NOS. 18-8027, 18-8029

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF WYOMING, *et al.*,
Petitioners-Appellees,

STATE OF NORTH DAKOTA and TEXAS,
Intervenors-Appellees,

v.

U.S. DEPARTMENT OF THE INTERIOR, *et al.*,
Respondents-Appellees,

WYOMING OUTDOOR COUNCIL, *et al.*,
Intervenors-Appellants,

and

STATE OF CALIFORNIA, BY AND THROUGH THE CALIFORNIA AIR RESOURCES BOARD, and STATE OF NEW MEXICO,
Intervenors-Appellants.

On Appeal from the United States District Court for the
District of Wyoming, Nos. 16-cv-080, 16-cv-085 (Hon. Scott W. Skavdahl)

INTERVENOR-APPELLEES STATE OF NORTH DAKOTA'S AND TEXAS'S JOINT RESPONSE BRIEF

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES

(1) Whether the Wyoming District Court erred in staying the implementation of the phase-in provisions of the Waste Prevention, Production Subject to Royalties, and Resource Conservation: Final Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016) (Venting and Flaring Rule)?

(2) Whether the Wyoming District Court erred in staying the merits briefing on the Venting and Flaring Rule pending finalization of the Bureau of Land Management's (BLM's) reconsideration of the Venting and Flaring Rule in the proposed Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements: Proposed Rule, 83 Fed. Reg. 7,924 (February 22, 2018) (Proposed Rescission Rule)?

STATEMENT OF THE CASE

The Venting and Flaring Rule has been the subject of multiple judicial and administrative challenges since its publication in November of 2016. BLM has every step of the way sought to avoid litigating the merits of the Venting and Flaring Rule through repeated requests for judicial stays, postponement of compliance dates, and proposed regulations revising portions of the Venting and Flaring Rule. However, the Venting and Flaring Rule substantially remains in effect nationwide (with the exception of certain currently stayed phase-in provisions), and Petitioner-Intervenor-Appellees, the State of North Dakota and

Texas, continue to suffer immediate, distinct, and irreparable harms from the Venting and Flaring Rule, and continue to have a concrete interest in proceeding to the merits of this case. Further, in accordance with recent Supreme Court precedent, this case is not prudentially unripe or moot and thus should not be dismissed.

I. Procedural History

A. The Venting and Flaring Rule

Appellants' description of the Venting and Flaring Rule as an update to BLM's rules preventing the "waste" of federally owned natural gas is incomplete and inaccurate: the Rule is an ambitious and unlawful effort by BLM to control methane emissions from new and existing oil and gas operations that occur, at least in North Dakota and Texas, largely on private land and private mineral estates regulated by the States. The Venting and Flaring Rule unlawfully expands BLM's regulatory authority over non-federal property and mineral estates by imposing requirements on all private oil and gas operations located within pooled or "communitized" areas that include even a small percentage of federal mineral interests, without regard to the volume of federal minerals involved (whether they are being extracted or not). 81. Fed. Reg. at 83,079. This imbalance is reflected by the fact that even under BLM's own flawed analysis, the costs of implementing the Venting and Flaring Rule vastly outweigh the minimal projected gains in

royalties (the purported goal of the Rule), with each dollar of increased royalties coming at a cost of twenty to thirty-eight dollars. 81. Fed. Reg. at 83,068-83,070. The Venting and Flaring Rule further unlawfully expands BLM's regulatory authority by imposing detailed air emissions restrictions on the venting and flaring of natural gas, which would displace the comprehensive provisions of the Clean Air Act (CAA) implemented by the States and EPA under a general framework of cooperative federalism. 81 Fed. Reg. at 83,023, 83,082-83,089.

The Venting and Flaring Rule also largely remains "on the books" nationwide. BLM's June 2017 effort to postpone the Venting and Flaring Rule's January 2018 compliance dates (82 Fed. Reg. 27,430 (June 15, 2017)) was struck down by a U.S. District Court in California; BLM's December 2017 attempt to suspend the Venting and Flaring Rule's provisions governing waste reduction (82 Fed. Reg. 58,050 (Dec. 8, 2017)) was enjoined by a U.S. District Court in California; and BLM's February 2018 proposed rule to rescind the Venting and Flaring Rule (83 Fed. Reg. 7,924 (Feb. 22, 2018) (Proposed Rescission Rule)) has yet to be finalized. *See* Appellants' Joint Opening Brief (July 30, 2018), Doc. No. 010110030065, at 9-10 (Appellants' Opening Br.).

