming v. U.S. Dep't of the Interior*, Nos. 2:16-cv-0285-SWS, 2:16-cv-0280-SWS (D. Wyo. Dec. 29, 2017) ("Stay Order").

D. A Postponement, Followed by a Delay

On March 28, 2017, the President issued Executive Order No. 13,783, Promoting Energy Independence and Economic Growth, 82 Fed. Reg. 16,093 (Mar. 31, 2017). This Executive Order directed the Secretary of the Interior to review the 2016 Rule for consistency with its policies, including promoting domestic energy and reducing regulatory burdens. *Id.* at 16,093, 16,096 (§§ 1(a), 7(b)); *see also* Ex. J, Secretarial Order No. 3349 (Mar. 29, 2017) (§ 5(c)(ii) (similar direction from the Secretary of the Interior to BLM)).

On June 15, 2017, BLM published a notice in the Federal Register that it was postponing

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the 2018 compliance deadlines in the 2016 Rule pursuant to § 705 of the APA ("705 Stay").[9] 82 Fed. Reg. 27,430 (June 15, 2017). The State Plaintiffs and many of the Citizen Group Plaintiffs challenged BLM's use of § 705 to postpone compliance deadlines in this judicial district. *See* Schroder Decl., Ex. K (Order Granting Pls.' Mots. for Summ. J., *California v. U.S. Bureau of Land Mgmt.*, Nos. 17–cv–03804–EDL, 17–cv–3885–EDL, 2017 WL 4416409 (N.D. Cal. Oct. 4, 2017). On October 4, 2017, Magistrate Judge Laporte determined BLM had improperly applied § 705 and invalidated the 705 Stay. *See id.* at *22. This decision caused the January 17, 2018 compliance deadlines in the 2016 Rule, which were suspended for nearly four months, to spring back in effect, leaving operators with just over three months to comply with the upcoming January 17, 2018 deadlines.

On October 5, 2017, BLM published the draft Suspension Rule, which proposed to temporarily suspend or delay certain January 17, 2018 compliance deadlines by one year, until January 17, 2019. 82 Fed. Reg. 46,458 (Oct. 5, 2017). BLM explained it was proposing the Suspension Rule "to avoid imposing temporary or permanent compliance costs on operators for requirements that might be rescinded or significantly revised in the near future" and to avoid expending scarce agency resources in implementation of transitory requirements. *Id.* at 46,460.

BLM published the final Suspension Rule on December 8, 2017, with an effective date of January 8, 2018. *See* 82 Fed. Reg. 58,050 (Dec. 8, 2017). The Suspension Rule deferred all compliance deadlines in subpart 3179 of January 17, 2018 by one year to January 17, 2019. *Id.* at 58,072–73 (43 C.F.R. §§ 3179.7(b), 3179.9(b), 3179.201–203 3179.301(c)). With respect to the portions of subpart 3179 that required compliance on January 17, 2017, BLM delayed the obligations related to well drilling, well completions, and downhole liquids maintenance until January 17, 2019. *Id.* (43 C.F.R. §§ 3179.101–102, 3179.204).

Despite the Wyoming court's characterization of litigation over the Suspension Rule as

[9] Section 705 of the APA allows an agency to "postpone the effective date of action taken by it, pending judicial review" when the agency finds that "justice so requires." 5 U.S.C. § 705.

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"intertwined with overlapping issues embedded in a merits analysis of the [2016 Rule],"[10] the Plaintiffs nonetheless elected to challenge the Suspension Rule before this Court, forcing the parties to expend significant time and resources bringing this Court up to date with the lengthy substantive and procedural history of this case.

III. ARGUMENT

Neither the State nor the Citizen Group Plaintiffs have demonstrated they meet any of the elements required for the extraordinary relief of a preliminary injunction. Plaintiffs' claims fall particularly short on two elements imperative to such extraordinary relief: (1) the establishment of clear, serious, imminent, and actual irreparable harms; and (2) demonstrating the balance of equities tip clearly in their favor. With regard to the former, Plaintiffs largely allege global climate change harms based on reductions in methane emissions that would have occurred in 2018 if the 2016 Rule had remained in effect but now are delayed for one year. Plaintiffs' claims are based on nearly imperceptible levels of methane emissions that do not adversely and materially impact these Plaintiffs. These speculative harms also are inadequate to tip the balance of the equities in the Plaintiffs' favor, particularly when weighed against the immediate, clear, and irreparable harms that oil and gas operators will face if the Suspension Rule is enjoined. The Court should deny Plaintiffs' Motions.

