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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

STATE OF WYOMING, et al.,	)	
	)	
Petitioners,	)	
	)	Civil Case No. 2:16-cv-00285-SWS [Lead]
v.	)	
	)	[Consolidated With 2:16-cv-00280-SWS]
UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,	)	Assigned: Hon. Scott W. Skavdahl
	)	
Respondents,	)	**RESPONDENT-INTERVENOR CITIZEN GROUPS' RESPONSE TO INDUSTRY PETITIONERS' SECOND MOTION FOR A PRELIMINARY INJUNCTION**
and	)	
WYOMING OUTDOOR COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, CITIZENS FOR A HEALTHY COMMUNITY, DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, EARTHWORKS, ENVIRONMENTAL DEFENSE FUND, ENVIRONMENTAL LAW AND POLICY CENTER, MONTANA ENVIRONMENTAL INFORMATION CENTER, NATIONAL WILDLIFE FEDERATION, NATURAL RESOURCES DEFENSE COUNCIL, SAN JUAN CITIZENS ALLIANCE, SIERRA CLUB, THE WILDERNESS SOCIETY, WESTERN ORGANIZATION OF RESOURCE COUNCILS, WILDERNESS WORKSHOP, AND WILDEARTH GUARDIANS,	)	
	)	
Respondent-Intervenors.	)	

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INTRODUCTION

This Court should reject the Western Energy Alliance (WEA) and Independent Petroleum Association of America's (collectively, Industry Petitioners) bid for a second bite at the preliminary injunction apple. Nothing relevant to the outcome of the motion has changed since this Court denied Petitioners' earlier bid. Critically, Industry Petitioners do not point to anything new with respect to their likelihood of success on the merits—one of the four factors that they must demonstrate to obtain such extraordinary relief. Nor could they—no intervening precedent casts doubt on the Bureau of Land Management's (BLM) statutory authority to promulgate the Waste Prevention Rule (the Rule), and Industry Petitioners have identified no new relevant factual evidence. With respect to irreparable harm, the Rule's costs remain the same. All that has changed is that the compliance deadlines for some of the Rule's requirements are now closer. But these requirements, which BLM determined are proven and cost-effective measures to reduce waste of publicly-owned resources, do not cause "certain" and "great" irreparable harm.

Unable to satisfy the four factors, Industry Petitioners' second motion for a preliminary injunction appears to be nothing more than an impermissible request for backup protection against the uncertainties of BLM's efforts to suspend the Rule, a request that this Court has already rejected. Order Granting Extension 4 (Oct. 30, 2017), ECF No. 163 (Extension Order). As BLM argues in its response, however, "this Court need not decide the propriety of the requested injunction because forthcoming agency rulemakings will likely render that relief moot." BLM Resp. to 2d Prelim. Inj. 2 (Nov. 29, 2017), ECF No. 170. But even if BLM fails to finalize its proposed suspension rule, the proper course would be for this Court to decide the merits, which are scheduled for argument on the same day as the preliminary injunction, *not* to grant preliminary relief pending a merits determination.

That BLM does not oppose this second bid does not change the analysis. An agency's "consent is not alone a sufficient basis for [a court] to stay or vacate a rule." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 557 (D.C. Cir. 2015). A contrary result would allow agencies to circumvent administrative law requirements for revising a final regulation. This Court should reject the motion, which will waste limited resources relitigating issues decided ten months ago.

BACKGROUND

BLM finalized the Waste Prevention Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016), over a year ago to prevent rampant waste of publicly-owned natural gas. Immediately thereafter, Industry Petitioners, along with the states of Wyoming, Montana, and North Dakota (collectively, Petitioners), moved this Court to preliminarily enjoin the Rule. *See* Mem. in Supp. of Mot. for Prelim. Inj., No. 16-cv-280-SWS (Nov. 23, 2016), ECF No. 13 (First PI Mem.). Full briefing on the motions for preliminary relief along with the submission of numerous factual declarations followed. On January 6, 2017, this Court held a half-day hearing, with witness testimony and oral argument, on the motions. Civil Minute Sheet (Jan. 6, 2017), ECF No. 87.

On January 16, 2017, after "having considered the briefs and materials submitted in support of the motions and the oppositions thereto, having heard witness testimony and oral argument of counsel, and being otherwise fully advised," this Court denied the motions for preliminary injunction. Order on Mots. for Prelim. Inj. 2 (Jan. 16, 2017), ECF No. 92 (PI Order). In a detailed opinion, this Court found that "Petitioners have failed to establish all four factors required for issuance of a preliminary injunction." *Id.* at 28. On the merits, this Court concluded that Petitioners have not "shown a clear and unequivocal right to relief." *Id.* at 20, 22. This Court also determined that Petitioners "failed to establish that irreparable injury is likely in the absence of an injunction." *Id.* at 27. Petitioners did not appeal this Court's order, and on

January 17, 2017, the Waste Prevention Rule went into effect and companies were legally required to comply with its provisions.

After denying the preliminary injunctions, this Court established an expedited briefing schedule on the merits, supported by the Citizen Groups, which would have led to merits briefing in the spring of 2017. *Id.* at 29; Tr. of Prelim. Inj. Hr'g Proceedings 148:16–17 (Jan. 6, 2017). On March 3, 2017, and again on March 30, 2017, however, Industry Petitioners sought an extension of the briefing schedule, noting that "Congress may eliminate the Venting and Flaring Rule through exercise of the Congressional Review Act, mooting the underlying case." Jt. Mot. to Extend Briefing Schedule 3 (Mar. 3, 2017), ECF No. 97 (Indus. 1st Extension Mot.); *see also* Indus. Pet'rs Mot. for Extension (Mar. 30, 2017), ECF No. 110 (Indus. 2d Extension Mot.).[1]

On May 10, 2017, despite intensive lobbying by Industry Petitioners, the American Petroleum Institute, and the newly-appointed Secretary Zinke, a majority of Senators voted *against* a motion to proceed to debate a Congressional Review Act (CRA) resolution to disapprove the Rule. 163 Cong. Rec. S2851, S2853 (May 10, 2017).