BLM also, through the Proposed Rescission Rule, continues to assert federal jurisdiction over all state and private oil and gas operations with the slightest connection to operations involving federal mineral interests, the central issue over

which North Dakota and Texas are challenging the existing Venting and Flaring Rule. 83 Fed. Reg. at 7,946. If the Proposed Rescission Rule is eventually finalized, it is virtually guaranteed that it will be challenged by a similar constellation of parties to those currently litigating the Venting and Flaring Rule.

B. The Wyoming District Court Litigation

The merits briefing on the Venting and Flaring Rule in the Wyoming District Court has largely been completed.[1] Appellants' Opening Br., at 10; Order Granting Mot. for an Ext. of the Merits Br. Deadlines (October 30, 2017), No. 2:16-cv-285-SWS, ECF. No. 163, at 5. On December 11, 2017 all parties, except BLM, filed their response briefs. BLM, instead of filing a responsive merits brief as ordered by the District Court, yet again sought to delay by filing a motion to dismiss or stay the case on prudential ripeness grounds. Fed. Resp'ts' Resp. to Pet'rs' Merits Brs. & Mot. To Dismiss, or in the Alt., for a Stay of Proceedings (Dec. 11, 2017), No. 2:16-cv-285-SWS, ECF No. 176. The Wyoming District

[1] Merits briefing was originally set to finish on August 25, 2017. Scheduling Order for Merits Br. (May 10, 2017), No. 2:16-cv-285-SWS, ECF. No. 126, at 2. Based on BLM's delay tactics surrounding plans to revise or rescind the Venting and Flaring Rule, briefing was delayed with a contemplated finish on November 22, 2017. Order Granting Mot. to Ext. Br. Deadlines (July 27, 2017), No. 2:16-cv-285-SWS, ECF. No. 128, at 3. Based on a second delay by BLM, the briefing was again postponed for a contemplated finish date of December 11, 2017, with oral argument set for December 18, 2017. Order Granting Mot. for an Ext. of the Merits Br. Deadlines (October 30, 2017), No. 2:16-cv-285-SWS, ECF. No. 163, at 5.

Court did not dismiss the case, but did stay the litigation. Granting Jt. Mot. To Stay (Dec. 29, 2017), No. 2:16-cv-285-SWS, ECF No. 189, at 4-5.

Following the December stay of the Wyoming District Court litigation, and after a slew of procedural developments in the related California litigation (with the Northern District Court in California vacating BLM's attempt to postpone effective dates in, and enjoining BLM's attempts to suspend, the Venting and Flaring Rule), and BLM's publication of the Proposed Rescission Rule, the Wyoming District Court issued the April 4, 2018 Order that is the subject of this consolidated appeal, staying portions of the Venting and Flaring Rule. Order Staying Implementation of Rule Provisions and Staying Action Pending Finalization of Revision Rule (Apr. 4, 2018), No. 2:16-cv-285-SWS, ECF No. 215 ("Stay Order").

The District Court's Stay Order only exercises the court's "equitable discretion to stay implementation of the [Venting and Flaring] Rule's *phase-in provisions*," and does not enjoin the entirety of the Venting and Flaring Rule. Stay Order at 10 (emphasis added). The Stay Order leaves in place the balance of the Venting and Flaring Rule, including BLM's vast jurisdictional overreaches related to the unlawful control over non-federal oil and gas extraction activities conducted under the states' jurisdictional authority, and restriction on air emissions from the

venting and flaring of natural gas subject to regulation by the states and EPA under the cooperative federalism framework established by Congress in the CAA.

