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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING and STATE OF)	
MONTANA,)	No. 16-cv-00285-SWS
)	
Petitioners,)	[Consolidated with 16-cv-00280-SWS]
)	
and)	FEDERAL RESPONDENTS’
)	MOTION FOR AN EXTENSION OF
STATE OF NORTH DAKOTA and STATE OF)	THE MERITS BRIEFING
TEXAS,)	DEADLINES
)	
Intervenor-Petitioners,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF THE)	
INTERIOR, <i>et al.</i> ,)	
)	
Respondents,)	
)	
and)	
)	
WYOMING OUTDOOR COUNCIL, <i>et al.</i> ,)	
)	
Intervenor-Respondents.)	
)	

Federal Respondents respectfully move this Court for a 37-day extension of the merits briefing deadlines in these two consolidated cases. The extension will provide sufficient time to the Bureau of Land Management (“BLM”) to complete a rule (“Suspension Rule”) suspending or delaying the majority of the provisions of the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (“Waste Prevention Rule”), including the portions of the Waste Prevention Rule that would otherwise become effective on January 17, 2018. As BLM aims to complete the Suspension Rule by December 8, 2017 and is currently working on a second rulemaking (“Revision Rule”) to revise or rescind the Waste Prevention Rule, *see* Ex. A, Decl. of Timothy Spisak, ¶¶ 5, 11, proceeding with the merits briefing at this time would be a waste of judicial resources and would undermine the administrative process. This Court has previously extended the briefing schedule twice based on Western Energy Alliance’s and the Independent Petroleum Association of America’s request for an extension, and once based on Federal Respondents’ request for an extension. ECF Nos. 100, 118, 129.

As Defendants have previously explained to this Court, President Donald J. Trump issued an Executive Order on March 28, 2017 requiring that the Secretary of the Interior “review” the Waste Prevention Rule and “if appropriate, . . . as soon as practicable, . . . publish for notice and comment proposed rules suspending, revising, or rescinding” the Rule. Exec. Order No. 13,783, 82 Fed. Reg. 16,093, § 7(b) (Mar. 28, 2017). As directed, BLM has reviewed the Waste Prevention Rule and determined that it does not align with the policy set forth in Executive Order 13,783, which states that it is “in the national interest to promote the clean and safe development of our Nation’s vast energy resources while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.” 82 Fed. Reg. at 16,093; 82 Fed. Reg. 46,458, 46,459-60 (Oct. 5, 2017); Ex. A ¶ 4.

BLM is therefore in the process of “reviewing the [Waste Prevention Rule] to develop an appropriate proposed revision.” 82 Fed. Reg. at 46,459-60; Ex. A ¶ 5.

On October 5, 2017, BLM published a proposed rule to suspend or delay for twelve months the majority of the provisions of the Waste Prevention Rule, including all of the requirements that would take effect on January 17, 2018, and all of the provisions that Petitioners have cited as their basis for seeking an expeditious resolution of this matter. 82 Fed. Reg. 46,458; *see, e.g.*, ECF No. 112 ¶¶ 3, 8; ECF No. 113 at 3-4; ECF No. 123 ¶¶ 16, 18.

Specifically, the proposed Suspension Rule would suspend the provisions of the Waste Prevention Rule regarding waste minimization plans, gas capture, the measurement and reporting of vented and flared gas, royalty-free flaring determinations, well drilling, well completion, pneumatic controllers, pneumatic diaphragm pumps, storage vessels, downhole maintenance and liquids unloading, and leak detection and repair. 82 Fed. Reg. at 46,474-75. The goal of the proposed Suspension Rule is to “avoid imposing temporary or permanent compliance costs on operators for requirements that might be rescinded or significantly revised in the near future.” *Id.* at 46,460.

The comment period for the proposed Suspension Rule ends November 6, 2017, *id.* at 46,458, and BLM expects to publish the final rule by December 8, 2017. Ex. A ¶¶ 10-11. BLM will utilize the twelve-month period while the majority of the Waste Prevention Rule is suspended to prepare and complete the Revision Rule, as determined to be appropriate and lawful after a public notice-and-comment rulemaking process, to rescind or revise the entire Waste Prevention Rule, including the aspects of the Waste Prevention Rule that have been challenged in this case. *See* Ex. A ¶¶ 5, 7; 82 Fed. Reg. at 46,459-60.