A. The Burden Required to Demonstrate an Injunction is Required to Upset the Status Quo is Extremely High

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff "bears the heavy burden" of showing "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* (quoting *Winter*, 555 U.S. at 20); *Ctr. for Competitive Politics v. Harris*, 784 F.3d 1307, 1312 (9th Cir. 2015).

[10] Schroder Decl., Ex. H at *4 n.1.

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Preliminary injunctions are especially disfavored where a plaintiff seeks to disrupt the status quo through mandatory injunctive relief. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The Court of Appeals has observed that mandatory injunctions are permissible when "extreme or very serious damage will result" absent a change in the status quo. *See, e.*g., *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

Here, the Suspension Rule largely preserves the regulatory status quo by delaying the January 17, 2018 compliance deadlines for one year. Plaintiffs seek to disrupt the status quo while their litigation is pending without any, much less extreme or very serious, alleged harm from that status quo. Plaintiffs fail to meet the extremely high burden required for a mandatory injunction to issue, nor as explained next, can they meet any of the four elements necessary for a preliminary injunction to issue.

B. Plaintiffs Have Not Demonstrated the Suspension Rule Causes Any Clear, Certain, or Serious Irreparable Harm

Because a plaintiff must clearly show that injunctive relief is warranted, the courts require far more than the mere possibility of irreparable harm. The Supreme Court has made clear that "plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is likely in the absence of an injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *accord Friends of the Wild Swan v. Weber*, 767 F.3d 936, 946 (9th Cir. 2014). To establish a likelihood of irreparable harm, the movant must do more than set forth conclusory or speculative allegations. *Titaness Light Shop, LLC v. Sunlight Supply, Inc.*, 585 F. App'x 390, 391 (9th Cir. 2014). Rather, a plaintiff must show that the injury is "both certain and great, actual and not theoretical, beyond remediation, and of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (internal quotation and citation omitted).

At the outset, it important to observe that Plaintiffs' assertions of irreparable harm are undermined by their positions in the District of Wyoming litigation. Here, Plaintiffs argue that a preliminary injunction is necessary to compel future emissions reductions that otherwise would not occur in 2018. *See, e.g.*, Conservation & Tribal Groups' Memo. of Points & Authorities in

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Supp. of Mot. for Prelim. Inj., *Sierra Club v. Zinke*, No. 3:17-cv-07187, ECF No. 4-1, at 19 (N.D. Cal. filed Dec. 19, 2017) ("Citizen Groups' Br."). In Wyoming, however, the Citizen Group Plaintiffs argued that some emission reductions would occur regardless of whether the 2016 Rule is in effect. *See* Schroder Decl., Ex. L ("Citizen Groups' Wyo. Resp. Br.") (arguing the 2016 Rule is "based on measures that are already widely deployed in leading States and by leading companies"). Similarly, in Wyoming, the State Plaintiffs acknowledged that some emission reductions would not occur even if the 2016 Rule is in effect because "multiple economic exemptions in the Rule" allow companies to avoid compliance. *See* Schroder Decl., Ex. M at 16 ("States' Wyo. Resp. Br."). These irreconcilable positions speak to the credibility of Plaintiffs' claimed imminent, irreparable harms.

1. Plaintiffs' Cannot Demonstrate Irreparable Climate Change Harms

Plaintiffs' charges of irreparable harm largely rest on alleged climate change impacts to their states and individual members caused by foregone reductions in methane emissions over the next year. BLM estimates the Suspension Rule will result in methane emissions of 175,000 tons in 2018. *See* 82 Fed. Reg. at 58,056–57. Plaintiffs incorrectly characterize these emissions as "additional." The Suspension Rule will not result in any more methane emissions than occurred in 2017, and possibly even less. *See* Section III.B, *supra*.