The Venting and Flaring Rule largely remains on the books, and continues to directly harm North Dakota and Texas by intruding on their state sovereignty through BLM's unlawful assertion of jurisdiction over State and private mineral interests. The harms to North Dakota and Texas are further exacerbated by the Wyoming District Court's decision to stay litigation on the merits of the Venting and Flaring Rule pending BLM's finalization of the Rescission Rule, an event which may never occur. And even if it does occur, North Dakota and Texas would be forced to challenge the finalized rule separately in court as the rule would not address the substantial impingement by BLM on the sovereignty of North Dakota and Texas.

SUMMARY OF THE ARGUMENT

North Dakota and Texas have long argued in the Wyoming District Court that the Venting and Flaring Rule is an unlawful usurpation of their sovereign authority to regulate oil and gas operations on non-federal lands. The Venting and Flaring Rule exceeds BLM's authority under the Mineral Leasing Act (MLA) which, with few exceptions, is limited to jurisdiction over federally owned property and mineral interests. The Venting and Flaring Rule also upends the congressionally mandated cooperative federalism proscribed by the CAA.

The Wyoming District Court's Stay Order, which only stays the Venting and Flaring Rule's phase-in provisions, does not enjoin the Rule's unlawful jurisdictional expansions that disproportionately affect North Dakota and Texas. Further, the potential that BLM might, at some point in the future, promulgate a final rule that rescinds or revises some or even all of the Venting and Flaring Rule does not take the Rule off the books and, under recent Supreme Court precedent, is not a basis for declaring this litigation prudentially moot or unripe. Indeed, vacating the Stay Order and dismissing the underlying litigation on mootness or ripeness grounds, as requested by the appellants, would be gifting the appellants a victory without the fully briefed merits ever having been decided: the Venting and Flaring Rule would be in full force and effect and the petitioners would have to restart the litigation challenging the Rule (assuming that such a re-filing would even be legally viable). Such an outcome would not be an efficient or prudential use of judicial resources given that merits briefing has largely been completed.

North Dakota and Texas urge this Court, if it chooses to reverse the Wyoming District Court's Stay Order, to remand the case back to the Wyoming District Court with express direction to finish this protracted legal process by promptly proceeding to a ruling on the merits.

ARGUMENT

I. The Stay Of The Venting and Flaring Rule And Litigation

North Dakota and Texas take no position on the Wyoming District Court's stay of the phase-in provisions of the Venting and Flaring Rule.

II. A Merits Decision On The Venting And Flaring Rule Is Appropriate

If this Court reverses the portions of the Wyoming District Court's Stay Order enjoining the phase-in provisions of the Venting and Flaring Rule, North Dakota and Texas urge this Court also to vacate the portions of the Stay Order staying the litigation and expressly direct the District Court to reach the long-overdue merits of the Venting and Flaring Rule. Vacating the Stay Order's stay of the phase-in provisions would result in the Venting and Flaring Rule being in full force and effect, including the initial phase-in deadlines that have already passed, creating an urgent need to resume the long-delayed litigation and deciding the merits of the fully briefed case that is neither moot nor unripe. Indeed, the harm to North Dakota's and Texas's state sovereignty by BLM's unlawful assertion of jurisdiction over State and private mineral interests continues regardless of whether a partial stay of the phase-in provisions of the Venting and Flaring Rule is maintained or the Proposed Rescission Rule is finalized, because the provisions of the Venting and Flaring Rule impinging on State sovereignty were not affected by the Wyoming District Court's Stay Order and are not remedied by the Proposed

Rescission Rule. These harms will only be exacerbated if the January 2018 phase-in provisions of the Venting and Flaring Rule go back into effect.

A. North Dakota And Texas Face Unique And Continuing Harms From The Venting And Flaring Rule And The Proposed Rescission Rule

North Dakota and Texas are subject to unique and disproportionate harms from the Venting and Flaring Rule. The Venting and Flaring Rule applies not only to oil and gas operations on federal and tribal lands, but also to any private or state mineral interests with which the federal interests have been pooled or communitized, however minimal the federal interests. Jt. Opening Br. of the States of North Dakota and Texas (October 17, 2017), No. 2:16-cv-285-SWS, ECF No. 143, at 11-12 (Opening Br. of North Dakota and Texas). BLM continues, in the Proposed Rescission Rule, to assert jurisdiction over private or state mineral interests that have been pooled and communitized with minimal federal interests. 83 Fed. Reg. at 7,946.

