THE ATTORNEYS GENERAL OF CALIFORNIA, COLORADO, CONNECTICUT, MICHIGAN, NEW MEXICO, AND OREGON

August 24, 2026

Stevan Pearce, Director
U.S. Department of the Interior, Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Comments submitted electronically via https://www.regulations.gov, docket ID BLM-2025-0235

RE: Comments on the Proposed "Royalty for Oil and Gas Lost from Onshore Federal and Indian Leases" Rule, 91 Fed. Reg. 37,906, Regulation Identifier Number: 1004–AF33

Dear Mr. Pearce:

The Attorneys General of California,[1] Colorado, Connecticut, Michigan, New Mexico, and Oregon ("State Commenters"), submit these comments in opposition to the proposed revisions to the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule, now referred to as the Royalty for Oil and Gas Lost from Onshore Federal and Indian Leases Rule, 91 Fed. Reg. 37,906 (June 24, 2026) ("Proposed Rule"). The Proposed Rule removes key portions of the 2024 Waste Prevention Rule ("2024 Rule"), which provided a commonsense and much-needed update to the Bureau of Land Management's ("BLM") rules governing the waste of natural gas and royalty payments from mineral leases administered by BLM.

The State Commenters oppose this effort to undo a commonsense waste prevention rule that aimed to fulfill BLM's statutory mandates to prevent waste and protect the public welfare by ensuring the environmentally responsible development of oil and gas resources on federal and tribal lands. The Proposed Rule fails to articulate a valid basis for repealing the substantive provisions of this Rule. Worse, it is contrary to BLM's previously stated objectives. The Proposed Rule seeks to remove the very provisions designed to address the insufficiencies BLM has cited in the Federal Register for more than a decade. The above listed Attorneys General oppose the Proposed Rule and urge BLM to retain the 2024 Rule and its requirements in its entirety.

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[1] The California Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. *See* Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico. v. Bd. of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).

FACTUAL AND LEGAL BACKGROUND

I. The Original 1980 Waste Prevention Rule

The regulations governing flaring, venting, and royalties associated with the production of oil and gas on federally leased lands are contained in "Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost" ("NTL-4A"). Promulgated in January 1980, NTL-4A requires operators to pay royalties on "avoidably lost" gas, meaning gas lost due to operator negligence, failure to take reasonable precautions to prevent or control the loss, or failure to comply with lease terms or other obligations. 87 Fed. Reg. at 73,594. Among its other provisions, NTL-4A expressly authorizes royalty-free venting and flaring "on a short-term basis" during emergencies and certain tests, and allows BLM to approve flaring where conservation of the gas is not "economically justified." *Id.* To evaluate the feasibility of conservation measures for gas, NTL-4A requires BLM to consider the "economics of a field-wide plan." *Id.* Further, NTL-4A specifies that the loss of vapors from gas tanks is considered an unavoidable loss, unless BLM determines that the "recovery of such vapors would be warranted." *Id.*

Subsequent implementing guidelines provided guidance on the economic standard for obtaining approval to flare, clarifying that the fact that the capture and sale of gas would not pay for itself was not sufficient to meet this standard. *Id.* This indicated that BLM intended its standard for approving royalty-free flaring to be challenging to overcome and disfavor such flaring, and BLM originally applied it as such. *Id.* However, this policy changed with Instruction Memorandum No. 87-652 (Aug. 17, 1987), which required BLM to give the operator an opportunity to demonstrate, after the fact, that capturing the gas was not economically justified. The number of applications for royalty-free flaring increased dramatically, from only 50 in 2005 to 4,181 in 2015. *Id.*

Due to the substantial increase in flaring, the growing number of applications to flare royalty-free, and new information regarding the quantities of gas lost through venting and flaring, BLM recognized the need to update these regulations, and attempted to do so in 2016, and again in 2024, as described below. However, due to legal challenges and changes in federal government administrations, the 2016 Rule has since been vacated and the 2024 Rule was enjoined in five states. NTL-4A and its 1987 implementing guidelines currently apply to oil and gas operations on federal lands in those five states, and the 2024 Rule governs elsewhere.

II. 2016 Waste Prevention Rule and Subsequent Challenges

BLM finalized the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule ("Waste Prevention Rule" or "Rule") in November 2016, after conducting a multi-year process of stakeholder engagement, analysis, and review of thousands of public comments. 81 Fed. Reg. 83,008, 83,010 (Nov. 18, 2016). In promulgating the Rule, BLM recognized that the NTL-4A regulations required updating because they preceded the development of new technologies, such as directional drilling and hydraulic fracturing techniques, that had significantly affected both the manner and volume of gas produced and wasted. BLM determined that the prior regulations were inadequate to prevent the waste of publicly-owned resources and that the volume of natural gas lost during production on public and tribal lands was "unacceptably high." *Id.* at 83,009-10, 83,015.

On the same day the Rule was issued, it was challenged in federal district court by the States of Wyoming and Montana, which alleged that the Rule was an unlawful attempt to impose air quality regulations under the "guise" of waste prevention and that BLM lacked the authority to promulgate the Rule. *Wyoming, et al. v. U.S. Dep't of Interior, et al*, No. 16-cv-0285 (D. Wyo. 2016). Industry groups brought a similar challenge in *Western Energy Alliance, et al. v. Jewell*, No. 16-cv-280 (D. Wyo. 2016), and the cases were consolidated. In December 2016, the states of California and New Mexico intervened as respondents in defense of the Waste Prevention Rule. In January 2017, the District of Wyoming denied petitioners' motion to preliminarily enjoin the Rule prior to its effective date of January 17, 2017, finding that the petitioners had not shown a "clear and unequivocal right to relief." This case was subsequently stayed pending the developments described below.