Federal Respondents request an extension of the briefing deadlines for 37 days to allow BLM to focus on finalizing the Suspension Rule by December 8, 2017. Once the Suspension Rule is completed, it will provide the immediate relief sought by Petitioners—relief from the portions of the Waste Prevention Rule that would otherwise come into effect on January 17, 2018, as well as other provisions of the Waste Prevention Rule already in effect—and thereby obviate the need for immediate judicial review of the Waste Prevention Rule. Rather than require BLM to defend a rule that the agency is in the midst of suspending, an extension would preserve the integrity of BLM’s ongoing administrative process by allowing the agency to complete its rulemaking without concern for judicial interference. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967) (encouraging courts to avoid “entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way”), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

The requested extension also serves judicial economy. As the Tenth Circuit recently noted in connection with BLM’s Fracking Rule, “proceeding to address whether the district court erred in invalidating the BLM’s Fracking Regulation when the BLM has now commenced rescinding that same regulation appears to be a very wasteful use of limited judicial resources.” *Wyoming v. Zinke*, 2017 WL 4173619, at *5 (10th Cir. Sept. 21, 2017). Those same concerns apply here. BLM is taking steps to suspend or delay the majority of the requirements of the Waste Prevention Rule and has indicated its intent to substantially revise the Waste Prevention Rule. Thus, similar to the Fracking Rule, the Waste Prevention Rule has “become a moving target.” *Id.* Proceeding with immediate judicial review of the Waste Prevention Rule in these

circumstances would undermine the integrity of the administrative process and waste judicial resources.

The requested extension will not prejudice Petitioners. As explained, it will allow BLM to devote its resources to completing the Suspension Rule by December 8, 2017, thereby providing Petitioners relief through the administrative process and obviating the need for immediate judicial review. Requiring BLM to proceed with merits briefing over the next 37 days would only prevent the agency from focusing its time and resources on the administrative processes that will provide certainty for the entire regulated community, including the many states and operators that are not parties to these cases.

Federal Respondents' response to Petitioners' merits briefs is currently due November 6, 2017 and Petitioners' replies are due November 22, 2017. To allow BLM time to complete its suspension rulemaking and to avoid the waste of judicial resources, Federal Respondents request a 37-day extension of the deadline for its response brief to December 13, 2017. To accommodate the holidays, Federal Respondents propose an extension of the deadline for Petitioners' replies to January 5, 2018.

Finally, Federal Respondents propose that the Court hold a status conference on December 8, 2017, or another date before the proposed December 13 deadline, during which Federal Respondents will provide an update on the status of both the Suspension Rule and the Revision Rule. Once the final Suspension Rule has been published, and Petitioners have thereby been afforded relief from the regulatory requirements underlying their complaints, Federal Respondents plan to request a stay of this litigation to allow BLM time to complete its revision of the Waste Prevention Rule and to avoid wasting judicial resources litigating a rule that may be substantially revised in the near future.

As required by Local Rule 7.1(b)(1)(A), Federal Respondents have conferred with the other parties to this litigation who have indicated that they take the following positions on this motion:

- Petitioner State of Wyoming takes no position on this motion.
- Petitioner State of Montana takes no position on this motion.
- Petitioners Western Energy Alliance and Independent Petroleum Association of America (IPAA) oppose the Federal Defendants' proposed extension of briefing deadlines and will file a written response to the Federal Defendants' motion as allowed by Local Rule 7.1(b)(1)(B). Recognizing the time pressures associated with deadlines for both the Federal Defendants' response brief and the 2018 compliance dates in the Venting & Flaring Rule, Western Energy Alliance and IPAA aim to file their written response by October 27, 2017.
- Intervenor-Petitioners States of North Dakota and Texas (States) oppose the BLM Motion to delay briefing in this matter and believe the BLM's latest motion is both untimely and prejudicial to the States. North Dakota and Texas intend to file a written response to the BLM Motion by October 27th.
- Intervenor-Respondents States of California and New Mexico take no position on this motion.
- Intervenor-Respondents Citizen Groups take no position on this motion.

Respectfully submitted this 20th day of October, 2017.

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Environment and Natural Resources Division

/s/ Clare Boronow
MARISSA PIROPATO
CLARE BORONOW

/s/ C. Levi Martin
C. Levi Martin
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2017, a copy of the foregoing was served by filing a copy of that document with the Court's CM/ECF system, which will send notice of electronic filing to counsel of record.

/s/ Clare Boronow

Clare Boronow