North Dakota and Texas have "split estate" property ownership structures and histories that result in oil and gas spacing units (a spacing unit is the property allocated to a well or group of wells) frequently being pooled or communitized in a combination of federal, state, and private mineral ownership. Opening Br. of North Dakota and Texas, at 12. In the Venting and Flaring Rule, BLM asserts federal jurisdiction and complete regulatory authority over all mineral interests and

oil and gas activities in pooled or communitized arrangements that include even the smallest federal or Indian mineral interest, even if that public interest is not being exploited. Because North Dakota's and Texas's "split estate" regimes pool significant amounts of private surface mineral interests with minor federal non-surface mineral interests, a significant portion of the Venting and Flaring Rule's obligations in North Dakota and Texas fall on private, not public, mineral interests over which BLM has no jurisdiction. *Id.*

For example, numerous small federal mineral interests were originally associated with small farms scattered across North Dakota that went into foreclosure during the Great Depression. Opening Br. of North Dakota and Texas, at 15. The federal government retained the mineral rights to these tiny tracts when it resold the surface to private owners (hence the "split estates"). *Id.* Those scattered small federal mineral estates with no surface estate have now largely been pooled or communitized with surrounding state and private land, and BLM asserts that it has jurisdiction over those state and private interests. *Id.* Thus, even though only eighteen percent of North Dakota's oil and gas production is from federal and tribal lands, the Venting and Flaring Rule would unlawfully extend BLM's jurisdiction to approximately thirty-two percent of the pooled or communitized oil and gas mineral interests in North Dakota. *Id.* at 12.

Texas is the only U.S. sovereign to control its own public lands. Opening Br. of North Dakota and Texas, at 17. All federal lands in Texas were acquired by the U.S. through purchase (e.g., military bases) or donation (e.g., national parks) from Texas. *Id*. Nearly three million acres of federal land in Texas are split-estate lands, with the federal surface estates overlaying oil and gas formations, and mineral interests held by Texas and private citizens that are subject to many scattered pooling or "communitization" agreements. *Id.*

In the Venting and Flaring Rule (and in the Proposed Rescission Rule), BLM unlawfully leverages the scattered small federal interests in North Dakota and Texas, and asserts jurisdiction over any state or private mineral interests that have been pooled or communitized. Opening Br. of North Dakota and Texas, at 17; 81 Fed. Reg. at 83,039. BLM's Venting and Flaring Rule would regulate extensive oil and gas operations on state and private surface and mineral estates over which BLM has no jurisdiction. The effect of BLM's unlawful jurisdictional expansion is felt disproportionately in North Dakota and Texas due to the large portion of state and private lands and mineral interests that have been pooled and communitized with small federal interests.

The disproportionate impact of the Venting and Flaring Rule on non-federal interests in comparison to the meager gains in royalties to the public purse–the purported purpose of the Rule–further demonstrates that the Rule has only

marginal impacts on emissions from publicly owned mineral interests. According to BLM's own calculations (which are disputed), the increased royalties, or the "avoided waste," will only be one to three percent of the total cost of the Venting and Flaring Rule, with each additional dollar of royalties coming at a cost of twenty to thirty-eight dollars. 81 Fed. Reg. at 83,023, 83,082-83,089. Therefore, it is difficult to credibly argue that the Venting and Flaring Rule is aimed at cost-effectively reducing the "waste" of publicly owned natural gas, and reflects BLM's unlawful assertion of jurisdiction over state and private mineral interests.

Congress only delegated authority to BLM to manage federal oil and gas interests and the management of *public* lands. *Boesche v. Udall*, 373 U.S. 472, 476 (1963). Federal lands include "all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate," 30 U.S.C. § 1702 (2016), but do not include state or private mineral estates. BLM has authority to "prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of the [MLA]," 30 U.S.C. § 189 (2016), which are "to promote the orderly development of oil and gas deposits in publicly owned lands of the United States through private enterprise." *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839, 842 (D. Wyo. 1981). BLM's authority under the MLA to "use all reasonable

precautions to prevent waste of oil or gas developed in the land," 30 U.S.C. § 225 (2016), does not grant or even imply the authority to impose detailed regulations on the extraction of state or privately owned minerals.