Regardless, the Citizen Groups' statement that "[m]ethane emissions will likewise be much greater as a result of the Amendment" lacks credibility. *See* Schroder Decl., Ex. L at 23 (emphasis added). In terms of global climate impacts, the foregone emission reductions are imperceptible, constituting approximately 0.061 percent of global methane emissions and 0.0092 percent of global greenhouse emissions.[11] *See* Schroder Decl., Ex. N. Domestically, the foregone reductions represent only 0.61 percent of all methane emissions in 2015. *See* Schroder Decl., Ex. O.

[11] Given that Plaintiffs have framed their harms in terms of global climate impacts, it is instructive to the irreparable harm analysis to place the estimated methane emissions from the Suspension Rule into a global context. *See* Pls.' Notice of Mot. & Mot. for Prelim. Inj.; Mem. of Points & Authorities, No. 3:17-cv-07186, ECF No. 3, at 20 ("States' Br.") (arguing that BLM must consider the "full, global impacts of these emissions"); *see also* Citizen Groups' Br. at 23.

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More significant, Plaintiffs fail to establish any immediate or irreparable harm from the foregone emission reductions. State Plaintiffs vaguely allege that the foregone reductions will "exacerbate" climate change impacts in California and New Mexico but fail to specify such impacts. *See* States' Br. at 23–24. Similarly, the Citizen Groups allege generic impacts like "increased likelihood of extreme weather events, including drought and floods, rising sea levels, and the loss of native plant and animal species." Citizen Groups' Br. at 23.

The Citizen Groups admit that such general allegations of climate harms are inadequate to support the extraordinary remedy of preliminary relief. Citizen Groups' Br. at 25 n.8 ("Establishing injury-in-fact for the purposes of standing is less demanding than demonstrating irreparable harm to obtain injunctive relief."). Even to establish standing, the Ninth Circuit required a plaintiff to prove "that the [climate change] injury is causally linked or fairly traceable to the Agencies' alleged misconduct, and not the result of misconduct of some third party not before the court." *Wash. Envtl. Council v. Bellon*, 732 F.3d 1131, 1139–41 (9th Cir. 2013) (quotation omitted); *see also Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 867 (9th Cir. 2012) ("global warming . . . is the result of a vast multitude of emitters worldwide whose emissions mix quickly, stay in the atmosphere for centuries, and, as a result, are undifferentiated in the global atmosphere"). Other courts have skeptically viewed unspecific claims of climate change harms. *See, e.g., Amigos Bravos v. U.S. Bureau of Land Mgmt.*, 816 F. Supp. 2d 1118, 1139 (D. N.M. 2011) (noting lack of scientific "consensus with regard to what the specific effect of climate change will be on individual geographic areas").

Here, Plaintiffs' allegations of climate change harms depend entirely on an unspecified and highly attenuated chain of conjecture that falls well short of this Court's requirement that irreparable harm be clear, certain, great, and imminent. It is absurd to argue the Suspension Rule must be overturned within the next few weeks to prevent Plaintiffs from suffering climate change harms. *See* Citizen Groups' Br. at 23; State Br. at 24; *compare with* Order Denying FRCP 12(b)(1) Dismissal & Granting Provision Relief, *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Security*, No. 3:17-cv-05211-WHA, ECF No. 234, at *43-44 (N.D. Cal. Jan. 9, 2018) (finding the possibilities of deportation and prolonged separation from family to constitute

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irreparable harm).

2. Plaintiffs Fail to Identify Immediate Public Health Impacts

Plaintiffs' remaining allegations of irreparable harm are vague, speculative, general claims of environmental and public health harms. The Citizen Groups Plaintiffs claim that "additional" or "excessive" emissions of air pollutants would have been avoided had the 2016 Rule remained in effect. *See* Citizen Groups' Br. at 20–21 (also generally describing impacts of ozone exposure). The State Plaintiffs make similar general, unspecific claims of harm from air pollution.[12] *See* States' Br. at 22. These general claims are insufficient and far less than what is required to demonstrate irreparable harm. *See, e.g.*, *Idaho Sporting Cong. Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (finding irreparable harm where old growth forests would "take hundreds of years to reproduce").

