



Pursuant to Fed. R. Civ. P. 6(b) and Local Rule 6, Federal Respondents respectfully request that this Court extend the briefing deadlines currently in place by 90 days. This Court has previously extended the briefing schedule twice based on Western Energy Alliance and the Independent Petroleum Association of America's ("Industry Petitioners") request for an extension. ECF Nos. 100, 118. Under the current briefing deadlines, opening briefs are due July 3, 2017, response briefs are due August 11, 2017, and reply briefs are due August 25, 2017. ECF No. 126. As good cause to support their request for an extension, Federal Respondents state the following.

1. The Bureau of Land Management ("BLM") published its Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (hereinafter, "the Rule") in the Federal Register on November 18, 2016. 81 Fed. Reg. 83,008 (Nov. 18, 2016). The Rule became effective on January 17, 2017. *Id.* Many of the Rule's requirements were to be phased in over time, and would not become operative until January 17, 2018. *See id.* at 83,023-24, 83,033; 43 C.F.R. §§ 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, 3179.301-305. North Dakota, Texas, and Industry Petitioners have cited the impending January 2018 compliance date for these requirements as a reason why expeditious resolution of this matter is necessary. ECF No. 112 ¶¶ 3, 8; ECF No. 113 at 3-4; ECF No. 123 ¶¶ 16, 18.

2. On March 28, 2017, President Donald J. Trump issued an Executive Order requiring that the Secretary of the Interior "review" the Rule and "if appropriate, . . . as soon as practicable, . . . publish for notice and comment proposed rules suspending, revising, or rescinding" the Rule. Exec. Order No. 13,783, 82 Fed. Reg. 16,093, § 7(b) (Mar. 28, 2017). On March 29, 2017, the Secretary of the Interior issued Secretary's Order 3349 requiring the Director of the BLM, within 21 days, to "review" the Rule and "report to the Assistant Secretary

– Land and Minerals Management on whether the Rule is fully consistent with the policy set forth in” the Executive Order. Dep’t of the Interior, Sec’y Order 3349, § 5(c)(ii) (Mar. 29, 2017), *available at* <https://elips.doi.gov/elips/0/doc/4512/Page1.aspx>.

3. Pursuant to this direction, the Department of the Interior has developed a three-step plan to propose to revise or rescind the Rule and prevent any harm from compliance with the Rule in the interim. First, BLM has postponed the Rule’s upcoming January 2018 compliance deadlines. On June 15, 2017, BLM published in the Federal Register a Notice of the Postponement of Certain Compliance Dates of the Rule (hereinafter “Postponement Notice”). 82 Fed. Reg. 27,430 (June 15, 2017). As explained in the Postponement Notice, BLM has exercised its authority under 5 U.S.C. § 705 to postpone the Rule’s upcoming January 2018 compliance dates, pending judicial review. *Id.* (postponing compliance dates for 43 C.F.R. §§ 3179.7, 3179.9, 3179.201, 3179.202, 3179.203, and 3179.301-305).

4. Second, BLM intends to conduct notice and comment rulemaking to propose to suspend certain provisions of the Rule already in effect and extend the compliance dates of requirements not yet in effect, but currently postponed pursuant to BLM’s Postponement Notice. *Id.* at 27,431. As presently envisioned, this rule would suspend or extend the requirements of the following provisions of the Rule until July 17, 2019: 43 C.F.R. §§ 3162.3-1(j), 3179.7, 3179.9(b), 3179.10(a), 3179.101, 3179.102, 3179.201(d), 3179.202(h), 3179.203(b)-(c), 3179.204, and 3179.301-305. That is, the proposed rule would suspend until July 17, 2019, the Rule’s requirements relating to waste minimization plans, gas capture percentages, measurement of flared volumes, well drilling, well completions and related operations, pneumatic controllers, pneumatic diaphragm pumps, storage vessels, downhole well maintenance and liquids unloading, and leak detection and repair. BLM intends to publish this proposed rule for public notice and

comment before the end of August 2017, and to publish a final rule in advance of the January 2018 compliance dates (which are currently postponed by the June 15, 2017 Postponement Notice).