Congress did not delegate to BLM the unilateral authority to assert comprehensive jurisdiction over all state and private interests that have been pooled or communitized. Federal law authorizes the communitization of federal mineral resources with resources of different ownership only when it is determined to be in the public interest. *See* 30 U.S.C. § 226(m). BLM's limited authority under the MLA to regulate state and private oil and gas interests in pooled or communitized units derives from 30 U.S.C. § 226(m) (2016) and from the consent of owners and lessees. This limited authority exists to protect the federal government as a fellow owner of mineral interests, not to usurp state sovereignty or exercise general jurisdiction over pooled state and private mineral interests.

Section 226(m) does not provide broad authorization for BLM to impose comprehensive federal regulations similar to those applicable to federal mineral interests on non-federal interests. It states: "Any plan authorized by the preceding paragraph which includes lands owned by the United States may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior . . . to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan." *Id*. Thus

BLM's authority in pooled arrangements is limited to rates of development and production for purposes of avoiding the "waste" of federal mineral interests, similar to the rights of any participant in pooled or communitized arrangements. It is not a grant of general and comprehensive regulatory authority over the state and private mineral interests in the pooled or communitized units asserted in the Venting and Flaring Rule.

BLM's jurisdictional overreaches in the Venting and Flaring Rule also violate Tenth Amendment and federalism principles. Absent a "clear statement from Congress" a federal agency may not intrude on state sovereignty. *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps. of Eng'rs.*, 531 U.S. 159, 174 (2001); *Bond v. United States*, 134 S. Ct. 2077, 2088–90 (2014); *Gregory v. Ashcroft,* 501 U.S. 452, 460, 463 (1991). "If Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory,* 501 U.S. at 460 (citation and quotation marks omitted).

The Venting and Flaring Rule thus significantly and materially infringes on North Dakota's and Texas's sovereignty through BLM's unlawful expansion of jurisdiction over pooled and communitized lands.

B. The Litigation Challenging The Venting And Flaring Rule Is Prudentially Ripe

Appellants' claim that the Wyoming District Court "concluded that due to the Proposed Rescission Rule, Petitioners' lawsuit challenging the Waste Prevention Rule is both prudentially unripe and prudentially moot" is inaccurate. Appellants' Opening Br., at 28. The Wyoming District Court only noted "concerns" regarding the prudential ripeness and mootness of the Venting and Flaring Rule litigation, and did not definitively decide the issue. Stay Order, at 10.

In any event, North Dakota's and Texas's challenges to the Venting and Flaring Rule are not prudentially unripe or moot. A recent Supreme Court decision weighed in on a nearly identical situation involving a challenge to a promulgated agency rule, where the agency had subsequently proposed two rules, one attempting to rescind the challenged rule, and one delaying the challenged rule's effective date. *Nat'l Ass'n of Mfrs. v. Dep't of Defense,* 138 S. Ct. 617 (2018). The Supreme Court rejected ripeness and mootness concerns and denied the government's motion to stay the litigation, observing that as the challenged rule "remains on the books for now, the parties retain 'a concrete interest' in the outcome of this litigation," which remains "true even if the agencies finalize and implement the [pending proposed rule]." *Id.* at 627 n.5 (2018) (internal citations omitted).

As the Supreme Court held in *National Association of Manufacturers,* the mere possibility that the Proposed Rescission Rule may be finalized in the future does not render moot a challenge to a current rule that is "on the books" and causing harm. *See Nat'l Assn. of Mfrs.*, 138 S.Ct. at 627 n. 5.[2] That is the case now under the Wyoming District Court's Stay Order, and is even more the case if this Court vacates the Stay Order and reinstates the phase-in provisions of the Venting and Flaring Rule.