III. <u>2017 Postponement and Suspension Rules</u>

After the federal administration change in January 2017, President Trump issued Executive Order 13783, "Promoting Energy Independence and Economic Growth," in March 2017. Among other things, the Order directed BLM to review the Waste Prevention Rule and, if appropriate, publish proposed and final rules suspending, revising, or rescinding it in whole or in part. This resulted in two attempts to delay implementation of the Rule, both of which were overturned by federal courts.

First, in June 2017, BLM issued a final rule delaying the January 2018 compliance date of certain sections of the Waste Prevention Rule, citing a provision of the Administrative Procedures Act ("APA") allowing agencies to postpone the effective date of rules under certain circumstances, 82 Fed. Reg. 27,430 (June 15, 2017) (the "Postponement Notice"). California and New Mexico challenged this action, and in October 2017 the court vacated the Postponement Notice, holding that compliance dates are distinct from effective dates and that the plain language of the APA does not permit an agency to "postpone" a rule that has already gone into effect. *California, et al v. BLM*, 277 F. Supp. 3d 1106 (N.D. Cal. 2017).

Second, in December 2017, BLM published a final rule suspending or postponing certain provisions of the Waste Prevention Rule until January 17, 2019, 82 Fed. Reg. 58,050 (Dec. 8, 2017) (the "Suspension Rule"). California and New Mexico challenged this rule as well, and on February 22, 2018, the court preliminarily enjoined the Suspension Rule. *California, et al. v. BLM*, 286 F. Supp. 3d 1054 (N.D. Cal. 2018). In finding that the plaintiffs were likely to succeed on the merits of their claims that the Suspension Rule was arbitrary and capricious, the court determined, among other things, that: BLM had provided no analysis or factual data in support of its newfound concern that the Waste Prevention Rule would jeopardize the operation of marginal wells; BLM's purported concerns with the Rule's economic impacts on small operators was contradicted by the agency's own analysis under the Regulatory Flexibility Act; BLM had provided no factual support for the purported concern that the Rule would decrease royalties, in contradiction of the 2016 Regulatory Impact Analysis showing a significant *increase* in royalties; and BLM had not pointed to any facts justifying the assertion that the Rule would encumber energy production. *Id.* at 1065-1068. BLM appealed the decision, but the case was mooted by the Rescission Rule discussed below, and was ultimately dismissed by stipulation of the parties. *Sierra Club, et al. v. BLM*, 17-cv-7186, Dkt. 129 (N.D. Cal, Mar. 29, 2019).

IV. 2018 Rescission Rule

In September 2018, BLM issued a final rule eliminating most of the substantive provisions of the Waste Prevention Rule, 83 Fed. Reg. 49,184 (Sept. 28, 2018) (the "Rescission Rule"). Specifically, the provisions rescinded included requirements for (1) waste minimization plans, (2) gas capture percentages, (3) well drilling, (4) well completion and related operations, (5) pneumatic controllers, (6) pneumatic diaphragm pumps, (7) storage vessels, and (8) leak detection and repairs. California and New Mexico challenged the Rescission Rule in federal district court, and on July 15, 2020, after thorough briefing and a hearing, the court vacated the Rescission Rule as unlawful under the National Environmental Policy Act ("NEPA") and other statutes, and in violation of the APA's requirements for reasoned decision-making. *California v. Bernhardt*, 472 F. Supp. 3d 573 (N.D. Cal. 2020).

Among the key findings of the court was that the definition of "waste" underlying the Rescission Rule – which deemed waste to not occur if the cost of conserving oil or gas exceeded the value of the oil or gas – contradicted the plain language and legislative history of the relevant statutes. Examining the language of the Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 181 *et seq*., the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq*., and the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA"), 30 U.S.C. § 1701 *et seq*., the court held that "[t]he statutory language demonstrates on its face that any consideration of waste management limited to the economics of individual well-operators would ignore express statutory mandates concerning BLM's public welfare obligations." *Id.* at 596. The court also pointed out that certain provisions of the Rescission Rule were inconsistent with this newly adopted definition, such as the elimination of requirements for low-bleed pneumatic controllers even though the compliance costs of such devices are less than the value of the gas they save. *Id.* at 599. The court thus held the Rescission Rule's definition of waste to be both an impermissible interpretation of the MLA and unsupported by a reasoned explanation, as required by the APA. *Id.* at 593-601.

The court also found that the following aspects of the Rescission Rule failed to meet APA's requirements for reasoned decision-making and public input:

- The provisions granting deference to *any* state or tribal waste regulations for the flaring of gas and only applying BLM requirements where a state or tribe had no applicable regulations, without any analysis of the sufficiency of such state or tribal regulations;
- The purported justification of the Rescission Rule as needed to reduce undue regulatory burden, contrary to factual findings that did not differ in any material way from those underlying the Waste Prevention Rule;

- The use of an "interim domestic" social cost of methane standard that ignored global climate impacts on American financial and geopolitical interests, which was unsupported by expert opinion and outside the expertise of the agency;
- The failure to quantify and monetize the environmental benefits foregone by the Rescission Rule, resulting in a skewed cost-benefit analysis; and
- The overstatement of the Waste Prevention Rule's compliance costs, and the arbitrary discounting of evidence that operators were able to comply with the Rule during the period it was effective.

Id. at 601-618.

In addition, the court found that BLM had failed to satisfy its obligations under NEPA to take a "hard look" at environmental impacts of its action with respect to public health and tribal communities, climate impacts, and cumulative impacts of the fossil fuel program for federal and tribal lands. *Id*. It also found that BLM erred by preparing an Environmental Assessment rather than an Environmental Impact Statement. *Id*.