Furthermore, the 2016 Rule does not quantify putative benefits to public health or the environment from non-methane air pollutant reductions.[13] *See* Schroder Decl., Ex. D at 6; Ex. Q. This lack of data in the administrative record regarding estimated adverse public health benefits from these pollutants reinforces that Plaintiffs' claims are entirely speculative. Further, there are numerous federal and state requirements in place that will continue to reduce these other emissions whether the 2016 Rule is in place or not.[14] *See* Schroder Decl., Ex. R at 23-26. In sum, Plaintiffs

[12] State Plaintiffs imply that the Suspension Rule will somehow exacerbate a methane "hot spot" in New Mexico's San Juan Basin. States' Br. at 23 (citing Declaration of Sandra Ely). There is scientific uncertainty, however, related to the cause of the methane "hot spot" over the Four Corners region, including the fact naturally occurring methane seepage has long been prolific throughout the region. *See* Schroder Decl., Ex. P, James Fenton, "Geologist: Coal Outcrops Cause Methane Hot Spot," Farmington Daily Times (May 12, 2016).

[13] Rather, Volatile Organic Compound ("VOC") reductions were only considered "incidental" to the 2016 Rule. *See* 81 Fed. Reg. at 83,014. In addition, BLM estimated some beneficial impact to public health from the 2016 Rule but provided no further analysis of that impact. *See* Schroder Decl., Ex. Q at 30-31.

[14] Ironically, California points out that because of the state's own rules to limit pollution from oil and gas operations, the Suspension Rule likely will only result in an additional 150 tons of VOC emissions and 4.9 tons of toxic air contaminants." States' Br. at 22. Assuming California's methodology is accurate, this equates to an increase of approximately 0.0006% of the Rule's annual estimated VOC and HAP emissions—hardly grounds for a preliminary injunction. *Cf.* 81 Fed. Reg. at 83,014 n.31 (the Rule is expected to reduce 250,000-267,000 tons per year in VOCs and hazardous pollutants).

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alleged irreparable air quality and public health harms are speculative, unsupported by, and conflict with, evidence on the record.

3. Judicial Precedent Does Not Support a Preliminary Injunction

Plaintiffs' claims that environmental injury *per se* constitutes irreparable harm goes too far and misrepresents the cited case law, which is all distinguishable in material respects. The Supreme Court's decision in *Beame v. Friends of the Earth*, 434 U.S. 1310 (1977), cited by the Citizen Groups, addressed harms far more serious, including carbon monoxide levels "over five times the federal health standards." *Id*. at 1312–14; *see also Friends of the Earth v. Carey*, 535 F.2d 165, 171 (2d Cir. 1976); *Sierra Club v. Ruckelshaus*, 344 F. Supp. 253, 256 (D. D.C. 1972). The Citizen Groups Plaintiffs have not alleged, nor can they demonstrate, that any federal or other air quality standard will be exceeded, nor have they cited any record or other evidence to support the individual harms cited.

The Citizen Groups also err in their reliance on *Southern Eastern Pennsylvania Transportation Authority v. International Association of Machinists and Aerospace Workers*, 708 F. Supp. 659 (E.D. Penn. 1989). Although air pollution was one reason for the preliminary injunction, the court was primarily focused on the serious and substantial harm to the transit authority and public as a result of a workers' strike, including a "shutdown of commuter rail lines that would "paralyze" the Philadelphia metropolitan area. *Id*. at 663. Plaintiffs irreparable harm allegations bear no resemblance to the serious, identifiable harms at issue in these cases.[15]

C. The Balance of Equities Does Not Support an Injunction.

Not only have Plaintiffs failed to demonstrate the requisite harm, the balance of equities actually tips decidedly against preliminary relief. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To assess whether Plaintiffs have met this burden, the Court has a "duty . . . to balance the interests of all parties and weigh the damage to each." *Stormans, Inc. v. Selecky*, 586

[15] By focusing their irreparable harm arguments almost exclusively on climate change and air pollution, Plaintiffs reinforce that the 2016 Rule had very little to do with waste prevention.