Therefore, Appellants' request that the underlying litigation be dismissed based on the mere potential that a rule might be promulgated in the future must be rejected.[3] Such a dismissal would give the appellants and BLM an unearned

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[2] In any event, BLM's Proposed Rescission Rule is characterized by the same unlawful jurisdictional over-reach challenged by North Dakota and Texas in the Venting and Flaring Rule litigation. To require that North Dakota and Texas to wait for the BLM to finalize the Proposed Rescission Rule, at some uncertain future date, and then require them to relitigate points which have already been substantially briefed in front of the Wyoming District Court is a waste of judicial resources that denies the North Dakota and Texas timely access to judicial review.

[3] Not only has the Supreme Court squarely rejected the theory that a proposed rule can serve as a sufficient basis for rendering litigation over an existing rule prudentially unripe or moot, the appellants mischaracterize the outcome of the case upon which they rely, *Wyoming v. Zinke*, 871 F.3d 1133 (10th Cir. 2017). In *Zinke*, the Court based its decision to dismiss the challenges as prudentially unripe on the fact that BLM's proposed rule would formally rescind the entirety of the original rule being litigated, and once enacted would leave nothing left for the litigants to challenge. 871 F.3d at 1146. In this case, BLM's Proposed Rescission Rule does not propose to rescind the Venting and Flaring Rule in its entirety, and instead would retain portions of the Venting and Flaring Rule that are central to the challenged filed by North Dakota and Texas. Further, in *Zinke* the 10th Circuit, at the request of BLM, held off on issuing its mandate dismissing the underlying

victory: the dismissal of all challenges to the Venting and Flaring Rule with the full Rule remaining in effect and enforceable, without the merits ever having been decided. Appellants want to have their cake and eat it too: a declaration that the dispute over the Venting and Flaring Rule is either moot or not ripe, combined with a decision to render that same Rule fully in force and enforceable. The principles of prudential mootness and ripeness cannot justify this outcome, and would send a message that "an agency can stave off judicial review of a challenged rule simply by initiating a new proposed rulemaking that would amend the rule in a significant way." *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 388 (D.C. Cir. 2012).

It "is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). A hypothetical possibility of a change in the regulatory framework at some uncertain point in the future is no reason for the Wyoming District Court to refuse to fulfill its "virtually unflagging" obligation to exercise its jurisdiction over the case presently before it.

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litigation until *after* the BLM had finalized and promulgated the rule fully rescinding the original rule. *See* Fed. Appellants' Response to Petitions for Rehearing En Banc (Nov. 20, 2017), Nos. 16-8068, 16-8069, Doc. 01019904357; Mandate (June 4, 2018), Nos. 16-8068, 16-8069, Doc. 010110002084. Thus, even though Supreme Court has since concluded that proposed rules do not render litigation over a final rule moot or justify a stay of such litigation in *Nat'l Assn. of Mfrs*, the situation in *Zinke* is clearly distinguishable from the instant action where BLM's Proposed Rescission Rule will leave in place BLM's unlawful jurisdictional expansions that North Dakota and Texas are challenging in the Venting and Flaring Rule.

Lexmark Int'l, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377, 1384 (2014).

CONCLUSION

If this Court chooses to vacate the Stay Order, this Court should direct that the Wyoming District Court move forward and proceed to the merits of all Petitioners' challenges to the Venting and Flaring Rule, as much of the merits briefing is already complete and the case is prudentially ripe for adjudication.

STATEMENT REGARDING ORAL ARGUMENT

Intervenor-Appellees North Dakota and Texas request oral argument because this case involves important issues regarding the validity of the portion of the Wyoming District Court's Stay Order declining to hear the merits of the Venting and Flaring Rule, and oral argument will assist this Court in its review.

Respectfully submitted this 12th day of September, 2018.

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/s/ *Paul M. Seby*

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/s/ *Paul M. Seby*

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I hereby certify that on September 12, 2018, I electronically filed the going **INTERVENOR-APPELLEES STATE OF NORTH DAKOTA'S AND TEXAS'S JOINT RESPONSE BRIEF** using the court's CM/ECF system which will send notification of such filing to all counsel of record.

/s/ *Paul M. Seby*