BLM, the State of Wyoming, and industry groups appealed the district court's decision to the Ninth Circuit Court of Appeals. The parties have agreed to keep those appeals in administrative closure and pause briefing to date.

V. <u>Vacatur of the 2016 Rule</u>

Following the decision in *California v. Bernhardt*, the Wyoming court lifted the stay in the challenge to the 2016 Waste Prevention Rule, and soon thereafter issued a decision vacating that Rule. *Wyoming v. United States Dep't of the Interior*, 493 F. Supp. 3d 1046 (D. Wyo. 2020). Fundamental to the court's decision was its finding that BLM had usurped the authority of the United States Environmental Protection Agency ("EPA") to regulate air quality by promulgating a rule primarily aimed at reducing methane emissions "under the guise of waste management." *Id.* at 1066. While the court acknowledged that "BLM has authority to promulgate and impose regulations which may have ancillary air quality benefits and even overlap with CAA regulations if such rules are independently justified as waste prevention measures pursuant to its MLA authority," it found that the 2016 Rule did not pass that test. *Id.* at 1067.

California and New Mexico appealed this decision to the Tenth Circuit Court of Appeals. As with the appeal of the Rescission Rule vacatur, briefing in this case was suspended pending BLM's finalization of the 2024 Rule. After the 2024 Rule was finalized, appellants California, New Mexico, and several environmental groups voluntarily dismissed this pending appeal as moot and requested to vacate the underlying judgment from the District of Wyoming. On August 13, 2024, the Court granted the motion to dismiss and vacate and denied a later petition for rehearing from Appellees. The underlying judgment described above was thus vacated.

VI. The 2024 Rule and Challenges

Following the federal administration change in January 2021, BLM indicated that it planned to revise the Waste Prevention Rule again (the "2024 Rule"). On November 30, 2022, BLM published its proposed rule. This proposal aimed to improve upon the existing framework in significant ways that prevent waste, while eschewing elements of the 2016 Rule that were the focus of unfavorable court rulings. BLM specifically noted it learned "two important lessons" from these rulemakings and related litigation from 2016 through 2022: "First, there are opportunities for the BLM to reduce the waste of natural gas through improved regulatory requirements pertaining to venting, flaring, and leaks. Second, courts disagreed as to whether the BLM's regulatory authority allows for all of the 2016 Rule provisions." The rule was finalized on March 27, 2024.

Following finalization of the 2024 Rule, the states of North Dakota, Montana, Texas, Wyoming, and Utah filed suit in April 2024 challenging the 2024 Rule in the District of North Dakota and filing a motion for preliminary injunction, which was granted on September 12, 2024. *North Dakota v. Interior*, No. 1:24–cv–00066 (D.N.D., Apr. 24, 2024). The order relied on similar reasoning employed by the Wyoming district court, including references to the now-vacated district court decision. BLM filed an interlocutory appeal of the order granting preliminary injunction in the Eighth Circuit Court of Appeals. *North Dakota v. Interior*, No. 24–3299 (8th Cir., Jan. 27, 2025). Opening briefs were filed, but the court did not issue its decision before the next change in administration. Similarly, in the district court, motions for summary judgment were filed, but a decision was not issued before the administration change. Both cases have been stayed since February 2025. The North Dakota district court's preliminary injunction order enjoined the 2024 Rule in the five states that challenged the 2024 Rule in that court. The 2024 Rule remains in effect in other states.

STATES' INTERESTS IN THE PROPOSED RULE

The State Commenters have strong interests in maintaining the requirements of the 2024 Rule and opposing the Proposed Rule and its implementation. For example, California and New Mexico have been involved in BLM's process to update its Waste Prevention Rule since at least 2016, due to their particularized interest in ensuring oil and gas development on their lands avoids waste and protects health and welfare. *See Western Energy Alliance v. Jewell*, No. 2:16-cv-00280-SWS (D. Wyo.) (Nov. 16, 2016); *State of Wyoming v. Jewell*, No. 2:16-cv-00285-SWS (D. Wyo.) (Nov. 18, 2016). Both states have been actively involved in subsequent litigation, as described above. As such, the states have a significant interest in maintaining the commonsense requirements of the 2024 Rule and the outcome of the Proposed Rule since it will almost certainly impact the pending appeals. California and New Mexico have additional significant interests in the Proposed Rule beyond the pending litigation, as do the other State Commenters.

I. California

California has a strong interest in opposing the Proposed Rule and maintaining the 2024 Rule because of the vast amount of BLM-administered land in California and the benefits that result from the 2024 Rule. BLM administers 15.2 million acres of public lands in California, equal to nearly 15 percent of the state. In addition, BLM recently opened more than 850,000 acres of public lands for oil exploration and development after approving new resource management plans in 18 counties that allow BLM to restart its federal oil and gas leasing program.[2] California is a prolific producer of oil on public lands, producing more than 6.5 million barrels annually, and also produces more than 7 billion cubic feet of natural gas each year.[3] Approximately $58 million in royalty revenue was generated from oil and gas production on federal lands in California in 2025.[4] Approximately half of those royalty payments are disbursed to the state, so California received approximately $39 million in disbursements in 2025.[5] California's share of royalties goes to the State School Fund.[6] The State School Fund helps fund education for the 5.7 million students in California's TK-12 public schools.[7] As such, California has a strong interest in regulations that govern how much oil and gas may be wasted royalty free and in obtaining a fair return from the production of oil and natural gas on public lands in the state in the form of royalties.