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F.3d 1109, 1138 (9th Cir. 2009) (citation omitted). "Economic harm may indeed be a factor in considering the balance of equitable interests." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010). Here, the significant economic harm to the oil and gas industry that will result from enjoining the Suspension Rule overwhelmingly outweighs the Plaintiffs' speculative and generalized alleged harms.

First, a decision enjoining the Suspension Rule will immediately harm operators because full compliance with the 2016 Rule cannot be immediately achieved. BLM already determined that operators required one year to comply with many of the 2016 Rule's key provisions.[16] *See* 81 Fed. Reg. at 83,082–88 (43 C.F.R. §§ 3179.7(b)(1), 3179.201(d), 3179.202(h), 3179.203(c), 3179.301(f)). The 705 Stay, however, halted operators' obligation to comply with the January 17, 2018 compliance deadline for 111 days—nearly one-third of the time necessary to comply with the 2016 Rule. *See* Schroder Decl., Ex. S; Declaration of Kathleen M. Sgamma, ¶ 11.

When the 705 Stay was invalidated and the 2016 Rule was reinstated on October 4, 2017, it was not possible in all circumstances for operators to fully comply by the January 2018 deadline. Larger operators may require months to assemble crews and travel to every site to perform initial LDAR inspections. *See* Schroder Decl., Ex. S, Sgamma Decl., ¶ 17. Similarly, operators require time to order and install necessary equipment. *Id.* The 111-day period caused operators to delay planning and preparing for the January 17, 2018 compliance deadlines. *Id.* ¶ 11; *see, e.g.*, *Yellow Transit Freight Lines, Inc. v. United States*, 221 F. Supp. 465, 471 (N.D. Tex. 1963) ("The citizen is entitled to rely upon [a] regulation until it is set aside or declared by court or administrative agency to be invalid."). The Suspension Rule finalized on December 8, 2017, has again caused operators to delay preparing for January 17, 2018 compliance deadlines. Ex. S, Decl. of K. Sgamma ¶ 15. Thus, enjoining the Suspension Rule will immediately harm operators by requiring instantaneous compliance with the 2016 Rule, which cannot be

[16] Further, the one-year compliance period was inadequate. *See* Waste Prevention, 81 Fed. Reg. at 83,058-59 ("Many commenters stated that one year is insufficient to replace high-bleed pneumatic controllers . . . ."), 83,061 (stating that commenters recommended one to three-year compliance period for tanks).

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accomplished.

Compounding this harm, an injunction of the Suspension Rule will require operators to expend approximately $115 million to come into compliance with the 2016 Rule. This amount is 44 times greater than the royalty Plaintiffs maintain will be lost by leaving the Suspension Rule in effect. *See* Citizen Groups' Br. at 24; States' Br. at 25. If the Suspension Rule is later upheld, the operators cannot recover these expenditures. *See Dominguez v. Schwarzenegger*, No. C 09–02306 CW, 2010 WL 2673715, at *5 (N.D. Cal. July 2, 2010) (finding irreparable harm when monetary damages are unavailable). It is inherently inequitable to require operators to expend such significant, unrecoverable amounts to comply with a rule that may change.

These immediate and irreparable harms to operators from enjoining the 2016 Rule are clear and outweigh the speculative harms alleged by Plaintiffs. Accordingly, the balance of harms tips decidedly against preliminary relief.

D. Plaintiffs Have Not Demonstrated a Likelihood of Success on the Merits

1. Agencies May Revisit Their Rules and Policies

Challenges to agency action are reviewed under the arbitrary and capricious standard of review under the APA, 5 U.S.C. §§ 701–706. An agency must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Wildwest Inst. v. Kurth*, 855 F.3d 995, 1002 (9th Cir. 2017) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Agencies have the flexibility to review and revise their rules as they deem necessary. *See Motor Vehicle Mfrs. Ass'n* 463 U.S. at 42 ("regulatory agencies do not establish rules of conduct to last forever . . . and that an agency must be given ample latitude to adapt their rules and policies to the demands of changing circumstances") (internal quotation and citation omitted). So long as the agency "suppl[ies] a reasoned analysis" to support a policy change, *id.* at 57, the "law does not require the explanation to be exhaustive." *Modesto Irr. Dist. v. Gutierrez*, 619 F.3d 1024, 1035 (9th Cir. 2010).

