Eric P. Waeckerlin – *Pro Hac Vice*
Samuel Yemington – Wyo. Bar No. 75150
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Colorado 80202
Tel: 303.892.8000
Fax: 303.975.5396
EPWaeckerlin@hollandhart.com
SRYemington@hollandhart.com

Kathleen Schroder – *Pro Hac Vice*
1550 17th Street, Suite 500
Denver, Colorado 80202
Tel: 303.892.9400
Fax: 303.893.1379
Katie.Schroder@dgslaw.com

*Attorneys for Petitioners Western Energy Alliance and Independent Petroleum Association of America*

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

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| STATE OF WYOMING, et al.,<br><br>Petitioners,<br><br>v.<br><br>UNITED STATES DEPARTMENT OF THE INTERIOR, et al.<br><br>Respondents. | Civil Case No. 2:16-cv-00285-SWS [Lead]<br><br>Consolidated with:<br><br>Case No. 2:16-cv-00280-SWS<br><br>Assigned: Hon. Scott W. Skavdahl |

**INDUSTRY PETITIONERS' RESPONSE TO RESPONDENT-INTERVENOR CITIZEN GROUPS' AND STATES' JOINT MOTION FOR A STAY PENDING APPEAL**

The Respondent-Intervenor Citizen Groups and States fail to heed this Court's observation that, "[w]ish as they might, neither the States, industry members, nor environmental groups are granted authority to dictate oil and gas policy on federal public lands." *See* Order Staying Implementation of Rule Provisions & Staying Action Pending Finalization of Revision Rule (Dkt. No. 210) at 7 ("Order"). In a motion styled as a Joint Motion for a Stay Pending Appeal ("Motion for Stay"), the Respondent-Intervenors now ask this Court to reconsider its Order and place the Venting and Flaring Rule back into full effect while they seek their desired relief from yet a third Court.[1] The Respondent-Intervenors, however, present no new information and establish no error in the Order. This Court correctly stayed the Waste Prevention Rule "to preserve the status quo, and in consideration of judicial economy and prudential ripeness and mootness concerns."[2] *See* Order at 10. Accordingly, the Motion for Stay should be denied.

The Order reflects a proper exercise of this Court's equitable discretion to craft a remedy that appropriately addresses the "difficult, and somewhat unique, procedural circumstances" presented by the ongoing administrative reconsideration of the Waste Prevention Rule. *See* Order at 7. The Order and its effect are well within the Court's broad equitable authority.[3] "[J]udicial

[1] The Respondent-Intervenors are now parties to pending actions before this court, the Court of Appeals, and the Northern District of California.

[2] The Respondent-Intervenors erroneously state that a court cannot grant substantive relief after concluding a case is prudentially unripe. *See* Motion for Stay at 2. If an agency rule is prudentially unripe for review, the Court must vacate the agency rule or use its equitable discretion to craft a narrower remedy such as a stay. *See* Reply in Supp. of Mot. for Prelim. Inj. or Vacatur of Certain Provisions of the Rule Pending Administrative Review (Dkt. No. 212) at 11–13; *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1240 (10th Cir. 2017) ("the district court may vacate the [agency decisions], or it might fashion some narrower form of injunctive relief based on equitable arguments . . .").

[3] The Respondent-Intervenors incorrectly characterize the Order as "enjoining" the Waste Prevention Rule rather than staying it. *See* Motion for Stay at 1–2. An injunction "directs the conduct of a party, and does so with the backing of [the court's] full coercive powers." *Nken v. Holder*, 556 U.S. 418, 428 (2009) (quoting *Weinberger v. Romero–Barcelo*, 456 U.S. 305, 312 (1982)); *accord* Black's Law Dictionary (10th ed. 2014) (defining "injunction" as "[a] court

review of administrative action follows equitable principles." *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1333 n.5 (10th Cir. 1982). "An appeal to the equity jurisdiction of the federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity." *Id.* (citing *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)). Given the need to provide "certainty and stability for the regulated community and the general public while BLM completes its rulemaking process" and "prevent the unrecoverable expenditure of millions of dollars in compliance costs," Order at 10–11, the Court's Order thoughtfully and appropriately applies its broad equitable authority to accommodate these real and ongoing concerns.

Furthermore, the Order is proper whether or not the Court expressly addressed Respondent-Intervenors' alleged injuries. *See* Motion for Stay at 2 (arguing that the Court "ignored" the Respondent-Intervenors' alleged irreparable injuries). To begin, Respondent-Intervenors overstate their claimed injuries and the actual impact of the Waste Prevention Rule. Because the stay of the Core Provisions of the Waste Prevention Rule effectively leaves BLM's existing regulation of venting and flaring in place, the Order will not cause any more methane or other emissions than have occurred over the last several decades under BLM's existing management.[4] In this respect, the Order is narrowly-tailored and carefully balanced. Moreover,

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order commanding or preventing an action"). The Order does not direct any party's conduct or command or prevent an action. Rather, the Order simply suspends portions of the Waste Prevention Rule from having any regulatory effect while BLM reconsiders the rule. Because the Order is not an injunction, the Court was not required to analyze the four preliminary injunction factors prior to issuing it.