Like all states, California has an interest in reducing the effects of climate change and greenhouse gases nationwide. Methane is a potent greenhouse gas with local and global impacts. California already experiences serious challenges due to climate change, including increased heat-related deaths, damaged coastal areas, disrupted ecosystems, more severe weather events, increased wildfires, and longer and more frequent droughts.[8] California has, and continues to, pursue ambitious programs to reduce the effects of climate change, such as AB 1279 which requires that "by 2045, statewide anthropogenic greenhouse gas emissions are reduced to at least 85 percent below the 1990 levels,"[9] with the goal of achieving carbon neutrality, investment in community resilience to strengthen protections for climate vulnerable communities, and a goal of serving 100 percent of retail electricity sales and state agency loads with clean energy by 2045.[10] Accordingly, even though reduction of methane emissions is an ancillary benefit of the 2024

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[2] "BLM approves oil and gas plans in California, restarting federal leases" KCBX (June 25, 2026), https://www.kcbx.org/environment-and-energy/2026-06-25/blm-approves-oil-and-gas-plans-in-california-restarting-federal-leases.
[3] "Natural Resources and Revenue Data," U.S. Dep't of the Interior, https://revenuedata.onrr.gov/explore/?dataType=Production&period=Calendar+Year&mapLevel=State&offshoreRegions=false&commodity=Gas+%28mcf%29&location=NF%2CNA%2CCA&year=2025.
[4] *Id.*
[5] *Id.*
[6] *See* Cal. Educ. Code § 12320.
[7] *See* https://calbudgetcenter.org/resources/school-funding-and-californias-state-budget-process/.
[8] "Climate Change Impacts in California," State of Cal. Dep't of Justice, https://oag.ca.gov/environment/impact.
[9] California Health and Safety Code, § 38562.2(c)(2) (2025).
[10] "California Climate Dashboard," California Environmental Protection Agency, https://calepa.ca.gov/climate-dashboard/.

Rule and not a primary purpose, California has an interest in regulations that reduce the impact of greenhouse gases nationwide.

II. New Mexico

In New Mexico, BLM administers 35.9 million acres of federal mineral land, including 26.4 million acres of federal surface lands and 9.5 million acres with federal mineral rights under private lands.[11] Over half of all federal onshore oil production occurs in New Mexico,[12] which is the second largest crude oil producing state after Texas.[13] The state contains approximately 14 percent of the United States' total proved crude oil reserves, and has "the second-largest number of producing oil and gas leases on federal lands."[14] New Mexico is also among the top 10 states in natural gas production, contains almost 6 percent of proved gas reserves in the country,[15] and accounts for 31 percent of federal onshore natural gas production. Altogether, New Mexico is the third largest energy producer in the United States.[16]

Oil and gas production constitutes a significant share of New Mexico's GDP and tax revenue, funding many essential services and crucial infrastructure.[17] New Mexico uses its 50 percent share of federal mineral leasing royalty payments in part for educational purposes. *See* NMSA 1978, § 22-8-34(A). Ensuring fair and adequate royalty recovery therefore serves vital state needs, giving New Mexico a strong interest in regulations governing how much oil and gas may be wasted royalty-free. According to a recent report by Taxpayers for Common Sense, from 2012-2021, oil and gas operators in New Mexico reported wasting 136 billion cubic feet ("bcf") of gas – more than 45 percent of all such waste reported on all federal lands nationwide.[18] The report also finds that "ONRR collected only $32.5 million in lost gas royalties, the equivalent of a mere 7.5% royalty on all lost gas."[19]

Recognizing the need to minimize waste of a valuable resource in the face of technological and market developments, New Mexico has promulgated waste prevention regulations for the oil and gas industry that are among the most stringent in the nation. *See*

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[11] *Public Land Statistics 2025*, United States Department of the Interior, BLM, Table 1-3.
[12] Office of Natural Resources Revenue, Explore Production Data in New Mexico page, https://revenuedata.onrr.gov/explore/?dataType=Production&period=Calendar+Year&mapLevel=State&offshoreRegions=false&location=NF%2CNA&year=2025.
[13] U.S. Energy Information Administration, New Mexico analysis page, https://www.eia.gov/states/nm/analysis.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] New Mexico's Boom That Cost Billions II: How Federal Oil & Gas Policies Continue to Fail Taxpayers at 9, available at https://www.taxpayer.net/wp-content/uploads/2023/05/New-Mexicos-Boom-That-Cost-Billions-II_5.17.23.pdf.
[19] *Id.*

19.15.27.1 et seq. NMAC (2021). Those regulations:

- Prohibit routine venting and flaring;
- Require attainment of gas capture targets under which upstream and midstream operators, including pipelines, must attain a higher level of natural gas capture each year, culminating in 98 percent natural gas capture by the end of 2026;
- Give the state the authority to deny drilling permits if gas capture targets are not achieved; and
- Require operators to have plans in place for takeaway capacity at all wells.

New Mexico therefore has a strong interest both in ensuring that oil and gas in New Mexico is not wasted, and that federal regulations do not interfere with application of more stringent state regulations on federal mineral operations.

New Mexico is also affected by methane's contribution to harmful levels of tropospheric ozone. Oil and gas production in the Permian Basin has been directly tied to increased downwind ozone pollution, including pollution measured in Carlsbad Caverns National Park.[20] Ozone levels in New Mexico's Eddy and Lea Counties—which lie at the heart of Permian fossil fuel extraction—have consistently violated EPA standards since 2021.[21] In fact, New Mexico partially hosts the largest "methane anomaly" in the contiguous United States, located above the Four Corners region in the northwest part of the State and consisting of such a large quantity of methane gas in the atmosphere as to be visible from outer space.[22] This anomaly corresponds with the location of the San Juan Basin and is the result of long-established fossil fuel extraction there.[23] Finally, like all states and especially those in the arid southwest, New Mexico is experiencing the accelerating adverse impacts of climate change. To cite just a few examples, it is in the midst of a 20-plus year mega-drought believed by scientists to be the worst in 1200 years[24]; its largest reservoir, Elephant Butte Lake, is presently at only 1.4 percent capacity,[25] and