Meanwhile, WEA sent a letter to Secretary Zinke, thanking him for his "efforts to persuade reluctant Senators to vote to overturn" the Waste Prevention Rule and urging him to "expeditiously publish a notice in the Federal Register to suspend the rule" in light of the fact that a "rulemaking to rescind it … must be done in a deliberative manner per the Administrative Procedure Act."[2] On June 15, 2017, without undergoing any notice or comment, Secretary Zinke

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[1] While Industry Petitioners claimed that they sought these extensions in order to complete the administrative record, North Dakota had offered a solution that would allow swift merits briefing with supplemental briefing should any additions to the administrative record yield additional arguments. Industry Petitioners rejected this accommodation. Indus. Pet'rs Reply in Supp. of Mot. for Extension 2 (Apr. 4, 2017), ECF No. 113.

[2] Letter from Kathleen Sgamma, President, WEA to Ryan Zinke, Sec'y of the Interior 1–2 (Apr. 4, 2017), https://www.blm.gov/sites/blm.gov/files/WEA_Letter_VF.pdf (Sgamma Letter).

published a rule suspending the requirements of the Waste Prevention Rule "pending litigation," which was later vacated as beyond the Secretary's statutory authority. *California v. BLM*, No. 3:17-cv-03804-EDL, 2017 WL 4416409 (Oct. 4, 2017).

On June 27, 2017, acting on a motion by BLM, this Court set a merits briefing schedule. Order Granting Mot. to Extend 3 (June 27, 2017), ECF No. 113. Petitioners submitted their opening briefs on October 2, 2017. *See, e.g.*, Br. in Supp. of Indus. Pet'rs Pet. for Review (Oct. 2, 2017), ECF No. 142 (Indus. Merits Br.). Three weeks after Petitioners filed their opening briefs, BLM sought an additional extension for its response brief to finalize its new proposal—requested by Industry Petitioners—to suspend the Rule. Industry Petitioners then filed the request at issue here to concurrently *relitigate* the preliminary injunction, predominantly premised on the same arguments that this Court considered and rejected ten months ago. *See* Mem. in Supp. of Mot. for Prelim. Inj. (Oct. 27, 2017), ECF No. 161 (Second PI Mem.). This Court noted that it "must decline Industry Petitioners' invitation to avoid the compliance and enforcement uncertainty by granting their request for a preliminary injunctive relief; Petitioners' motion for preliminary injunction must be resolved on its own merit, or lack thereof." Extension Order 4. This Court set a date of December 18, 2017 for both an oral argument on the merits and a hearing on Industry Petitioners' second preliminary injunction motion. *Id.* at 5.

ARGUMENT

There is no reason to disturb this Court's earlier finding that Petitioners failed to establish all four factors necessary to grant the extraordinary remedy of a preliminary injunction. Indeed, for several reasons, this Court should not even consider Industry Petitioners' second bid, which is merely an impermissible attempt to take out an insurance policy against the vagaries of BLM's suspension rulemaking in the guise of a preliminary injunction request. But even if this Court

decides to give Industry Petitioners a second bite at the apple, Petitioners have not demonstrated that such extraordinary relief is warranted here.

I. This Court's Denial of Industry Petitioners' Previous Request for a Preliminary Injunction Precludes Industry's Second Request Premised on the Same Legal and Factual Claims.

Industry Petitioners are estopped from relitigating this Court's earlier findings that Petitioners are not entitled to the extraordinary relief of a preliminary injunction because they present no new relevant evidence regarding their likelihood of success on the merits or the irreparable harm they will allegedly face. Absent such new relevant information, Industry Petitioners cannot mount a successful successive bid.

A party filing a sequential motion for a preliminary injunction is "collaterally estopped from challenging the district court's earlier findings." *Adams v. City of Chicago*, 135 F.3d 1150, 1153 (7th Cir. 1998); *see* 18A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4445 (2d ed. 2017) ("Wright & Miller") (ruling on a preliminary injunction motion is preclusive with respect to a subsequent preliminary injunction motion "if the same showings are made and it appears that nothing more is involved than an effort to invoke a second discretionary balancing of the same interests"). Although a new motion is "allowed to present new evidence," *Adams*, 135 F.3d at 1153, "[t]he moving party is collaterally estopped from challenging the findings made on the first motion apart from the new evidence," Wright & Miller § 4445 n.5; *see also Pinson v. Pacheco*, 424 F. App'x 749, 755 (10th Cir. 2011) ("As the magistrate judge explained, and the district court adopted [in denying Pinson's third preliminary injunction motion], Pinson 'provided no new, substantial evidence to support his motion for a

preliminary injunction.'"').[3] The rule against successive preliminary injunction motions prevents parties from wasting valuable judicial resources relitigating issues that have already been decided in a full and fair proceeding. *See, e.g.*, *F.W. Kerr Chem. Co. v. Crandall Assoc., Inc.*, 815 F.2d 426, 429 (6th Cir. 1987) ("Parties should not be allowed to harass their adversaries and the courts with a barrage of successive motions for extraordinary, preliminary injunctive relief.").

Here, with respect to likelihood of success on the merits, Industry Petitioners present the same legal arguments and factual evidence this Court already considered—and found insufficient—in its January 2017 order denying their first preliminary injunction motion. Indeed, Industry Petitioners merely cite this Court's earlier statements in its order concluding that Petitioners *had not demonstrated* a likelihood of success on the merits and *denying* preliminary injunctive relief. *See* Second PI Mem. 8–9 (quoting PI Order 17–19). Industry Petitioners then incorporate by reference their merits brief, Second PI Mem. 9, but make no attempt to present new evidence regarding this prong, which Industry Petitioners must demonstrate in order to warrant extraordinary injunctive relief, *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005) (party seeking a preliminary injunction must show that its right to relief is "clear and unequivocal" and must establish all four factors).