To supply a reasoned analysis, an agency must first "display awareness that it is changing position" and then show "there are good reasons for the new policy." *Fed. Commc'ns Comm'n v.*

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Fox Television Stations, Inc., 556 U.S. 502, 515 (2009). Critically, the agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates." *Id*. (emphases omitted). BLM has easily met these governing standards in issuing the Suspension Rule.

Again, Plaintiffs manipulate their choice of forum by taking positions inconsistent with their positions in the ongoing Wyoming litigation. There, when supporting the 2016 Rule, the Plaintiffs vociferously argued the court owed BLM substantial deference to determine reasonable waste prevention measures. *See* Schroder Decl., Ex. L (Wyo. Resp. Br.) at 13–17. Now that BLM's decision no longer aligns with Plaintiffs' interests, they assert BLM is owed no deference and urge this Court to substitute its judgment for that of the agency.[17] *See, e.g.*, Citizen Groups' Br. at 9–15. Ultimately, Plaintiffs' conflicting positions lay bare the true motivations for their lawsuit—to leave a flawed rule in place at all costs because it promotes their interests.

2. BLM Has Provided More Than Adequate Rationale in Support of The Suspension Rule

BLM has fully explained its decision to suspend deadlines in the 2016 Rule for a year pending reconsideration. First and foremost, BLM stated "is not confident that all provisions of the 2016 final rule would survive judicial review." 82 Fed. Reg. at 58,050. Concerns that the prior policy may have exceeded the agency's statutory authority, alone, constitute sufficient rationale for revisiting that prior policy. *See e.g.*, *Nat'l Ass'n of Homebuilders v. Envtl. Prot. Agency*, 682 F.3d 1032, 1037–39 (D.C. Cir. 2012) (upholding new regulation because EPA explained it "promotes, to a greater extent, the statutory directive").

BLM also explained it is reexamining the 2016 Rule to align with this administration's policies expressed in Executive Order 13,783. 82 Fed. Reg. at 58,050. BLM specifically noted the

[17] Plaintiffs' hypocrisy on this exact point was not lost on the Wyoming court. *See* Schroder Decl., Ex. I at 3, n.1 (noting the Citizens Groups in the Wyoming case argue "BLM's determination of what constitutes reasonable precautions to control waste is entitled to deference").

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2016 Rule's potentially severe economic impacts on marginal wells. *Id*. at 58,050–51. Similarly, BLM explains it is necessary to reconsider the costs and benefits of the 2016 Rule given the administration's change in policy on the use of the social cost of methane.[18] *Id*. at 58,051. The Supreme Court recognizes these as reasonable bases for reevaluation of agency priorities. *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 42–43.

BLM further notes that "a number of specific assumptions underlying the analysis supporting the 2016 final rule warrant reconsideration," including whether: 1) BLM appropriately assumed the 2016 Rule will not cause undue permit approval delays; 2) BLM correctly assumed that temporary well shut-ins to comply with gas capture percentage requirements would not cause underground waste; 3) BLM reasonably assumed the increasingly stringent gas capture percentages would not disproportionately impact smaller operators; and 4) the LDAR cost-benefit analysis was based on the best available information and science. 82 Fed. Reg. at 58,050–56.

Finally, BLM explains that the Suspension Rule "is estimated to result in positive net benefits, meaning that the reduction of compliance costs would exceed the reduction in cost savings and the cost of emissions additions." 82 Fed. Reg. at 58,057 (citing the 2017 RIA at 36). A "net benefit" result should define rational, non-arbitrary or capricious agency action. Moreover, avoiding "considerable costs on operators for requirements that may be rescinded or significantly revised in the near future" makes eminent sense, and is a reasonable policy choice. *See generally State Farm*, 463 U.S. at 54–55.