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[20] Marsavin *et al.*, *Summertime ozone production at Carlsbad Caverns National Park, New Mexico: Influence of oil and natural gas development*, 129 J. Geophysical Research: Atmospheres (July 16, 2024), https://doi.org/10.1029/2024JD040877.
[21] *My Air Quality*, N.M. Env't Dep't, https://www.env.nm.gov/air-quality/my-air-quality [https://perma.cc/NR2F-8ENN]; *Two Counties in New Mexico Account for 29% of Permian Basin Crude Oil Production*, *supra* note 11.
[22] Kort et al., *Four corners: the largest US methane anomaly viewed from space*, 41 Geophysical Rsch. Letters 6898 (2014).
[23] *Id.*
[24] Williams et al., *Rapid intensification of the emerging southwestern North American megadrought in 2020–2021*, 12 Nature Climate Change 232 (2022) https://doi.org/10.1038/s41558-022-01290-z.
[25] Elephant Butte Lake, WATER DATA FOR TEXAS (Aug. 19, 2026), https://waterdatafortexas.org/reservoirs/individual/elephant-butte.

its two largest wildfires in history – each over 300,000 acres – both occurred in 2022.[26] Heat waves lasting longer than four days have significantly increased since 1960.[27] Global climate models projects an average increase across the state of between 5°F and 7°F over the next 50 years.[28]

New Mexico is taking aggressive action to reduce the causes of climate change, for example setting a statewide renewable energy standard of 50 percent by 2030 for New Mexico investor-owned utilities and rural electric cooperatives and a goal of 80 percent by 2040, in addition to setting zero-carbon resources standards for investor-owned utilities by 2045 and rural electric cooperatives by 2050. *See* New Mexico Energy Transition Act, 62-18-1 NMSA 1978, et seq. Thus, while the purpose of the Proposed Rule is not to address climate change, it is entirely appropriate to consider the co-benefits of methane reduction when assessing the cost and benefits of the Rule as required by long-standing executive order.

III. Colorado

Colorado and its citizens have a significant interest in ensuring that natural resources within its borders are used effectively. Colorado is the eighth-largest natural gas-producing state in the country and has the eighth-largest natural gas reserves of any state.[29] In Colorado, BLM administers 29.4 million acres of federal mineral land.[30] Consistent with its statutory authority, Colorado's regulatory framework for oil and gas operations prohibits venting and flaring except under specific enumerated circumstances. The venting and flaring of natural gas represent waste of an important energy resource and pose safety and environmental risks. Colorado's regulatory framework for oil and gas operations ensures that natural gas is not wasted, and that operators follow standards that protect public health and safety. Colorado has a strong interest in ensuring that BLM's proposed revisions do not interfere with application of the state's venting and flaring regulations.

The other State Commenters (Connecticut, Michigan, and Oregon) share an interest in minimizing the waste of resources on public lands, in obtaining a fair return from extraction of oil and gas resources, and in preventing natural gas waste and therefore greatly reducing methane emissions that impact climate change.

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[26] U.S. Global Change Research Program, Fifth National Climate Assessment at 1381 (2023).
[27] Robert Repetto, *New Mexico's Rising Economic Risks from Climate Change*, DĒMOS, at 1 (2012) https://www.demos.org/sites/default/files/publications/UpdatedNMFullReport.pdf.
[28] N.M. Bureau of Geology & Mineral Res., Bull. No. 164, Climate Change in New Mexico Over the Next 50 Years: Impact on Water Resources at vi (2022).
[29] U.S. Energy Information Administration, Colorado, https://www.eia.gov/states/co/analysis (last accessed Aug. 20, 2026).
[30] *Public Land Statistics 2025*, United States Department of the Interior, BLM, Table 1-3.

COMMENTS IN OPPOSITION OF THE PROPOSED RULE

I. <u>BLM's Statutory Obligations</u>

The Proposed Rule recognizes BLM is charged with regulating oil and gas exploration and production activities on federal lands under a variety of statutes. 91 Fed. Reg. at 37,909. In comparison to the 2024 Rule and prior iterations of the Waste Prevention Rule, the Revised Rule neglects to discuss these obligations. As recognized in the 2024 Rule, a fundamental principle of the Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 181 et seq., is that the public should benefit from mineral production on public lands, and an important means of ensuring such benefit is "minimizing and deterring the waste of oil and gas produced" from federal lands. 89 Fed. Reg. at 25,383. The 2024 Rule also recognized that BLM is tasked with regulating the physical impacts of oil and gas development on public lands to prevent environmental harm and protect public welfare. *Id.* at 25,383.

The MLA provides BLM with broad regulatory power to require oil and gas lessees to observe "such rules… for the prevention of undue waste as may be prescribed by [the] Secretary," to protect "the interests of the United States," and to safeguard "the public welfare." 30 U.S.C. § 187. The MLA specifically requires that "[a]ll leases of lands containing oil or gas … shall be subject to the condition that the lessee will … use all reasonable precautions to prevent waste of oil or gas developed in the land …." *Id.* § 225. In addition, under the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA"), 30 U.S.C. § 1701 et seq, Congress provided that lessees would be "liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this chapter or any mineral leasing law." *Id.* § 1756.

Further, the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 et seq., provides BLM with broad authority to regulate "the use, occupancy, and development of the public lands." *Id.* § 1732(b). Among other requirements, FLPMA mandates that BLM manage public lands "in a manner that will protect the quality of … ecological, environmental, [and] air and atmospheric … values," *id.* § 1701(a)(8), and provides BLM with authority to take any action, by regulation or otherwise, "necessary to prevent unnecessary or undue degradation of the lands." *Id.* § 1732(b). BLM has similar authority over tribal lands pursuant to the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a–396g, and the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–08.