Nor could Industry Petitioners present new, relevant evidence on the likelihood of success on the merits—the Rule itself, and the law governing BLM's authority to promulgate it, have not changed. This Court should end its analysis here. Because Industry Petitioners are

[3] This common-sense test has been widely embraced. *See, e.g.*, *Hawksbill Sea Turtle v. Fed. Emergency Mgmt. Agency*, 126 F.3d 461, 474 n.11 (3d Cir. 1997) (noting that giving a preliminary injunction ruling preclusive effect "would seem to be particularly appropriate in a second action seeking the same injunctive relief"); *F.W. Kerr Chem. Co.*, 815 F.2d at 428 (explaining that courts require successive preliminary injunction motions to state new facts warranting reconsideration of the prior decision and collecting cases in support of that point).

precluded from relitigating this Court's findings on their likelihood of success on the merits, this second preliminary injunction motion is a waste of this Court's resources.

Similarly, Industry Petitioners' renewed claims of irreparable harm due to the Rule's compliance costs merely repeat those harms that they asserted in their first motion, and which were rejected by this Court. PI Order 25–27. Nothing about the Waste Prevention Rule's requirements, or the costs of those requirements, has changed over the last ten months.[4] Industry Petitioners raise two allegedly "new" circumstances—that certain compliance deadlines are now closer and that there is uncertainty about BLM's efforts to suspend the Rule. But neither of those circumstances change the nature of the compliance costs, which this Court found insufficient to warrant injunctive relief. Moreover, Industry Petitioners, having delayed merits briefing during their failed attempt to get Congress to disapprove the common-sense and beneficial Waste Prevention Rule, and then urged BLM to hastily suspend the Rule *before* thoroughly considering whether a rescission is lawful and warranted, are largely responsible for both of these circumstances. *See Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (litigant cannot "be heard to complain about damage inflicted by its own hand").

Industry Petitioners' arguments on the third and fourth factors likewise repeat (sometimes word-for-word) arguments made in their first preliminary injunction motion. *Compare* Second PI Mem. 10 *with* First PI Mem. 53. Industry Petitioners are precluded from duplicating earlier

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[4] Industry Petitioners purport to present new cost estimates in support of their claim of irreparable harm, but (beyond the speculative and unsubstantiated nature of those estimates, discussed *infra* pp. 18–24) they fail to explain why they could not have presented the current cost analysis in their first preliminary injunction motion. *See Am. Optical Co. v. Rayex Corp.*, 394 F.2d 155, 155 (2d Cir. 1968) (admonishing against attempts to "relitigate on a fuller record preliminary injunction issues already decided"); *cf. Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (regarding successive reconsideration motions, holding that "[i]t is not appropriate to revisit issues already addressed or advance arguments that *could have been raised* in prior briefing" (emphasis added)).

arguments when this Court has already found that the third and fourth factors do not tip decidedly in their favor. PI Order 27–28.

With no evidence of changed circumstances sufficient to alter this court's preliminary injunction analysis, Industry Petitioners' second motion is merely a "second discretionary balancing of the same interests," Wright & Miller § 4445, which is impermissible.[5] Rather than give credence to Industry Petitioners' attempt to waste valuable judicial resources relitigating issues that have already been decided in a full and fair proceeding, this Court should conclude that its earlier ruling, which Petitioners did not appeal, has preclusive effect, and deny Industry Petitioners' second motion for preliminary injunction.

II. The Extraordinary Remedy of a Preliminary Injunction is Not Necessary or Appropriate in this Case.

As Industry Petitioners' motion admits, "the purpose of a preliminary injunction is to 'preserve the relative position of the parties *until a trial on the merits can be held*.'" Second PI Mem. 4 (emphasis added) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)); *see, e.g.*, *Keirnan v. Utah Transit Auth.*, 339 F.3d 1217, 1220 (10th Cir. 2003) ("A preliminary injunction serves to preserve the status quo pending a final determination of the case on the merits" in order to "preserve the power to render a meaningful decision on the merits." (quotation omitted)).[6] In this case, no preliminary injunction is necessary because this Court has

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[5] Certainly, Industry Petitioners would not be allowed to now appeal any of this Court's earlier findings that they declined to appeal earlier. *See F.W. Kerr Chem. Co.*, 815 F.2d at 429 (finding lack of appellate jurisdiction over appeal from denial of successive preliminary injunction motion for issues that were indistinguishable from earlier motion where party failed to timely appeal from denial of earlier motion).

[6] Likewise, under the Administrative Procedure Act, 5 U.S.C. § 705, courts are authorized to stay regulations "pending judicial review." The legislative history of that provision confirms that it was intended to "afford parties an adequate *judicial* remedy," H.R. Rep. No. 79-1980, at 277

set the hearing on the merits and the preliminary injunction for the same day, December 18, 2017. At that point, either (1) the merits will be ready for resolution and a decision on the merits will moot Industry Petitioners' successive motion, *see Wyoming v. Sierra Club*, Nos. 15-8126 & 15-8134, 2016 WL 3853806, at *1 (10th Cir. July 13, 2016), or (2) BLM will have obviated the need for adjudication of the preliminary injunction by finalizing a rule suspending the Waste Prevention Rule's provisions that Industry Petitioners claim are responsible for their harm, *see* BLM Resp. to 2d Prelim. Inj. (Nov. 29, 2017), ECF No. 170. Because the merits can be ready for adjudication at the same time as the preliminary injunction, it would be inappropriate to grant preliminary relief "until a trial on the merits can be held." *Camenisch*, 451 U.S. at 395.[7]

Industry Petitioners appear to seek a preliminary injunction as insurance against the possibility that BLM may not finalize its attempt to suspend the Rule or the suspension decision may be struck down as unlawful. Indus. Pet'rs' Condt'l Opp'n to Mot. for Extension 4 (Oct. 27, 2017), ECF No. 158 (Indus. Condt'l Opp'n). But the appropriate course of action in that case is to resolve the merits—which are set for a hearing on the same day—*not* to grant preliminary relief pending a merits determination that this Court does not plan to provide. Indeed, should the

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(1946) (emphasis added), and to "provide[] intermediate judicial relief … in order to make *judicial* review effective," S. Rep. No. 79-752, at 213 (1945) (emphasis added).

[7] Underscoring the inappropriateness of seeking a preliminary injunction *after* filing a merits brief is Federal Rule of Civil Procedure 65(a)(2), which allows courts to consolidate merits and preliminary injunction proceedings where the merits can be resolved at that stage. *See Camenisch*, 451 U.S. at 395; *N. Arapahoe Tribe v. Hodel*, 808 F.2d 741, 753 (10th Cir. 1987) (consolidation appropriate when petitioner is prepared to "prove [their] whole case"); *Curtis 1000, Inc. v. Suess*, 24 F.3d 941, 945 (7th Cir. 1994) ("The general point is that when the eventual outcome on the merits is plain at the preliminary injunction stage, the judge should, after due notice to the parties, merge the stages and enter a final judgment."). Here, where the administrative record has been complete for months, Petitioners have filed their merits brief (and incorporated that brief by reference into their second preliminary injunction motion), and had weeks of notice that this Court is holding a simultaneous hearing on the merits and the second preliminary injunction motion, a final judgment would be more appropriate than addressing the preliminary injunction motion.

Rule be preliminarily enjoined, Industry Petitioners have indicated that they would not oppose BLM's attempts to prevent this Court from *ever* reaching the merits. *See* Fed. Resp'ts' Mot. for Extension 4–5 (Oct. 20, 2017), ECF No. 155 (proposing to obviate need to decide merits); Indus. Cont'l Opp'n 1–2 (not opposing BLM's proposal if preliminary injunction granted). Should this Court grant extraordinary preliminary relief and then not reach the merits, it would in effect grant Industry Petitioners a permanent injunction based solely on a likelihood of success on the merits.

Likewise, should this Court decide that this case is prudentially unripe and it is not a good use of this Court's resources to decide the merits of the petitions for review, as urged by BLM, the same would be equally true of deciding the preliminary injunction motion, which would include a ruling on the likelihood of success on the merits. If BLM reconsidering the Rule affects the propriety of deciding the merits, the appropriate course is not to effectively grant a permanent injunction without ever reaching the merits, but instead to dismiss the petitions for review. *See Wyoming v. Zinke*, 871 F.3d 1133, 1145–46 (10th Cir. 2017). If this Court determines that the case is *not* prudentially unripe, it should decide the merits.

III. BLM's Non-Opposition Is Not a Valid Basis to Enjoin the Waste Prevention Rule.

After vigorously opposing Petitioners' first bid to preliminarily enjoin the Rule, BLM does not oppose the second preliminary injunction, although it deems it unnecessary. BLM's non-opposition cannot change this Court's analysis of the required four factors.

An agency's "consent is not alone a sufficient basis for [a court] to stay or vacate a rule." *Mexichem Specialty Resins, Inc.*, 787 F.3d at 557. A "court is not bound to accept, and indeed generally should not uncritically accept, an agency's concession of a significant merits issue." *Id.* Otherwise, "an agency could circumvent the rulemaking process through litigation concessions, thereby denying interested parties the opportunity to oppose or otherwise comment

on significant changes in regulatory policy. If an agency could engage in rescission by concession, the doctrine requiring agencies to give reasons before they rescind rules would be a dead letter." *Id.*

For example, the D.C. District Court squarely rejected the Obama Department of the Interior's request to remand and vacate a Bush-era coal mine waste rule without reviewing the merits despite the new administration's admission of serious legal deficiencies in the rulemaking. *Nat'l Parks Conservation Ass'n v. Salazar*, 660 F. Supp. 2d 3, 4 (D.D.C. 2009). The court concluded that "granting the Federal defendants' motion would wrongfully permit the Federal defendants to bypass established statutory procedures for repealing an agency rule," and "allow the Federal defendants to do what they cannot do under the APA, repeal a rule without public notice and comment, without judicial consideration of the merits." *Id.* at 5.

The same reasoning applies here. BLM may—as it is doing—embark on a notice and comment rulemaking to revise or repeal the Waste Prevention Rule, and may finalize such a rule so long as it is permissible under its statutory authority, and BLM follows the proper procedures under the APA for public notice and comment and gives good reasons for the revised rule. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–16 (2009). But what BLM may not do is agree to a shortcut to its preferred result *before* completing those steps because BLM would like to revise or repeal the Rule.[8]

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[8] Nor does the possibility that BLM may change its position on the merits affect this Court's adjudication of the merits. Review of a final agency action must be "based on the full administrative record that was before all decision makers at the time of the decision." *Bar MK Ranches v. Yeutter*, 994 F.2d 735, 739 (10th Cir. 1993); *see* 5 U.S.C. § 706 ("In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party."). "It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). "After-the-fact rationalization by counsel in briefs or arguments will not cure noncompliance by the agency with" the requirement that it "must make

IV. Should this Court Reach the Merits of the Second Preliminary Injunction Motion, It Should Again Conclude that Petitioners Have Not Demonstrated a Clear and Unequivocal Right to Extraordinary Relief.

A preliminary injunction is an "extraordinary remedy," for which "the right to relief must be clear and unequivocal." *Schrier*, 427 F.3d at 1258 (quotation omitted). To obtain a preliminary injunction, Industry Petitioners must demonstrate: (a) a likelihood of success on the merits; (b) that they are likely to suffer irreparable harm in the absence of injunctive relief; (c) that the balance of equities favors an injunction; and (d) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "[E]ach of these elements is a prerequisite for obtaining a preliminary injunction." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). "[A]ny modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible." *Id.* at 1282.

In addition to the threshold issues that doom Industry Petitioners' second-chance motion, Petitioners also fail to establish *any* of the four factors required for a preliminary injunction, let alone all four factors.

A. Industry Petitioners fail to demonstrate a likelihood of success on the merits.

As discussed *supra* Part I, Industry Petitioners raise no new evidence regarding their likelihood of success on the merits and there is therefore no reason for this Court to disturb its earlier finding that Petitioners failed to satisfy this precondition to injunctive relief. Rather than repeating the more extensive arguments the Citizen Groups already made in their earlier response to Petitioners' first round of preliminary injunction briefing and that the Citizen Groups

plain its course of inquiry, its analysis, and its reasoning" in the administrative record. *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575 (10th Cir. 1994).

will make in their response to Petitioners' merits brief, the Citizen Groups here highlight a number of reasons why Petitioners cannot satisfy this requirement.[9]

In promulgating the Waste Prevention Rule, BLM reasonably determined the measures that constitute "reasonable precautions to prevent waste" of publicly-owned resources under the Mineral Leasing Act (MLA), 30 U.S.C. § 225. As this Court held, the MLA and FOGRMA "unambiguously grant BLM authority to regulate the development of federal and Indian oil and gas resources *for the prevention of waste*." PI Order 14–15. Under its governing statutes, BLM may require lessees to "use all reasonable precautions to prevent waste of oil or gas developed in the land." *Id.* at 13 (quoting 30 U.S.C. § 225); *see also id*. (recognizing that "Section 187 [of the MLA] confirms the BLM's authority to issue regulations to carry out the MLA's waste prevention objectives"). These statutes also "contain … broad grant[s] of rulemaking authority to achieve [their] objectives." *Id.* at 14 (citing 30 U.S.C. § 1751). And this Court earlier "agree[d] that the BLM is entitled to deference regarding the determination of how best to minimize losses of gas due to venting, flaring, and leaks, and incentivize the capture and use of produced gas"—in other words, how to best prevent waste. PI Order 15.

The requirements of the Waste Prevention Rule are "reasonable precautions to prevent waste." The provisions challenged by Petitioners will reduce the amount of publicly-owned natural gas that is currently wasted through venting, flaring and leaking, and ameliorate the rampant problem of waste of publicly-owned resources. *See* VF_0000562 (showing gas savings associated with the capture target requirement and requirements for pneumatic controllers,

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[9] Although the Citizen Groups requested that this Court extend their deadline to respond to Industry Petitioners' second preliminary injunction motion to December 11, 2017 to correspond with their merits briefing deadline and allow the Citizen Groups to incorporate merits arguments by reference, as Industry Petitioners have done, this Court instead set the deadline for November 29. Order Partially Granting Jt. Mot. to Extend 2 (Nov. 8, 2017), ECF No. 168.

pneumatic pumps, liquids unloading, storage tanks, and leak detection and repair); 81 Fed. Reg. at 83,010–13 (estimating current losses of gas from leakage and other sources addressed in the Rule).

Moreover, every challenged provision of the Waste Prevention Rule is a "reasonable precaution" because they are based on proven, widely available technologies and techniques already required in states like Colorado, used by leading companies, and associated with only modest costs. 81 Fed. Reg. at 83,019 (Rule is based on "approaches that Colorado, Wyoming and North Dakota adopted to address rising rates of flaring, waste of minerals, and pollution impacts in those states."); *see also id.* at 83,013–14 (compliance costs represent about 0.15 percent of small company profits). Indeed, Congress's direction for BLM to use "*all* reasonable precautions to prevent waste" suggests that Congress intended BLM to aggressively control waste of publicly-owned resources. 30 U.S.C. § 225 (emphasis added); *see Halliburton, Inc. v. Admin. Review Bd.*, 771 F.3d 254, 266 (5th Cir. 2014) (statutory term "all relief necessary" authorized broad remedies because "we think Congress meant what it said. All means all." (quotation omitted)).[10]

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[10] Industry Petitioners' asserted limitation that "waste" can only mean what is profitable for a company to capture is neither compelled by the MLA nor a reasonable construction of a statute that is aimed at safeguarding the *public's* interest, not the interest of individual operators. *See, e.g.*, H.R. Rep. No. 65-1138, at 19 (1919) (Conf. Rep.) (demonstrating that Congress's overriding concern was to "reserve to the Government the right to supervise, control and regulate the … [development of public natural resources], and prevent monopoly and waste, and other lax methods that have grown up in the administration of our public-land laws"). To support their assertion, Industry Petitioners cherry-pick one explicitly *economic* definition from a treatise, Indus. Merits Br. 19 (citing Williams & Meyers, *Manual of Oil and Gas Terms*, 1135 (16th ed. 2015)), ignoring the *primary* definition of waste in that treatise as "the ultimate loss of oil or gas," and a far more apposite definition of *physical* waste as "the loss of oil or gas that could have been recovered and put to use," including the "flaring of gas," Williams & Meyers, *Manual of Oil and Gas Terms* 1046 (14th ed. 2009).

Industry Petitioners argue that the Waste Prevention Rule is not actually a rule for the prevention of waste, but instead a "comprehensive air quality regulation[]," which they allege is within EPA's exclusive authority. Indus. Merits Br. 12–13. But repeatedly calling the Rule an air quality rule does not make it so. As this Court previously recognized, overlap between waste prevention provisions and air quality controls is inevitable because when it comes to natural gas, the "product is also the pollutant." PI Order 7; *see also id.* at 15 ("[A] regulation that prevents wasteful losses of natural gas necessarily reduces emissions of that gas."). Overlapping authority among federal agencies is pervasive throughout our administrative state and entirely lawful.

The Supreme Court's decision in *Massachusetts v. EPA* is controlling. There, EPA argued that it did not have authority to "regulate carbon dioxide emissions from motor vehicles because doing so would require it to tighten mileage standards, a job (according to EPA) that Congress has assigned to DOT." 549 U.S. 497, 531–32 (2007). The Supreme Court disagreed:

> But that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's 'health' and 'welfare,' a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

Id. at 532 (citations omitted). The same is true here. Like the mileage standards at issue in *Massachusetts*, measures to prevent venting, flaring and leaking gas achieve two independent goals: reducing waste of natural resources and cleaning the air. But BLM's obligation to reduce waste of publicly-owned resources is "wholly independent" of EPA's obligation to reduce emissions of dangerous pollutants, and there is no reason that BLM and EPA cannot both administer these obligations and yet avoid inconsistency.[11]

[11] In fact, BLM's authority and substantive expertise is not limited solely to preventing waste. Under the MLA, BLM has express authority to "safeguard[] … the public welfare." 30 U.S.C.

That is exactly what the agencies did here, through a concerted effort to ensure that both agencies may fulfill their statutory mandates without undue duplication. *See* 81 Fed. Reg. at 83,010, 83,013 (recognizing the possibility of overlap and explaining how the final rule seeks to minimize overlap while ensuring that BLM's statutory duties are fulfilled). The fact that BLM and EPA communicated regularly in developing the Waste Prevention Rule demonstrates that they were applying in good faith the Supreme Court's direction to implement their independent statutory obligations while at the same time avoid inconsistency.

Contrary to Industry Petitioners' allegations, Indus. Merits Br. 13–17, there is no conflict between BLM's Waste Prevention Rule, which regulates waste from existing sources developing federal and tribal minerals, and EPA's as-yet-unexercised authority to regulate air emissions from existing oil and gas wells nationwide. Although the agencies have some overlapping authority with respect to existing oil and gas sources, the vast majority of these sources are not subject to the Rule because they are not located on federal or tribal lands. Even for the existing sources that are subject to the Rule, there is nothing more than the *potential* for future conflict as EPA has yet to exercise its authority. When it does, EPA can be expected to heed the Supreme Court's direction in *Massachusetts* to avoid inconsistency, just as BLM did in promulgating the Waste Prevention Rule.

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§ 187. Similarly, pursuant to the Federal Land Policy and Management Act (FLPMA), it is the "policy of the United States" to manage public lands "in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, *air and atmospheric*, water resource, and archeological values." 43 U.S.C. § 1701(a)(8) (emphasis added); *see* PI Order 15 (recognizing that FLPMA "arguably directs BLM to consider any impact to 'the quality of air and atmospheric values'" in determining how to minimize waste). FLPMA also requires BLM "by regulation or otherwise" to "take any action necessary to prevent unnecessary or undue degradation" of public lands. 43 U.S.C. § 1732(b). Under these authorities, BLM *must* consider and protect public resources, including air quality.

Finally, the Waste Prevention Rule is not arbitrary and capricious, as claimed by Industry Petitioners. Indus. Merits Br. 22–26. BLM reasonably determined that the Rule's requirements constitute "reasonable precautions to prevent waste," as required by the MLA. That BLM also carefully considered the costs and benefits of the Rule, including the indirect benefits in the form of cost-savings for industry and reducing emissions of the powerful greenhouse gas methane, has no impact on the reasonableness of BLM's exercise of its discretion under the MLA. In fact, BLM's examination of the costs and benefits in its Regulatory Impact Analysis complies with all relevant guidance. Executive Order No. 12,866 requires agencies to consider "environmental, public health and safety, and other advantages" of a rule. Exec. Order No. 12,866 § 1(a), 76 Fed. Reg. 3821, 3821 (Jan. 18, 2011); *see also* Exec. Order No. 13,563 § 1(a), 58 Fed. Reg. 51,735, 51,735 (Sept. 30, 1993) (agency must measure the "actual results of regulatory requirements"). And the Office of Management and Budget's Circular A-4 instructs agencies to "look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks." VF_0007668. BLM did exactly that in considering both the benefits of waste reduction measures in the form of cost savings and the important benefits of reducing greenhouse gas emissions.

The fact that the Rule will reduce dangerous air pollution is a virtue and not a vice; it does nothing to undermine the direct benefits of the rule in the form of publicly-owned resources that will no longer be wasted. 81 Fed. Reg. at 83,069. As discussed above, the MLA and FLPMA also mandate that BLM consider the public welfare and air and atmospheric values. *See supra* n.11. By including analysis of the impacts of greenhouse gas emissions, BLM is not considering a "factor[] which Congress has not intended it to consider." Indus. Merits Br. 24 (quoting *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43). Rather, BLM is fulfilling its explicit

statutory mandates to conserve resources and safeguard the public welfare. *See Zero Zone, Inc. v. U.S. Dep't of Energy*, 832 F.3d 654, 677 (7th Cir. 2016) (holding the Energy Policy and Conservation Act's direction to consider energy conservation authorized the Department of Energy to consider "potential environmental benefits" based on the social cost of carbon); *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 625–26 (D.C. Cir. 2016) (holding that consideration of potential co-benefits that might be achieved from a regulation was consistent with the Clean Air Act's purpose). Accordingly, there is no reason for this Court to reverse its earlier finding that Petitioners have not demonstrated likelihood of success on the merits.

B. Industry Petitioners fail to demonstrate they will suffer irreparable harm absent an injunction.

Industry Petitioners have not shown that absent a preliminary injunction, they will incur imminent and "certain, great, actual 'and not theoretical'" harm. *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (quotation omitted).

1. Compliance uncertainty is not irreparable harm, nor is compliance with the Waste Prevention Rule "impossible."

Industry Petitioners' complaints about compliance uncertainty cannot form the basis for the "certain" and "not theoretical" harm required for a preliminary injunction because the complaint is based on speculation about what may or may not occur. *Heideman,* 348 F.3d at 1189. As this Court already recognized, compliance uncertainty alone is insufficient to justify a preliminary injunction. Extension Order 4 ("The Court must decline Industry Petitioners' invitation to avoid the compliance and enforcement uncertainty by granting their request for a preliminary injunctive relief."). This Court found that Industry Petitioners' "motion for preliminary injunction must be resolved on its own merit, or lack thereof." *Id.* Indeed, any situation in which regulated entities bring a legal challenge to a promulgated regulation entails

some degree of uncertainty as to whether the regulation will be upheld and thus whether compliance will ultimately be required. Reducing that uncertainty cannot be the basis for a preliminary injunction. The petitioner must still show that it meets all four preliminary injunction factors, including irreparable harm—something Industry Petitioners have failed to do here.

Industry Petitioners further claim that "it is now impossible" for some operators to fully comply with the Waste Prevention Rule. Second PI Mem. 7.[12] Industry Petitioners, however, do not identify *any* specific operator who is unable to comply with the Rule, instead relying on broad, generalized, and completely unsubstantiated allegations of difficulty made by the president of a trade group. *Id.* These allegations ignore the operators who are already readily complying with the Rule, *see infra* pp. 23–24, and ignore the fact that operators had a full year to comply with these provisions, while the Rule was only administratively stayed for three months.

Moreover, the harms Industry Petitioners now allege due to supposed uncertainty and impossibility are partially of their own making. "The case law is well-settled that a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted." *Lee v. Christian Coal. of Am., Inc.*, 160 F. Supp. 2d 14, 33 (D.D.C. 2001) (quotation omitted); *see also Pennsylvania*, 426 U.S. at 664 (litigant cannot "be heard to complain about damage inflicted by its own hand"); *Salt Lake Tribune Publ'g Co. v. AT&T Corp.*, 320 F.3d

[12] Industry Petitioners cite *Messina v. U.S. Citizenship & Immigration Servs.*, No. CIV.A. 05CV73409DT, 2006 WL 374564, at *6 (E.D. Mich. Feb. 16, 2006), for the proposition that it is "arbitrary and capricious to require compliance with a regulation when compliance is impossible." The "impossibility" in *Messina* is completely inapposite to the situation here. In *Messina*, adoptive parents sought permanent immigration status for their adopted daughter, but the U.S. Citizenship and Immigration Services denied the request under its regulations, which required adoption before a child turned sixteen. *Id.* The adoptive parents, however, could not obtain an order of adoption until after the daughter turned eighteen because they were unable to locate her birth parents to consent to the termination of their parental rights. *Id.*

1081, 1106 (10th Cir. 2003) (court will not consider a self-inflicted harm to be irreparable). To the extent that any operators face difficulties meeting the Rule's requirements, those operators have brought that harm on themselves by simultaneously delaying both adjudication of this case and their own compliance efforts. Similarly, much of the alleged uncertainty surrounding implementation of the Rule has been created or encouraged by industry.

The Waste Prevention Rule was published over a year ago, and took effect on January 17, 2017—providing operators significant time to come into compliance with the requirements that have a January 17, 2018 deadline. While this Court indicated that it could resolve the merits of this case on an expedited briefing schedule, PI Order 28, Industry Petitioners instead opted to seek to delay merits briefing on two occasions while attempting to persuade Congress to disapprove the Rule. *See* Indus. 1st Extension Mot.; Indus. 2d Extension Mot.[13]

As the CRA effort was foundering, Industry turned to BLM, asking the agency to hastily suspend the Rule *before* engaging in a repeal or revision rulemaking in which the agency would fully consider its statutory mandate, the record evidence, and public comment. *See* Sgamma Letter 1–2. In response to these requests, six months after the Rule took effect, BLM purported to stay it under 5 U.S.C. § 705, without undergoing notice and comment rulemaking. Industry Petitioners conceded that "a suspension requires a thirty-day public notice and comment period," *id.* at 2, and so it should have come as no surprise when the June 2017 stay was held unlawful, *California*, 2017 WL 4416409, at *14. Had Industry Petitioners pursued a different course, this Court could have resolved the merits last spring and industry would not be subject to the

[13] Indeed, Industry Petitioners' counsel noted in press comments regarding the relationship between the CRA and the litigation that "[w]e definitely wanted to give the CRA process a chance to work out." Ellen M. Gilmer, *CRA effort looms large in legal battle over BLM methane rule*, E&E News (May 9, 2017), www.eenews.net/stories/1060054241.

compliance uncertainty it now decries. Industry Petitioners must comply with a final rule until it is validly revised, and the Waste Prevention Rule is no exception—there is nothing uncertain about that. *See Nat'l Family Planning v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir. 1992) ("[A]n agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked.").

2. Compliance costs alone are not irreparable harm, and Industry Petitioners fail to demonstrate that the Rule's common-sense, cost-effective requirements result in certain and great harm.

As discussed at length in the previous round of preliminary injunction briefing, compliance costs alone are legally insufficient to constitute irreparable harm. Citizen Groups' Resp. to Mots. for Prelim. Inj. 33–35 (Dec. 15, 2016), ECF No. 69 (First PI Resp.). Under Industry Petitioners' argument, the irreparable harm standard would always be met for any regulation which requires compliance by private entities—a view that has been rejected by the courts. *E.g.*, *A.O. Smith Corp. v. Fed. Trade Comm'n*, 530 F.2d 515, 527 (3d Cir. 1976) ("Any time a corporation complies with a government regulation that requires corporation action, it spends money and loses profits; yet it could hardly be contended that proof of such an injury, alone, would satisfy the requisite for a preliminary injunction."); *Wis. Gas Co. v. Fed. Energy Regulatory Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985) (similar).[14]

Industry Petitioners' claims of "severe costs and stranded production," Second PI Mem. 8, are unsubstantiated and belied by the detailed and transparent analysis of compliance

[14] Industry Petitioners attempt to rehash this argument, citing *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742 (10th Cir. 2010), for the proposition that ordinary compliance costs are irreparable. Second PI Mem. 8. The Citizen Groups earlier explained why *Edmondson*, in which the court concluded that the regulation was likely *unconstitutional*, is inapposite here. First PI Resp. 34–35; *see Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable harm is necessary." (quotation omitted)).

costs conducted by BLM when it promulgated the Rule, the Rule's numerous off-ramps for situations where compliance would cause operators to cease production, and the fact that the Rule's requirements are based upon industry best practices, and are modeled after and have been implemented by states without any of the issues Industry Petitioners claim here.

Based on an extensive analysis, BLM concluded that costs associated with the Rule were reasonable, particularly because many of these costs would be offset by the capture and sale of additional gas. Analyzing the impacts on small businesses in particular, BLM estimated that average annual compliance costs would range from about $44,600 to $65,800 for each company, the equivalent of approximately 0.15% of per company profits. *See* VF_0000575–76, 602 (analyzing the impacts for small producers and concluding that $55,200 midpoint average annual compliance cost represents an average reduction in profit margin of 0.15%). BLM reasonably determined that these modest costs are "not expected to impact the investment decisions of firms or significantly adversely impact employment." AR VF_0000454. Nothing has changed in this respect: in its proposal to suspend the Rule's requirements for one year, based on a similar analysis, BLM estimated that the suspension would not "substantially alter the investment or employment decisions of firms." BLM, *Regulatory Impact Analysis for the Proposed Rule to Suspend or Delay Certain Requirements of the 2016 Waste Prevention Rule* 44 (Sept. 27, 2017), https://www.regulations.gov/document?D=BLM-2017-0002-0002.

Industry Petitioners ignore the rigorous and detailed estimates of compliance costs developed by BLM, instead citing to the estimates of their own consultant, as they did in their initial motion for a preliminary injunction. Second PI Mem. 6–7, 11. However, the cost estimates presented here in support of Industry Petitioners' latest preliminary injunction motion suffer from the same analytical flaws that rendered Industry Petitioners' previous cost estimates

unreliable and speculative—they consist of unsubstantiated claims without disclosure of methodology, assumptions, or underlying data. *See* Decl. of Jonathan Camuzeaux & Kristina Mohlin ¶¶ 6–13 (Nov. 29, 2017) (Camuzeaux Decl.). Industry Petitioners' estimates are likewise flawed because they ignore additional revenues from the sale of captured gas. *Id.* ¶ 8. For example, BLM has determined that the requirement to replace pneumatic controllers will pay for itself over the life of the equipment. VF_0000501.

The recent Department of the Interior report referenced by Industry Petitioners also offers no support for Industry's position that operators will be irreparably harmed by compliance costs. Second PI Mem. 6. That report contains only unsubstantiated and unexplained conclusions that conflict with the agency's prior, well-documented analysis that compliance costs are modest and will have limited effects on business decisions. VF_0000454, 576; *see also* Camuzeaux Decl. at ¶ 14–16.

Furthermore, as this Court has recognized, the Rule contains "several economic exemptions" in the event that compliance with the Rule's requirements would force operators to cease production and abandon reserves. PI Order 24–25 (citing 43 C.F.R. § 3179.102(c) (well completion requirements); § 3179.201(b)(4) (pneumatic controller requirements); § 3179.202(f) (pneumatic diaphragm pump requirements); § 3179.203(c)(3) (storage vessel requirements); § 3179.303(c) (operator may request approval of an alternate leak detection program)). Industry Petitioners continue to ignore the impact of these exemptions. *See* Camuzeaux Decl. at ¶ 18.

Finally, Industry Petitioners fail to reconcile their claims with the fact that BLM modeled the Rule on state regulations that have been implemented without disruption to industry. Indeed, in Colorado, production increased after similar requirements were adopted in 2014. *See* Decl. of Barbara Roberts ¶ 11 (Dec. 14, 2016), ECF No. 69-4. Moreover, since the Rule took effect

earlier this year, other operators have voluntarily committed to undertaking similar best practices as those contained in the Waste Prevention Rule across their operations on federal, state, and private lands. For example, XTO Energy, the production subsidiary of ExxonMobil, recently announced not just that "XTO is complying with recent … Bureau of Land Management (Waste Prevention) regulations" but also that it will expend "considerable effort beyond regulatory requirements." XTO Energy, *Methane Emissions Reduction Program* (last visited Nov. 28, 2017), http://www.xtoenergy.com/responsibility/current-issues/air/xto-energy-methane-emissions-reduction-program#/section/1-regulatory-requirements. Although these commitments are not universal—which underscores the need for uniform standards for production on federal and tribal lands—they do shed light on the reasonable, cost-effective nature of the requirements reflected in the Waste Prevention Rule.

3. Industry Petitioners' limited allegations of harm do not support their request for broad relief.

"It is well settled that an injunction must be narrowly tailored to remedy the harm shown." *ClearOne Commc'ns, Inc. v. Bowers*, 643 F.3d 735, 752 (10th Cir. 2011) (quotation omitted). As described above, Industry Petitioners put forward fundamentally flawed claims of harm associated with the January 17, 2018 compliance deadlines for certain requirements, including leak detection and repair, storage tanks, pneumatic controllers, and pneumatic pumps. Second PI Mem. 6. Yet Industry Petitioners also seek to enjoin the Rule in its entirety, including provisions that are already in effect and for which they have not even alleged any harms. *Id.* at 11. Because Industry Petitioners have failed to allege any harm related to many provisions of the Waste Prevention Rule, much less demonstrated such harm, their request to broadly enjoin the entire Rule must fail.

C. The Balance of the equities and the public interest do not support a preliminary injunction.

To obtain a preliminary injunction, Industry Petitioners must demonstrate that the balance of equities favors an injunction, and that an injunction is in the public interest. *Winter*, 555 U.S. at 20. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* at 24 (quotation omitted). Here, the harms to the public if the Rule is enjoined—waste of public resources, lost royalties for state, tribal, and local governments, and additional dangerous air pollution—are substantial and outweigh the limited compliance costs and speculative production concerns alleged by industry. Industry Petitioners utterly fail to acknowledge the full magnitude of harms to the public and the Citizen Groups caused by a preliminary injunction of the Rule, instead attempting to minimize public harm as mere "generalized concerns." Second PI Mem. 10. They are wrong. As discussed in the previous round of preliminary injunction briefing, the harms the public would suffer from an injunction are specific and significant. First PI Resp. 46–49.

Moreover, Industry Petitioners' assertion that "the alleged harms to the Defendant-Intervenors will occur regardless of whether this Court enjoins the Rule," while "injunctive relief is necessary to avoid the harms to the Industry … regardless of whether BLM proceeds with the" suspension, Second PI Mem. 10, is a classic "heads I win, tails you lose" argument, and is simply untrue. *All efforts* expended by industry to comply with the Rule, including those occurring now, will achieve meaningful reductions in waste and associated pollution, and thereby reduce the harm to the public, regardless of whether the Rule is ultimately suspended by BLM.

CONCLUSION

For the foregoing reasons, the Citizen Groups respectfully request that this Court deny Industry Petitioners' second motion for a preliminary injunction.

Respectfully submitted on November 29, 2017,

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CERTIFICATE OF SERVICE

I certify that on November 29, 2017, I filed the foregoing **RESPONDENT-INTERVENOR CITIZEN GROUPS' RESPONSE TO INDUSTRY PETITIONERS' SECOND MOTION FOR A PRELIMINARY INJUNCTION** using the United States District Court CM/ECF which caused all counsel of record to be served by electronically.

/s/ Robin Cooley
Robin Cooley