The rationale for the Suspension Rule also is consistent with the evidence before the agency. Proposed-Intervenors have consistently raised concerns about each of the four assumptions listed above, as well as the 2016 Rule's legality. *See, e.g.*, Schroder Decl., Ex. N at 4–11, 24–26, 37–38. While some of these concerns plagued the draft 2016 Rule, others relate to new provisions incorporated into the final rule without opportunity for public comment, such as concerns with the gas capture limits and the requirement to install automatic ignition systems. *See*

[18] As BLM notes, the Wyoming court also questioned the legality of justifying the 2016 Rule's benefits on the social cost of methane. 82 Fed. Reg. at 58,050.

81 Fed. Reg. at 83,022–36. Moreover, agencies are "well within" their discretion to give more weight to prior concerns, even on precisely the same record. *See Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038 (D.C. Cir. 2012). In light of Executive Order 13,783 and the administration's withdrawal of the social cost of methane, it is not only reasonable but necessary for BLM to reexamine the assumptions underlying the 2016 Rule to ensure any final rule comports with the agency's statutory authority, administration priorities, and is adequately supported by the record.

3. The Suspension Rule Was Not Procedurally Flawed

BLM complied with the APA in proposing and finalizing the Suspension Rule. Many of the cases Plaintiffs rely on involve agency failure to adhere to notice comment procedures. *See, e.g., Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 204 (2d Cir. 2004); *Envtl. Def. Fund, Inc. v. Gorsuch*, 713 F.2d 802, 804 (D.C. Cir. 1983); *Nat. Res. Def. Council, Inc. v. U.S. E.P.A.*, 683 F.2d 752, 760 (3d Cir. 1982); *Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 582 (D.C. Cir. 1981) (but upholding the good cause exception). Obviously, BLM went through notice and comment rulemaking here.[19] Further, none of these cases involved requests for preliminary injunctions and, in each of these cases, the entire rescission of the rule was at issue. *See id.*

The Citizen Groups incorrectly imply that BLM failed to offer meaningful opportunity to comment because BLM announced its intent to suspend the 2016 Rule in the Wyoming litigation. *See* Citizen Groups' Br. at 4–5. BLM published the Proposed Suspension Rule and then simply announced its intent to do exactly what it proposed. "An administrative official is presumed to be objective and capable of judging a particular controversy fairly on the basis of its own circumstances. Mere proof that the official has taken a public position, or has expressed strong views, or holds an underlying philosophy with respect to an issue in dispute cannot overcome that presumption." *Hous. Study Group v. Kemp*, 736 F. Supp. 321, 332 (D. D.C. 1990). In sum,

[19] Plaintiff Citizen Group's argument on this point is difficult to understand. *See* Citizen Groups' Br. at 7–8. To the extent they argue the Suspension Rule is a "substantive" rather than a "procedural" rule, that point is irrelevant as BLM properly complied with APA's notice and comment requirements. *See* 5 U.S.C. § 553(d).

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Plaintiffs have failed to establish any procedural error with the promulgation of the Suspension Rule.

4. Plaintiffs Objections to the Regulatory Impact Analysis do Not Provide a Basis For Invalidating The Suspension Rule

In issuing the RIA, BLM put forth a reasonable, good-faith effort to comply with the Regulatory Flexibility Act (RFA). *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1101 (9th Cir. 2005) ("[t]he RFA imposes no substantive requirements on an agency"). To the extent Plaintiffs attempt to challenge BLM's RFA analysis, they are not within the act's zone of interest because they are not small entities regulated by the 2016 Rule. *See Permapost Prod., Inc. v. McHugh*, 55 F.Supp.3d 14, 30 (D. D.C. 2014).

The State Plaintiffs' arguments that the RIA is "flawed" are meritless. Yet again, Plaintiffs are trying to have it two different ways depending on the forum. Here, the States argue that the Suspension is arbitrary and capricious because it is based on an "inherently flawed [RIA]." *See* States' Br. at 19. The 2017 RIA, however, "uses the impacts estimated and underlying assumptions used by the BLM for the 2016 RIA." 82 Fed. Reg. at 58,056. Plaintiffs took no issue with the 2016 RIA in the Wyoming litigation and, in fact, supported it. *See* Schroder Decl., Ex. L (Citizens Groups' Wyo. Resp. Br.) at 29 ("BLM's RIA complied with all relevant guidance."); *see also* Ex. M (States' Wyo. Resp. Br.) at 20–21.