II. <u>The Proposed Rule is Arbitrary and Capricious</u>

The APA requires a court to "hold unlawful and set aside agency action, findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

When an agency changes its policy on an issue, it must provide "a reasoned explanation" for "disregarding facts and circumstances that underlay or were engendered by the prior policy." *F.C.C. v. Fox Television Stations. Inc.*, 556 U.S. 502, 515-16 (2009). Although an agency need not show that a new rule is better than the rule it replaced, it must demonstrate that "there are good reasons" for the replacement. *Id.* at 515. Further, an agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy." *Id.* Any "unexplained inconsistency" between a rule and its repeal is "a reason for holding an interpretation to be an arbitrary and capricious change." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

a. BLM Fails to Provide a Reasoned Explanation for Disregarding the Facts and Circumstances Underlying the 2024 Rule.

As an initial matter, BLM's approach to revise the 2024 Rule rather than rescind the Rule in its entirety cannot avoid the fact that it is essentially repealing a duly promulgated rule. *See* 91 Fed. Reg. at 37,907. BLM even notes it would "prefer to rescind the 2024 Rule in its entirety," but is taking this approach to avoid questions of which rule would apply. *Id.* However, by proposing to entirely remove substantive sections of the 2024 Rule, the Proposed Rule *is* effectively a rescission, and such change in policy requires reasoned explanation under the APA. BLM appears poised to repeat history with this unlawful action.[31]

When an agency rescinds a prior regulation, it is required to demonstrate "that the new policy is permissible under the statute" and that "that there are good reasons for it." *Fox*, 556 U.S. at 515. In addition, an agency action is arbitrary and capricious where the agency has entirely failed to consider an important aspect of the problem. *State Farm*, 463 U.S. at 43. Here, BLM fails to provide good reasons for effectively rescinding the 2024 Rule and entirely fails to consider the reasons for promulgation of the 2024 Rule and previous iterations of the Rule.

BLM has recognized many times that NTL-4A "has proven ill-suited to address royalty determinations in an era of horizontal drilling and hydraulic fracturing and increased gas volumes associated with those techniques," 91 Fed. Reg. at 37907, and recognized the need to update "decades-old" requirements that are "outdated" and "needed to be overhauled." 2016 Rule, 81 Fed. Reg. at 83,009, and 2018 Revision/Rescission, 83 Fed. Reg. at 7,927. BLM has further recognized that regulatory updates are needed in order to address "the rapid development

[31] *See, e.g.*, *State of California v. U.S. Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106 (N.D. Cal. 2017) (vacating postponement action of the 2016 Rule for violation of the APA); *State of California v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054 (N.D. Cal. Feb. 22, 2018) (finding that BLM failed to provide a reasoned analysis for the rescission rule and otherwise acted in an arbitrary and capricious manner under the APA.)

of unconventional tight oil and gas resources that has occurred in recent years." 87 Fed. Reg. at 73,588. BLM now proposes to remove the substantive requirements in the 2024 Rule meant to address the deficiencies recognized in NTL-4A. *See generally* 91 Fed. Reg. 37,906. Just two years ago, BLM articulated the important reasons for promulgating an updated rule. For example, the 2024 Rule noted the "significant increase in oil and natural gas production" over recent years accompanied by a "significant waste of natural gas through venting and flaring," illustrated that the requirements established by NTL-4A were "ineffective at limiting the amount of gas that is vented or flared" from public lands. 89 Fed. Reg. at 25,380-81. BLM does not refute these findings in the Proposed Rule. The Proposed Rule therefore does not provide sufficient analysis that would support this reversal in policy.

Further, BLM entirely ignores the problems articulated for promulgation of the 2024 Rule, just two years ago. For example, the 2024 Rule acknowledged up front that the final rule was promulgated to "reduce the waste of natural gas from oil and gas leases." 89 Fed. Reg. at 25,378. The 2024 Rule further includes a comprehensive discussion of the significant increase in oil and gas production in recent years and the associated significant waste of natural gas through venting and flaring. *Id.* at 25,380. This includes estimates that between 2010 and 2020, the total venting and flaring reported from federal leases was approximately 44.2 Bcf per year, at a value of approximately $1.46 billion. *Id.* The 2024 Rule recognized that the increasing amount of waste from venting and flaring and the potential lost value in royalty payments was a significant issue that BLM could address through promulgation of this rule. In contrast, the Proposed Rule notes up front that the Rule is meant to "reduce unnecessary compliance burdens for operators." 91 Fed. Reg. at 37,906. The Proposed Rule does not recognize the increased amount of waste through venting and flaring or the significant value lost in royalty payments. Rather, the Proposed Rule relegates this data to a footnote and attempts to reframe it only in comparison to the amount of gas LDAR requirements are estimated to capture. *See id.* at 37,910, FN 31. Yet, the Proposed Rule still recognizes that LDAR requirements in the 2024 Rule would have allowed for annual capture of 555,000 Mcf of gas, with an annual royalty value of $210,000. *Id.* That is not an insignificant amount, and BLM's scant justification for allowing that amount of gas to be wasted is not sufficient. *See id.* As such, BLM ignores the factual findings of the 2024 Rule and entirely fails to consider the reasons for promulgation of the 2024 Rule.

b. BLM's Reliance on Executive Order 14154 to Justify the Proposed Rule Fails to Provide the Reasoned Explanation Required by the APA.

The primary rationale cited by BLM for the Proposed Rule is direction from Executive Order ("E.O.") 14154, which is to "promote sound regulatory decision making and prioritize the interests of the American people" and ensure that "an abundant supply of reliable energy is readily accessible in every State and territory of the Nation." 91 Fed. Reg. at 37,907. BLM's decision to rely on this direction does not provide the "reasoned explanation" required by the APA.