[4] In fact, methane emissions are declining due to other state and federal regulations and voluntary emission reduction efforts. 83 Fed. Reg. 7,924-28 (Feb. 22, 2018). Moreover, the prohibition on venting at 43 C.F.R. § 3179.6 remains in effect, which is almost "entirely" responsible for the reduction in volatile organic compounds (VOCs) and hazardous air pollutants (HAPs) under the Waste Prevention Rule. *See e.g.*, Environmental Assessment, Waste Prevention, Production Subject to Royalties, and Resource Conservation Delay Final Rule, DOI-BLM-WO-WO3000-2018-0001-EA 17 (Dec. 1, 2017), available at

the methane reductions the Respondent-Intervenors claim will occur by making the Waste Prevention Rule entirely effective will not materialize because Industry Petitioners' members cannot fully or immediately comply with the rule and BLM cannot administer it. *See* Reply in Supp. of Mot. for Prelim. Inj. or Vacatur of Certain Provisions of the Rule Pending Administrative Review (Dkt. No. 212), Ex. 1, Decl. of K. Sgamma ¶¶ 8, 12, 13. The Court appropriately considered these facts. *See e.g.*, Order at 9 ("[T]he intended period for 'ramping up' never came to be . . . ."). Therefore, even if the Court were required to expressly address Respondent-Intervenors' alleged injuries (which it is not), their claims are at best inflated, speculative, and inaccurate.

Finally, even if the Respondent-Intervenors could establish clear, imminent, and irreparable injury, the Court's equitable discretion allows it to balance the Respondent-Intervenors' alleged injury with the clear, irreparable, and immediate injury facing Industry Petitioners. A court's "traditional equitable discretion" allows it "to decide an appropriate remedy based on a balance of the competing harms." *Anacostia Watershed Soc'y v. Babbitt*, 875 F. Supp. 1, 2 (D.D.C. 1995). The Respondent-Intervenors' generalized alleged injury—methane emissions totaling 0.061% of global methane emissions[5]—does not outweigh the concrete, specific, and irreparable injuries facing the Industry Petitioners' members from compliance with the Waste Prevention Rule. If the rule took full effect, it would require Industry Petitioners' members to install emission-control equipment on thousands of wells operating on federal and Indian leases or shut in wells that cannot bear these costs. *See* Reply in Supp. of Mot. for Prelim. Inj. or Vacatur of Certain Provisions of the Rule Pending Administrative Review (Dkt. No. 212)

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https://www.regulations.gov/contentStreamer?documentId=BLM-2017-0002-17370&contentType=pdf.

[5] Br. in Supp. of W. Energy Alliance & Independent Petroleum Ass'n of Am.'s Pet. for Review of Final Agency Action, Dkt. No. 142 at 5.

at 3. BLM has recognized that these equipment requirements, coupled with Leak Detection and Repair (LDAR) surveys, impose between $110 and $279 million in compliance costs. *See id.* at 4. Sovereign immunity prevents Industry Petitioners from recovering these costs if the Waste Prevention Rule is later judicially invalidated or revised by BLM. *Id.* (citing *Mexichem Specialty Resins, Inc. v. E.P.A.*, 787 F.3d 544, 555 (D.C. Cir. 2015)). In light of these alleged harms, the Order appropriately mitigates the concrete, immediate, and irreparable harms to the Industry Petitioners.

Although the Court has observed that "[t]he waste, inefficiency, and futility associated with a ping-ponging regulatory regime is self-evident," this fact is not yet evident to the Respondent-Intervenors. *See* Order at 11. With their Motion to Stay, Respondent-Intervenors yet again attempt to force Industry Petitioners' members to comply with, and BLM to administer, a rule that may be substantially rewritten within months. Worse yet, Respondent-Intervenors force this Court and all the parties to waste time and resources in response, ignoring the Circuit Court's recent admonition against such futility. *See Wyoming v. Zinke*, 871 F.3d 1133, 1142 (10th Cir. 2017) ("[P]roceeding to address [the merits of] 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."). The Respondent-Intervenors have not established any error in the Court's Order or that the Order should be stayed during its appeal. Therefore, this Court should deny the Motion for Stay.

Respectfully submitted this 16th day of April, 2018.

HOLLAND & HART LLP

By: *s/ Eric Waeckerlin*

Eric P. Waeckerlin – *Pro Hac Vice*
Samuel R. Yemington – Wyo. Bar. No. 7-5150
555 17th Street, Suite 3200
Denver, Colorado 80202
Tel: 303.295.8000
Fax: 303.975.5396
EPWaeckerlin@hollandhart.com

Kathleen Schroder – *Pro Hac Vice*
1550 17th Street, Suite 500
Denver, Colorado 80202
Tel: 303.892.9400
Fax: 303.893.1379
Katie.Schroder@dgslaw.com

*Attorneys for Petitioners Western Energy Alliance and the Independent Petroleum Association of America*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of April, 2018, the foregoing **INDUSTRY PETITIONERS' RESPONSE TO RESPONDENT-INTERVENOR CITIZEN GROUPS' AND STATES' JOINT MOTION FOR A STAY PENDING APPEAL** was filed electronically with the Court, using the CM/ECF system, which caused automatic electronic notice of such filing to be served upon all counsel of record.

*s/ Eric Waeckerlin*