Fundamentally, the RIA supports the Suspension Rule. As noted above, and as reflected in the RIA, the Suspension Rule provides net positive benefits. 82 Fed. Reg. at 58,057. BLM also makes clear it intends to revisit the 2016 RIA out of concerns that it underestimated costs, overestimated benefits, and was generally based on numerous flawed technical assumptions. *See id.* at 58,050–51. These are sufficient grounds for issuing the Suspension Rule while revisiting the 2016 Rule and the underlying support for it.

E. A Preliminary Injunction is Not in the Public Interest

Finally, a preliminary injunction is not in the public interest. Plaintiffs incorrectly assume the public interest favors a preliminary injunction simply because they allege environmental

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injury. The Supreme Court, however, has cautioned against "exercising equitable powers loosely or casually whenever a claim of 'environmental damage' is asserted." *Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 409 U.S. 1207, 1217 (1972). Here, Plaintiffs have not established a likelihood of significant or irreparable environmental harm because the Suspension Rule will not significantly impact public health and the methane reductions are imperceptible and no different from the status quo. *See* Schroder Decl., Ex. T. Accordingly, the Suspension Rule would not adversely impact the public's interest in a healthy environment.

Plaintiffs also incorrectly argue that enjoining the Suspension Rule would increase royalty revenue by $2.6 million, or a mere 0.11% of the generated $2.3 billion in royalties generated by onshore production. Citizens Groups' Br. at 6,7, 24; States' Br. at 25. Even if true, this amount hardly warrants preliminary relief. This argument, however, is premised on the fiction that all federal and Indian lessees can immediately begin complying with the 2016 Rule and begin generating royalties. As noted in section III.C, *supra*, not all operators can immediately begin to comply with the rule.[20] Further, BLM's estimated reduction in royalty revenue underestimates the number of oil and gas wells that will be shut in or taken out of production if the 2016 Rule takes effect. *See* Schroder Decl., Ex. E at 11.

The public interest disfavors an injunction because it would compel BLM to administer the flawed 2016 Rule at a significant and cognizable cost. The public interest is not served by requiring BLM to enforce a rule that "upends the CAA's cooperative federalism framework and usurps the authority Congress expressly delegated under the CAA to the EPA, states, and tribes to manage air quality." *See* Schroder Decl., Ex. F at *17–18. The public interest similarly is not served by compelling BLM to enforce a rule that carries costs that vastly outweigh its benefits. Finally, in light of BLM's decision to revise the 2016 Rule, the public interest is not served by requiring BLM to "expend[ ] scarce agency resources on implementation activities" for

[20] Moreover, in the District of Wyoming, the Citizen Groups argued that many oil and gas operators are already complying with the 2016 Rule, thus reducing the additional revenue to be generated by enjoining the Suspension Rule. *See* Section III.B, *supra*.

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"potentially transitory requirements." 82 Fed. Reg. at 58,501. Because the Court will not promote any public interest by enjoining the Suspension Rule, the public interest does not favor an injunction.

IV. CONCLUSION

The Plaintiffs have not demonstrated any of the four factors necessary to obtain the extraordinary relief on a preliminary injunction. In contrast, a preliminary injunction will irreparably harm the Proposed Intervenors' members that must immediately comply with the entire 2016 Rule. For these reasons, the Proposed Intervenors respectfully request that this Court deny all Plaintiffs' requests for a preliminary injunction.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 10960 Wilshire Boulevard, 18th Floor, Los Angeles, CA 90024-3804.

On January 16, 2018, I served the following document(s) described **INTERVENORS WESTERN ENERGY ALLIANCE AND INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA'S OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 16, 2018, at Los Angeles, California.

/s/ Adriana C. Moreno
Adriana C. Moreno