E.O. 14154 directs agencies to review regulations that "impose an undue burden on the identification, development, or use of domestic energy resources," and to consider whether to "suspend, revise, or rescind"' them. 91 Fed. Reg. at 379,09; E.O. 14154 at 1. Secretary's Order

No. 3418, issued on February 3, 2025, directed BLM to review the 2024 Rule for consistency with the executive order and directed the "removal of impediments" to the development of energy and natural resources on public lands. Given these directives, BLM reconsidered the 2024 Rule to "identify undue burdens on operators and impediments to energy development that could be either eliminated or refined for greater efficiency," resulting in the Proposed Rule. 91 Fed. Reg. at 37,909-10. However, the record demonstrates that the 2024 Rule is not an impediment to development and actually increases energy production through recovery of gas from BLM leases on public lands.

The regulatory impact analysis ("RIA") for the Proposed Rule notes that removing these provisions as proposed, such as removing the LDAR program requirements, will decrease gas production, reduce benefits to the operator in captured gas, and reduce royalties. 2026 RIA at 8. Further, BLM admits that the Proposed Rule will not "significantly impact the price, supply, or distribution of energy." *Id.* In contrast, the 2024 Rule estimated an additional $1.8 million per year in recovered gas that could be sold. 89 Fed. Reg. at 25,380.

Consequently, the record demonstrates that the 2024 Rule does not "impose an undue burden" to development of energy resources. The Proposed Rule's vague references to "unnecessary compliance burdens" does not demonstrate an impediment to development of energy resources. To the contrary, BLM previously found that the 2024 Rule's requirements do not impose undue compliance costs on operators. Although operators would face some compliance costs associated with the 2024 Rule, BLM determined that "per-entity, annualized compliance costs associated with this proposed rule are estimated to represent only a small fraction of the annual net incomes of the companies likely to be impacted." 89 Fed. Reg. at 25,422. BLM acknowledged that although compliance costs to operators would exceed the market value of the gas conserved, this does not conflict with the 2024 Rule's purpose of preventing waste. BLM also acknowledged that the estimated costs did not outweigh other benefits that were not taken into account, such as increase in royalties received by the public, increase in production that could be received from changes in behavior due to the unavoidable loss threshold, and reduced methane emissions that provide a monetized benefit to society in the form of avoid climate damages. 89 Fed. Reg. at 25,392. In the Proposed Rule, BLM does not account for these benefits and only now determines that the cost to operators is "overly burdensome and expensive." 91 Fed. Reg. at 37,910. BLM does not provide sufficient explanation for why this cost is now "overly burdensome" when it previously found it was not outweighed by other benefits and provides no reasoned explanation for its changed policy or contradiction of previously relied upon facts.

Although new presidential administrations are entitled to change policy positions, to meet the requirements of the APA, they must give reasoned explanations and "address [the] prior factual findings" underpinning a prior regulatory regime. *California v. BLM*, 277 F. Supp. 3d at 1123 (citing *Organized Vill. of Kake v. U.S. Dep't of Ag.*, 795 F.3d 956, 966-67 (9th Cir. 2015) (en banc)). BLM fails to adequately do so to justify the Proposed Rule.

III. BLM Fails to Fulfill its Statutory Mandates under the Proposed Rule

The Proposed Rule runs counter to BLM's statutory mandates and, accordingly, would result in BLM failing to fulfill these requirements if the Proposed Rule is adopted.

As described above, the MLA provides BLM with broad regulatory power to promulgate and impose regulations that prevent undue waste and safeguard the public welfare. *See* 30 U.S.C. § 187. The MLA specifically requires that operators use all reasonable precautions to prevent waste of oil or gas. *Id.* § 225. BLM fails to fulfill its statutory mandates under the MLA, as seen in the proposed revision to the "purpose" of the Proposed Rule. One of the listed purposes of 2024 Rule was to "implement and carry out the purpose of the statutes related to the prevention of waste from Federal and Indian (other than The Osage Nation) oil and gas leases," and the Proposed Rule recognizes that the 2024 Rule was "primarily focused on the prevention of waste from Federal and Indian oil and gas leases." 91 Fed. Reg. at 37,911. In contrast, the Proposed Rule proposes to change the "purpose" to exclude any reference to the prevention of waste and refocuses on "proper compensation" of mineral rights owners, "promotion of orderly and efficient development and administration of fluid mineral resources," reduction of "regulatory burdens" for operators, and "streamlining" BLM's administration of leases. *See, e.g.*, 91 Fed. Reg. at 37,911. BLM provides no justification regarding how the proposed rule will prevent waste, ensure the adequate payment of royalties, or protect the public interest. To the contrary, BLM admits that the Proposed Rule will result in less capture of waste and decreased amount of royalties. *See, e.g.*, *Id.* at 37910.

In addition, FLPMA provides BLM with broad authority to regulate "the use, occupancy, and development of the public lands," 43 U.S.C. § 1732(b), and more specifically mandates that BLM manage public lands "in a manner that will protect the quality of … ecological, environmental, [and] air and atmospheric … values," *id.* § 1701(a)(8). This includes the authority to prevent "unnecessary or undue degradation of the lands." *Id.* § 1732(b). BLM similarly fails to fulfill its statutory mandates under FLPMA by failing to show how removing requirements that had the added benefit of reducing methane emissions will protect the quality of ecological, environmental, and air and atmospheric values. The 2024 Rule determined that reduced methane emissions associated with the Rule would provide a monetized benefit to society in the form of avoiding climate damages of $17.9 million per year. 89 Fed. Reg. at 25,392. As discussed above, the State Commenters share strong interests in mitigating the effects of climate change. FLPMA mandates BLM balance multiple land uses. *See* 43 U.S.C. § 1701(a)(8). This includes conservation. In the Proposed Rule, BLM does not discuss or acknowledge any benefit from conservation as a use of public lands. Rather, in the Proposed Rule, BLM does not explain any benefits to climate or environmental impacts and entirely fails to describe how it is protecting the natural environment. In addition, BLM fails to explain how the Proposed Rule, which purports to "eliminate" impediments to operators in order to promote "greater efficiency" of energy development, doesn't necessarily lead to unnecessary and undue degradation of the lands.

