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

STATE OF WYOMING,)	
STATE OF MONTANA,)	
STATE OF NORTH DAKOTA, and)	
STATE OF TEXAS)	
)	
Petitioners,)	Case No. 16-cv-00285-SWS [Lead]
)	
v.)	Consolidated with:
)	
UNITED STATES DEPARTMENT OF)	Case No. 16-cv-00280-SWS
THE INTERIOR, <i>et al.</i>)	
)	
Respondents,)	
)	

**REQUEST FOR CLARIFICATION BY THE STATES OF NORTH DAKOTA AND
TEXAS OF THE COURT’S ORDER LIFTING STAY AND SETTING BRIEFING
SCHEDULE ON PENDING MOTIONS**

Petitioner-Intervenors States of North Dakota and Texas (the “States”) respectfully submit this Request for Clarification of the Court’s Order Lifting Stay and Setting Briefing Schedule on Pending Motions, *see* ECF No. 202 (“Order”). The Court’s Order lifts the stay of this litigation challenging the Bureau of Land Management’s (“BLM”) Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule, 81 Fed. Reg. 83,008 (“Venting and Flaring Rule”), granting part of the relief sought in (1) *Joint Motion by the States of North Dakota and Texas to Lift the Stay entered December 29, 2017 and to Establish Expedited Schedule for Further Proceedings* (ECF No. 194); (2) *Motion to Lift Stay and Suspend Implementation Deadlines* filed by Petitioner States of Wyoming and Montana (ECF No. 195); and Industry Petitioners’ *Motion to Lift Litigation Stay and for Preliminary Injunction or Vacatur of Certain Provisions of the Rule Pending Administrative Review* (ECF No. 196).

The Court also ordered that any responses to these three pending motions shall be filed on or before March 14, 2018, with reply briefs to be filed on or before March 21, 2018. The Order indicated the Court will resolve these three pending motions on the written submissions and that no hearing would be held.

North Dakota and Texas seek clarification and confirmation that this Order reflects the Court’s intent to decide on the briefs the issue of the appropriate path forward for this litigation, and not the merits of the request by Wyoming and Montana for a *partial* stay of the Venting and Flaring Rule under Section 705 of the Administrative Procedure Act (“APA”) or the Industry request that *portions* of the Venting and Flaring Rule be preliminarily enjoined. If the Court intends to decide the latter (i.e., the substantive prayers for relief), then North Dakota and Texas respectfully request the Court clarify that briefing includes completion of the briefing for the three pending dispositive motions on the merits that were filed by North Dakota and Texas,

Wyoming/Montana, and Industry. (ECF Nos. 141, 142 and 144). This would ensure that, should the Court be considering deciding the substantive requests made in the Wyoming/Montana and Industry Motions, that it will have, fully briefed, all of the pending dispositive motions in front of it, not just the three recently filed motions.

This clarification would be consistent with the relief sought by North Dakota and Texas in their *Joint Motion to Lift the Stay entered December 29, 2017 and to Establish Expedited Schedule for Further Proceedings*: to complete the briefing on the pending dispositive motions to decide the merits of the challenges to the Venting and Flaring Rule. However, it is not clear if the Court's Order contemplates this briefing, since it refers only to the recently filed motions, and its listing of "pending" motions does not include the dispositive motions to decide the merits filed previously, pursuant to the Court's previously ordered merits briefing schedule. Further, it is unclear if the Court intends to decide substantive issues, whether the North Dakota and Texas request to decide the merits, Wyoming and Montana's prayer for a *partial* APA 705 stay of the Venting and Flaring Rule, or Industry's petition for a *partial* preliminary injunction of the Venting and Flaring Rule solely on the briefs and without a hearing.

Accordingly, North Dakota and Texas respectfully request that the Court clarify the scope of the Order and, if the Order was intended to outline the process by which the Court will decide the substantive prayers for relief made by Wyoming and Montana, and Industry, that the Order be modified to include completion of briefing on the pending dispositive merits motions so that the Court will have all pending motions before it.

CONCLUSION

For the reasons set forth above, North Dakota and Texas respectfully request that the Court clarify its Lift Stay Order as requested herein.

Respectfully submitted this 7th day of March, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of March, 2018, a true and correct copy of **REQUEST FOR CLARIFICATION BY THE STATES OF NORTH DAKOTA AND TEXAS OF THE COURT'S ORDER LIFTING STAY AND SETTING BRIEFING SCHEDULE ON PENDING MOTIONS** was filed with the Clerk of the Court using CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Paul M. Seby