5. Third, BLM intends to publish a separate proposed rule for public notice and comment that would propose to permanently rescind or revise the Rule. The proposed suspension of the Rule's requirements until July 17, 2019 under the second step of BLM's three-step process, if adopted as a final rule after notice and an opportunity for public comment, is intended to provide relief to states and operators from the Rule's requirements while BLM engages in notice and comment rulemaking to propose to rescind or revise the Rule.

6. In light of the postponement of the Rule's January 2018 compliance dates and BLM's intent to undertake a rulemaking to propose to suspend most of the Rule's requirements until July 17, 2019, Federal Respondents request an extension of the current briefing schedule for a period of 90 days. Such an extension will allow BLM to devote its resources to developing and promulgating a rule proposing to suspend and extend the provisions of the Rule, rather than to the defense of a Rule that BLM is actively reconsidering. The requested extension will also ensure that the Court's and Parties' time and resources are not wasted litigating a Rule which may soon be replaced, and many provisions of which may never come into effect. Indeed, it is possible that BLM's reconsideration of the Rule may ultimately obviate the need for judicial resolution of Petitioners' claims.

7. An extension will not prejudice Petitioners because the upcoming January 2018 compliance dates, which they have cited as the source of their harm, have been postponed. Thus, Petitioners do not need to expend resources to comply with those requirements. To the extent Petitioners allege that they are suffering ongoing harm, their previous requests for multiple

extensions of merits briefing belie those claims. *See* ECF Nos. 97, 110. This Court also found in its Order denying Petitioners' motion for a preliminary injunction that Petitioners had not demonstrated imminent irreparable harm flowing from the portions of the Rule currently in effect. ECF No. 92 at 22-26. Even if the portions of the Rule currently in effect are harmful to Petitioners, BLM is in the process of developing a proposed rule to suspend those provisions, and anticipates finalizing such a rule by this coming fall. If the parties were to proceed with the briefing deadlines currently in place, it is unlikely the merits would be resolved prior to this fall.

8. An extension is also justified because one of Federal Respondents' attorneys is currently on maternity leave and will be unable to assist with briefing if the current schedule remains in place. This case has been staffed thus far by two Department of Justice attorneys—Ms. Boronow and Ms. Piropato—and both worked extensively and cooperatively in responding to the Petitioners' motions for a preliminary injunction in late 2016 and early 2017. The United States would be prejudiced if Ms. Piropato were not able to contribute to the briefing on the merits.

9. For these reasons, Federal Respondents propose the following briefing schedule:

- Federal Respondents shall file a status report on September 1, 2017, notifying the Court and the parties of BLM's progress in promulgating a suspension of various requirements of the Rule.
- Opening briefs shall be filed on October 2, 2017.
- Response briefs shall be filed on November 9, 2017.
- Reply briefs shall be filed on November 24, 2017.

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

- Petitioners States of Wyoming and Montana take no position on this motion.
- Industry Petitioners oppose this motion and intend to file a response.
- Intervenor-Petitioners States of North Dakota and Texas oppose this motion and intend to file a response.
- Intervenor-Respondents States of California and New Mexico state their position as follows: “The States of California and New Mexico do not oppose the extension to the extent that it is based on the Department’s intention to conduct notice and comment rulemaking to reconsider certain provisions of the Rule, assuming such reconsideration is done in compliance with the Administrative Procedure Act. However, the States of California and New Mexico oppose the extension to the extent that it is based on 5 U.S.C. § 705, which does not apply to a Rule that is already in effect.”
- Intervenor-Respondents Conservation Groups state their position as follows: “The Conservation Groups take no position on the extension motion at this time, but reserve the right to file a response. The Conservation Groups also preserve all rights with respect to the validity of BLM's stay of the rule pursuant to 5 U.S.C. § 705.”

Respectfully submitted this 20th day of June, 2017.

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**CERTIFICATE OF SERVICE**

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

/s/ Clare Boronow  
Clare Boronow