FOGRMA provides that lessees are liable for royalty payments on oil or gas lost or wasted from a lease site. *Id.* § 1756. BLM also fails to meet its mandates under FOGRMA by failing to explain how allowing more royalty-free flaring and reducing royalty payments meets its mandate to hold lessees liable for royalty payments and wasted oil and gas.

Finally, BLM claims that the requirements of the 2024 Rule are unnecessary because "operators are already financially incentivized to capture and sell gas." 91 Fed. Reg. at 37,910. BLM provides no data or analysis to support this justification. BLM also fails to explain how this "incentive" fulfills its own statutory mandates and trust responsibilities to reduce the waste of oil and gas on public lands.

As such, it is well recognized that BLM has the duty and the authority to adopt regulations preventing wasteful venting, flaring, and leaks, ensuring that the public benefits from mineral production on federally-administered lands. These statutes unambiguously grant BLM the authority to regulate oil and gas production activities for the prevention of waste, which it fails to do with the Proposed Rule. *See, e.g.*, *Western Energy Alliance, et al., v. Sec. of the U.S. Dep't of the Interior, et al.*, Case No. 2:16-0280 [Dkt. No. 279, p. 20].

In conclusion, BLM fails to show how the Proposed Rule fulfills its important statutory mandates under the MLA, FLPMA, and FORGMA to prevent waste and ensure the safe and responsible development of oil and gas on public lands. The unexplained inconsistencies between the 2024 Rule and the Proposed Repeal constitute "a reason for holding an interpretation to be an arbitrary and capricious change." *Nat'l Cable & Telecomms. Ass'n*, 545 U.S. at 981.

IV. BLM Should Maintain the Commonsense Requirements of the 2024 Rule

The State Commenters urge BLM to maintain the 2024 Rule since it includes commonsense and necessary requirements to modernize BLM's standards for oil and gas development. The 2024 Rule is calculated to prevent waste of natural gas and obtain a fair return to taxpayers through royalties. It provides sound explanations for how key provisions, such as LDAR requirements and waste minimization plans, will result in significant waste reductions, and ultimately, provides reasonable and achievable precautions that operators can implement to prevent waste. The 2024 Rule also has important financial benefits, resulting in additional royalties that will provide a significant benefit to the public. The 2024 Rule estimates that royalty revenues from recovered and flared gas will increase by up to $51 million per year. 89 Fed. Reg. at 25,380. This is a significant amount payable to the public and provides an important benefit to taxpayers, unlike the Proposed Rule which will result in decreased royalty revenues. In addition, the 2024 Rule has important environmental benefits. Although the goal of the 2024 Rule is not the prevention or mitigation of climate change, the 2024 Rule is predicted to capture more gas per year, significantly reducing methane emissions that contribute to climate change. These avoided emissions, and thus avoided climate damages, will provide a monetized benefit of $17.9 million per year to the public. *Id.* This ancillary impact of the 2024 Rule is a substantial benefit to the public and a step in the right direction towards meeting some of the State Commenters' climate goals. As such, the 2024 Rule was a necessary regulatory development that will also result in important climate-related benefits for the public, and BLM should maintain its commonsense requirements.

CONCLUSION

BLM has failed to articulate a valid basis or provided a reasoned explanation for effectively repealing a much needed, commonsense, legally and environmentally sound update to a rule that it recently found was necessary to fulfill its statutory mandates to prevent waste, increase royalty receipts for American taxpayers, and ensure the safe and responsible development of oil and gas resources on federal and tribal lands. Therefore, we respectfully urge BLM not to move forward with the Proposed Rule and to retain the requirements of the 2024 Rule in its entirety.

Sincerely,

FOR THE STATE OF CALIFORNIA

ROB BONTA
California Attorney General

/s/ *Adrianna Lobato*
ADRIANNA LOBATO
Deputy Attorney General
ABIGAIL BLODGETT
Supervising Deputy Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814
(916) 210-6384
adrianna.lobato@doj.ca.gov

FOR THE STATE OF COLORADO
PHILIP J. WEISER
ATTORNEY GENERAL

/s/ *Carrie Noteboom*
CARRIE NOTEBOOM
Assistant Deputy Attorney General
Natural Resources and Environment Section
1300 Broadway, 10th Floor
Denver, CO 80203
720-508-6000
carrie.noteboom@coag.gov

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
CONNECTICUT ATTORNEY GENERAL

/s/ Jill Lacedonia
Jill Lacedonia
Assistant Attorney General
165 Capitol Avenue
Hartford, CT 06106
860-808-5250
Jill.Lacedonia@ct.gov

FOR THE PEOPLE OF THE STATE OF MICHIGAN
DANA NESSEL
Attorney General

By: /s/ *Echo Aloe*
Echo Aloe
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
AloeE1@Michigan.gov

FOR THE STATE OF NEW MEXICO
RAÚL TORREZ
Attorney General

/s/ Thomas Silva
Thomas Silva
Assistant Attorney General
201 Third St. NW, Suite 300
Albuquerque, New Mexico 87102
Tel. (505) 681-4894
TSilva@nmdoj.gov

FOR THE STATE OF OREGON
DAN RAYFIELD
Attorney General

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov