

### Multiple Documents

Part	Description
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2	Proposed Order

1 ROBERT W. FERGUSON  
Attorney General of Washington  
2 KELLY T. WOOD, WSBA #40067  
WILLIAM R. SHERMAN, WSBA #29365  
3 STACEY S. BERNSTEIN, WSBA #40143  
Assistant Attorneys General  
4 800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
5 Telephone: (206) 326-5494  
Fax: (206) 587-5088  
6

7  
8 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

9 PEOPLE OF THE STATE OF  
CALIFORNIA, by and through XAVIER  
10 BECERRA, ATTORNEY GENERAL; and  
STATE OF NEW MEXICO, by and through  
11 HECTOR BALDERAS, ATTORNEY  
GENERAL,

12 Plaintiffs,

13 v.

14 UNITED STATES BUREAU OF LAND  
MANAGEMENT; KATHARINE S.  
15 MACGREGOR, Acting Assistant Secretary  
for Land and minerals Management, United  
States Department of the Interior; and RYAN  
16 ZINKE, Secretary of the Interior,  
Defendants.

Case No. 3:17-cv-03804-EDL

Consolidated with:

Case No. 3:17-cv-03885-EDL

NOTICE OF MOTION AND MOTION  
OF THE STATES OF WASHINGTON,  
OREGON, MARYLAND, AND NEW  
YORK TO FILE AN *AMICUS CURIAE*  
BRIEF IN SUPPORT OF PLAINTIFFS

Judge: Hon. Elizabeth D. Laporte

17 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE THAT the States of Washington, Oregon, Maryland, and New  
19 York (*amici states*) hereby move the Court for leave to file a brief *amicus curiae* in the above-  
20 captioned case in support of Plaintiffs. A copy of the proposed *amicus* brief is attached as an  
21 exhibit to this motion.

22 **I. LEGAL STANDARD**

23 District courts have wide discretion in granting leave to participate as *amicus curiae*.  
24 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). While there is no specific rule on when  
25 such leave is proper, this discretion is liberally applied when the legal issues in a case “have  
26

1 potential ramifications beyond the parties directly involved.” *NGV Gaming, Ltd. v. Upstream*  
 2 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). Indeed, the “classic role” of  
 3 *amicus curiae* is filled in cases that involve the general public interest, including the  
 4 interpretation and status of the law. *Funbus Systems, Inc. v. State of Cal. Pub. Util.s Comm’n*,  
 5 801 F.2d 1120, 1125 (9th Cir. 1986) (referencing *Miller-Wohl Co. v. Commissioner of Labor &*  
 6 *Industry*, 694 F.2d 203, 204 (9th Cir. 1982)); *Cnty. Ass’n for Restoration of the Env’t. (CARE)*  
 7 *v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999).

## 8 II. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

9 The current case involves allegations that the United States Department of Interior,  
 10 Bureau of Land Management (BLM), engaged in an expansive and illegal interpretation of the  
 11 federal Administrative Procedure Act (APA) to suspend a duly adopted and effective rule. The  
 12 ramifications of this action go well beyond the parties to the case and are well within matters of  
 13 general public interest. As a result, the States are well-positioned to file a brief *amicus curiae*.  
 14 Amici states have proprietary interests in receiving the maximum share of royalty payments from  
 15 capturable gas on federal and tribal lands within the State. Each State also has a strong interest  
 16 in ensuring that federal agencies comply with the APA and refrain from engaging in arbitrary  
 17 and capricious decision-making. The States and their businesses and residents depend on a stable  
 18 and predictable federal regulatory environment. Furthermore, the States have particular insights  
 19 to share because they already have suffered concrete harms following expansionary applications  
 20 of § 705 of the APA.

## 21 III. AMICI CURIAE’S EXPERTISE WILL BENEFIT THE COURT

22 The *amici* States have “unique information” and a “perspective that can help the [C]ourt”  
 23 by demonstrating the broad implications flowing from BLM’s actions and other expansionary  
 24 applications of § 705 by the new administration. *Sonoma Falls Developers, LLC v. Nev. Gold &*  
 25 *Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). The ramifications of this case directly  
 26 affect the States, which will be negatively impacted if federal agencies engage in questionable

1 and expansive interpretations of the APA to postpone regulations already in effect that are  
2 important for the economic and environmental health of the state. States depend upon a stable  
3 and predictable regulatory environment. It is especially important for the Court to consider the  
4 States' view that the regulatory instability and administrative whim embodied by the  
5 government's broad interpretation of § 705 of the APA imperils regulated entities and businesses  
6 within the States. A favorable ruling from the Court in this challenge will make it more difficult  
7 for federal agencies to engage in ad-hoc indefinite postponement of duly adopted regulations.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the *amici* States respectfully request this Court's leave to file  
10 the attached *amicus* brief.

11 RESPECTFULLY SUBMITTED this 22nd day of August 2017.

12 ROBERT W. FERGUSON  
13 Attorney General

14 s/ Kelly T. Wood  
15 KELLY WOOD, WSBA #40067  
16 WILLIAM R. SHERMAN, WSBA #29365  
17 STACEY S. BERNSTEIN, WSBA #40143  
18 Assistant Attorneys General  
19 Counsel for Environmental Protection Unit  
20 Attorneys for Amicus Curiae  
21 State of Washington

22 ADDITIONAL COUNSEL:

23 FOR THE STATE OF MARYLAND

24 BRIAN E. FROSH  
25 Attorney General of the State of Maryland  
26 Steven M. Sullivan  
Solicitor General  
Office of the Attorney General  
200 Saint Paul Place, 20<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Tel: (410) 576-6427  
Email: [ssullivan@oag.state.md.us](mailto:ssullivan@oag.state.md.us)

1 FOR THE STATE OF NEW YORK

2 ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
3 Attorney for Amicus Curiae State of New York

4 MONICA WAGNER  
Deputy Bureau Chief  
5 LEMUEL M. SROLOVIC  
Bureau Chief  
6 Environmental Protection Bureau  
Office of the Attorney General of the State of New York  
120 Broadway  
7 New York, NY 10271

8 FOR THE STATE OF OREGON

9 ELLEN F. ROSENBLUM  
10 ATTORNEY GENERAL  
Paul Garrahan  
11 Attorney-in-Charge  
Natural Resources Section  
12 Oregon Department of Justice  
1162 Court Street NE  
13 Salem, OR 97301-4096

14 Tel: (503) 947-4593

1 ROBERT FERGUSON  
 Attorney General of Washington  
 2 KELLY T. WOOD, WSBA #40067  
 WILLIAM R. SHERMAN, WSBA #29365  
 3 STACEY BERNSTEIN, WSBA #40143  
 Assistant Attorneys General  
 4 800 Fifth Avenue, Suite 2000  
 Seattle, WA 98104  
 5 Telephone: (206) 326-5494  
 Fax: (206) 587-5088  
 6

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 11 ATTORNEY GENERAL,

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12 v.

13 UNITED STATES BUREAU OF LAND  
 MANAGEMENT; KATHARINE S.  
 14 MACGREGOR, Acting Assistant Secretary  
 for Land and Minerals Management, United  
 15 States Department of the Interior; and RYAN  
 ZINKE, Secretary of the Interior,  
 16 Defendants.

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*AMICUS CURIAE* BRIEF OF THE  
 STATES OF WASHINGTON, OREGON,  
 MARYLAND, AND NEW YORK

Judge: Hon. Elizabeth D. Laporte

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## I. INTRODUCTION

1  
2 States have fundamental interests in ensuring the proper execution of federal law by  
3 federal agencies. States are directly impacted by the federal government’s regulatory actions and  
4 have a duty to protect the legal rights of their citizens and ensure that federal actions impacting  
5 state interests are lawful. Just two months ago, *amici curiae* states filed a brief urging this Court  
6 to prevent the United States Department of Interior and its Office of Natural Resource Revenue  
7 (ONRR) from violating these interests in its efforts to roll back duly-promulgated regulations.  
8 *See* Amicus Curiae Brief of The State of Washington; The State of Oregon; The State of  
9 Maryland; and The State of New York, *California v. Zinke*, No. 3:17-cv-02376-EDL (N.D. Cal.  
10 June 14, 2017) (ECF No. 20). In doing so, *amici* highlighted similar efforts by multiple federal  
11 agencies and warned that sanctioning ONRR’s broad reading of Section 705 of the  
12 Administrative Procedures Act (APA) would foster regulatory whiplashes throughout the federal  
13 government that violate both the spirit and the letter of the APA. The current case represents yet  
14 another example of that overreach.  
15  
16

17 In 2014, after determining that “insufficient and outdated” regulations allowed billions  
18 of cubic feet of natural gas to be wasted, and thus millions of dollars of revenue to be lost every  
19 year from oil and gas leases on federal lands, the Department of Interior’s Bureau of Land  
20 Management (BLM) initiated an extensive rulemaking to update its regulations to minimize  
21 these losses and maximize royalties. After a three-year process, BLM finalized its efforts in the  
22 “Waste Prevention Rule” (the Rule), which is anticipated to save up to 41 billion cubic feet of  
23 gas and increase royalty payments by up to \$14 million dollars every year. The final Rule was  
24  
25  
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1 published in November 2016 and became effective on January 17, 2017. 81 Fed. Reg. 83,008  
2 (Nov. 18, 2016)

3 Nearly five months later—after industry groups and four states challenged the Rule in  
4 federal district court in Wyoming but were denied a preliminary injunction preventing the rule  
5 from taking effect—BLM invoked Section 705 of the APA to suspend the Rule’s compliance  
6 dates pending the litigation and so that BLM could “review[] and reconsider[]” the Rule. BLM  
7 then sought—and received—a delay in litigation dates so that it could conduct that  
8 administrative review. This action is an impermissible expansion of Section 705, violates the  
9 APA, and effectively amends or repeals the Rule without notice and comment. *Amici* states urge  
10 this Court to invalidate BLM’s action and re-instate the Rule until BLM follows proper  
11 procedure.  
12

## 13 II. FACTUAL AND PROCEDURAL BACKGROUND

14 The BLM is charged with managing the federal onshore oil and gas lease program on  
15 federal lands. *See, generally*, Mineral Leasing Act of 1920, 30 U.S.C. §§ 181–287. Oil and gas  
16 production from lands overseen by BLM amounts to approximately 11 percent of the nation’s  
17 natural gas supply and 5 percent of its oil supply. 81 Fed. Reg. 83,008, 83,014 (Nov. 18, 2016).  
18 Technological advances in the last decade have led to significantly increased oil and gas  
19 production on these lands, and royalty revenues from these resources are in the billions of dollars  
20 per year.  
21

22 However, BLM regulations failed to keep up with these advances, particularly with  
23 respect to preventing waste of natural gas that escapes during oil and gas production. In 2010,  
24 the Office of the Inspector General (OIG) of the Department of the Interior, along with the  
25  
26

1 Government Accountability Office (GAO), conducted reviews raising concerns that BLM's  
2 existing requirements allowed excessive flaring (burning) and direct venting of gas into the  
3 atmosphere. 81 Fed. Reg. 83,008, 83,010 (Nov. 18, 2016). The GAO noted that "around 40  
4 percent of natural gas estimated to be vented and flared on onshore Federal leases could be  
5 economically captured with currently available control technologies." *Id.* at 83,010. The failure  
6 to capture that gas deprived taxpayers of royalty revenues. *Id.* at 83,009. In addition, "vented or  
7 leaked gas contributes to climate change, because the primary constituent of natural gas is  
8 methane, an especially powerful greenhouse gas." *Id.* The OIG and GAO recommended that  
9 BLM "update its regulations to require operators to augment their waste prevention efforts,  
10 afford the BLM greater flexibility in rate setting, and clarify BLM policies regarding royalty-  
11 free, on-site use of oil and gas." *Id.* at 83,010.

12  
13  
14 Starting in 2014, BLM conducted a process to engage stakeholders and solicit input  
15 regarding the development of regulations to address the findings and recommendations in the  
16 OIG and GAO reviews. *Id.* After multiple public meetings and extensive outreach to impacted  
17 entities, trade associations, and state and tribal governments, BLM issued a proposed rule on  
18 January 21, 2016. Following months of public comments, BLM issued its final rule on  
19 November 18, 2016. Among other things, the Rule reduces the waste of natural gas by  
20 prohibiting venting except under specified conditions. *Id.* at 83,011. The Rule requires updates  
21 to existing equipment to reduce flaring, ratcheting down the amount of allowed waste escape  
22 over time, requires operators to produce waste minimization plans, and requires semi-annual  
23 inspections for leak detection. *Id.* The Rule also modifies the definition of "unavoidable losses"  
24 in a manner that increases the amount of escaped gas deemed subject to royalties. The Rule is  
25  
26

1 estimated to produce additional royalties of approximately \$14 million, avoid up to 180,000 tons  
2 of methane emissions per year, and reduce emissions of volatile organic compounds by  
3 approximately 250,000 tons per year. *Id.* at 83,014.

4  
5 Shortly after the final Rule was issued, two industry groups and a group of states  
6 (Wyoming, Montana, North Dakota, and Texas) challenged the Rule in the District of Wyoming.  
7 The Petitioners immediately moved for a preliminary injunction to prevent the Rule from taking  
8 effect. On January 16, 2017, the district court denied the motion for preliminary injunction  
9 finding that petitioners failed to show a likelihood of success on the merits or irreparable harm  
10 in the absence of an injunction. *Wyoming v. Dep't of the Interior* 2017 WL 161428 (D. Wyo.  
11 Jan. 16, 2017) (slip op). The Rule took effect the following day, January 17, 2017.

12  
13 Almost five months later, on June 15, 2017, BLM published a “Postponement Notice”  
14 related to the Rule. 82 Fed. Reg. 27,430 (June 15, 2017) (Waste Prevention, Production Subject  
15 to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates). Despite  
16 the fact that the Wyoming district court had already determined that the challenge to the Rule  
17 was not likely to succeed on the merits and thus declined to suspend the Rule’s January 17, 2017,  
18 effective date, BLM postponed the January 17, 2018, compliance date for several requirements  
19 of the Rule, including reductions in how much gas may be allowed to escape and updates to  
20 equipment, BLM postponed those dates under APA Section 705, which only permits an agency  
21 to “postpone the *effective date* of action taken by it, pending judicial review.” 5 U.S.C. § 705  
22 (emphasis added). BLM stated that it was doing so because of “the existence and potential  
23 consequences of the pending litigation.” 82 Fed. Reg. at 27,430. BLM also stated that the  
24 postponement was necessary so that the agency could “review[] and reconsider[] the Rule.” *Id.*  
25  
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1 at 27,431. BLM subsequently sought (and received) a 90-day extension of briefing deadlines in  
2 the underlying Rule challenge so that it could pursue “future administrative review.” BLM has  
3 also stated that it ultimately plans to eliminate or extend the Rule’s compliance dates, at some  
4 unnamed point in the future, through notice-and-comment rulemaking. 82 Fed. Reg. 27,430,  
5 27,431 (June 15, 2017) .  
6

7 On July 5, 2017, the States of California and New Mexico filed the current lawsuit,  
8 challenging BLM’s suspension of the Rule.

9 **III. ISSUE ADDRESSED**

10 Whether BLM violated the APA when it suspended the compliance dates of a rule that  
11 was already in effect and effectively amended or repealed the rule without notice and comment  
12 rulemaking.

13 **IV. ARGUMENT**

14 **A. BLM’s Suspension of the Waste Prevention Rule’s Compliance Dates Violates the**  
15 **APA**

16 The plain language of Section 705 is clear: Section 705 is narrowly crafted only to permit  
17 an agency to “postpone the effective date” of a rule pending judicial review. 5 U.S.C. § 705. It  
18 does not allow the retroactive suspension of a rule, or any part thereof, that has already gone into  
19 effect.

20  
21 Attempting to get around this limitation, BLM couches its suspension as a postponement  
22 of the Rule’s future “compliance dates,” claiming that such dates are encompassed within the  
23 meaning of “effective date” as used in Section 705. But, future compliance dates in a regulation  
24 are not the regulation’s effective date, and BLM’s strained construction of Section 705 would  
25 constitute a significant expansion of its plain language. The operative language of Section 705  
26

1 is “postpone the effective date ... pending judicial review.” While the APA makes no mention  
2 of “compliance dates,” an “effective date” is a specific term of art within the APA. For example,  
3 substantive rules must be published at least 30 days before their effective dates, and future  
4 compliance dates are often timed in reference to a rule’s effective date. *See* 5 U.S.C. § 553(d).  
5 While a rule may have many components, including multiple future deadlines for compliance,  
6 rules only have *one* “effective date.” *See Silverman v. Eastrich Multiple Inv’r Fund, L.P.*, 51  
7 F.3d 28, 31 (3rd Cir. 1995) (warning that a regulation’s “compliance date should not be  
8 misconstrued as the effective date.”).

10 BLM’s reliance on Section 705 to suspend the Rule’s compliance dates also violate the  
11 APA’s notice and comment requirements because such suspensions are deemed an amendment  
12 or repeal that is invalid without following notice and comment requirements. Section 553 of the  
13 APA requires an agency to provide notice and an opportunity to comment in a “rule making.”  
14 Section 551(5) defines a rule making to include “amending” and “repealing” a regulation.  
15 Because suspending—and effectively modifying—a regulation’s compliance dates constitutes  
16 amending or repealing the regulation, it requires notice and comment. *See Clean Air Council v.*  
17 *Pruitt*, 862 F.3d 1, 6 (2017) (finding jurisdiction to review a suspension of compliance deadlines  
18 for requirements for methane leaks in oil and gas production because the suspension is  
19 “tantamount to amending or revoking” the regulation); *Environmental Defense Fund, Inc. v.*  
20 *Gorsuch*, 713 F.2d 802 (1983) (*EDF*); *Natural Resources Defense Council v. EPA*, 683 F.2d  
21 752, 761–62 (D.C. Cir. 1982) (*NRDC*); *see also Motor Vehicle Mfrs. Ass’n v. State Farm Mut.*  
22 *Auto. Ins. Co.*, 463 U.S. 29 (1983) (rescissions or modifications of substantive rules require a  
23 new rulemaking proceeding).  
24  
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1 For example, in *NRDC*, the Court of Appeals ruled that the indefinite postponement of  
2 the effective date of a regulation regarding sewage treatment plants pending reconsideration of  
3 the regulation effectively repealed the regulation and thus constituted a rulemaking for which  
4 notice and comment was required. 683 F.2d at 761–62. In *EDF*, EPA announced that it would  
5 conduct a notice and comment rulemaking regarding suspension of the effective dates of the  
6 performance standards for two categories of hazardous waste facilities but that it would suspend  
7 the submission of permit applications for those facilities pending the rulemaking. 713 F.2d  
8 at 808. The court ruled that EPA’s the suspension of permit applications “constitute[d]  
9 rulemaking subject to notice and comment requirements of 5 U.S.C. § 553.” *Id.* at 816.  
10

11 Indeed, BLM itself conceded that it was required to conduct a rulemaking regarding the  
12 suspension of the Rule’s compliance dates when it announced its intent to “conduct notice-and-  
13 comment rulemaking” regarding the extension or elimination of those dates. *See* 82 Fed. Reg.  
14 27,430, 27,431. BLM is half right—it can extend or eliminate the Rule’s compliance dates but  
15 only *after* developing an adequate record to do so and following notice and comment  
16 requirements. It cannot, however, perform ad-hoc amendment to the dates by suspending them  
17 in the interim.  
18

19 BLM’s action violates the APA and should be invalidated.

20  
21 **B. BLM’s Actions Undermine the APA’s Goal of Creating Stability and Predictability**  
22 **With Regard to Federal Regulatory Efforts With Potential for Impacts Well**  
23 **Beyond the Current Dispute**

24 As noted above, States have a fundamental interest in ensuring the proper execution of  
25 federal law by federal agencies, both as impacted parties and pursuant to their duties to protect  
26 the legal rights of their citizens. When it comes to regulatory actions, both States and the citizens  
and businesses within their borders frequently undertake substantial efforts to prepare for, and



1 comply with, regulatory actions. And, in many instances—including here—States and their  
2 citizens are the direct beneficiaries of federal regulatory efforts.<sup>1</sup>

3         These significant interests are backstopped by two bedrock principles of the APA:  
4 (1) advance notice of potential agency action and (2) an opportunity to meaningfully comment  
5 on proposed actions before they are final. *See* 5 U.S.C. § 553. These requirements ensure that  
6 interested parties are involved early in the rulemaking process and provide a mechanism to  
7 substantively engage with the regulating agency on proposed rules. *See, e.g., N.L.R.B. v. Wyman-*  
8 *Gordon Co.*, 394 U.S. 759, 764 (1969) (APA “designed to assure fairness and mature  
9 consideration” when adopting regulations); *Brown Express, Inc. v. U.S.*, 607 F.2d 695, 701 (5th  
10 Cir. 1979) (APA ensures that the broadest base of information is provided to agencies by those  
11 most impacted and, thus, perhaps best informed); *Nat’l Retired Teachers Ass’n v. U.S. Postal*  
12 *Service*, 430 F. Supp. 141, 147 (D.D.C. 1977) (APA’s rulemaking provisions were enacted for  
13 the central purpose of allowing public participation in the promulgation of rules that have a  
14 substantial impact on those regulated).

15         The consequences of failing to follow these procedures are clear. Shifting policies and  
16 regulatory instability “imperils” regulated entities and “muddles the regulatory landscape.”  
17 *Fed. Commc’ns Comm’n v. Fox Television Stations, Inc.*, 556 U.S. 502, 541 (2009) (Stevens, J.,  
18 dissenting) (discussing undisputed APA policy rather than matters specific to the majority  
19 decision). As a result, both the APA and the rule of law “favor stability over administrative  
20 whim.” *Id at 542.*

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<sup>1</sup> In this case, Plaintiff States impacted by the Rule stand to lose significant revenues from BLM’s suspension. *See* Complaint ¶ 14 (ECF No. 1).

1           Allowing BLM to effectively repeal large portions of a rule without notice and comment  
2 rulemaking flips this paradigm on its head and encourages policy whiplashes to the detriment of  
3 stability and predictability. This is the opposite of what the APA requires. Under the APA,  
4 agencies must engage in notice and comment rulemaking when adopting, modifying, or  
5 repealing any substantive rules.<sup>2</sup> *See* 5 U.S.C. §§ 551(5), 553. As with adoption, repeal or  
6 modification of a rule must be supported by a “reasoned analysis for the change.” *State Farm*,  
7 463 U.S. at 42. Once an agency finalizes a rule, it “embodies the agency’s informed judgment”  
8 that the rule discharges its duty to “carry out the policies committed to it by Congress.” *Id.* at  
9 41–42. As a result, adopted rules create “a presumption that those policies will be carried out  
10 best if the [existing] rule is adhered to” and a “presumption . . . . *against* changes in current  
11 policy that are not justified by the rulemaking record.” *Id.* at 42 (emphasis original); *see also*  
12 *AFGE, Local 3090 v. FLRA*, 777 F.2d 751, 759 (D.C. Cir. 1985) (“an agency seeking to repeal  
13 or modify a legislative rule promulgated by means of notice and comment rulemaking is  
14 obligated to undertake similar procedures to accomplish such modification or repeal and to  
15 provide a reasoned explanation for the change addressing with some precision any concerns  
16 voiced in the comments received” (citation omitted)). Ad-hoc modifications or rescissions of  
17 existing rules with no record to justify and without following the APA’s mandated procedures  
18 for doing so destroys these presumptions and violates both the letter and the spirit of the APA.  
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22           The impacts of allowing actions like BLM’s are not limited to the Waste Prevention Rule.  
23 As noted above, *amici* states have already submitted an *amicus* brief to this Court in a lawsuit  
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26           <sup>2</sup> An agency also may not “simply disregard rules that are still on the books.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

1 over similar use of Section 705 by DOI's Office of Natural Resource Revenue. Notice of Motion  
2 and Motion of the States of Washington, Oregon, Maryland, and New York to File an Amicus  
3 Curiae Brief in Support of Plaintiffs, *California v. Zinke*, No. 3:17-cv-02376-EDL, ECF No. 20  
4 (N. D. Cal. June 14, 2017). And, as *amici* set out in that brief, similar expansive readings of  
5 Section 705 and disregard for other APA requirements are occurring across multiple federal  
6 agencies. Last month, the D.C. Circuit Court of Appeals invalidated an attempt by the  
7 Environmental Protection Agency (EPA) to illegally suspend compliance dates contained in the  
8 "methane rule" (establishing new source performance standards for fugitive emissions of  
9 methane and other pollutants). *Clean Air Council v. Pruitt*, 862 F.3d 1, 5 (D.C. Cir. 2017). In  
10 doing so, the Court reiterated what should be axiomatic to any administrative agency: "an agency  
11 issuing a legislative rule is itself bound by the rule until that rule is amended or revoked and may  
12 not alter such a rule without notice and comment." *Id.* at 9 (internal quotations and citation  
13 omitted). Because EPA's suspension was tantamount to amending the rule, and because neither  
14 the APA nor the Clean Air Act granted authority for the suspension, the Court found that EPA's  
15 action was arbitrary, capricious, and in excess of its statutory authority. *Id.* at 14.

18 As noted in *amici's* prior brief to this Court, EPA has also invoked Section 705 to stay  
19 an EPA regulation regarding new water effluent limits for steam power plants. This action  
20 suspended and indefinitely postponed remaining compliance deadlines for covered power plants,  
21 effectively grinding the rule to a halt. 82 Fed. Reg. 19,005 (April 25, 2017). EPA then sought an  
22 immediate stay of the underlying judicial challenge to the rule and has since asked the Fifth  
23 Circuit to hold judicial review in abeyance pending completion of "further rulemaking." *See*  
24  
25  
26

1 *Southwestern Electric Power Co., v. EPA*, No. 15-60821 (Document No. 00514115266) (August  
2 14, 2017) available at [https://www.eenews.net/assets/2017/08/15/document\\_gw\\_06.pdf](https://www.eenews.net/assets/2017/08/15/document_gw_06.pdf).

3 The universe of other rules with future compliance dates that are potentially subject to  
4 similar action is significant and spans a broad spectrum of federal regulatory programs. A small  
5 fraction of such rules include: 81 Fed. Reg. 90,416 (December 14, 2016) (2017 effective date  
6 with 2019 full compliance date for minimum sound requirements for electric vehicles); 81 Fed.  
7 Reg. 67,438 (September 30, 2016) (2016 effective date with 2018 compliance date associated  
8 with state standards required for Child Care and Development Fund block grants); 81 Fed.  
9 Reg. 33,742 (May 27, 2016) (2016 effective date with 2018 and 2019 compliance dates for food  
10 and dietary supplement labeling requirements); 81 Fed. Reg. 20,092 (April 6, 2016)  
11 (2016 effective date with 2018 compliance date for sanitary transportation of food for human  
12 and animal consumption).

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15 These actions subvert the rule of law and the very policies the APA was enacted to foster.  
16 This Court should invalidate BLM's actions.

## 17 V. CONCLUSION

18 BLM's suspension of the Waste Prevention Rule's compliance dates contravenes the  
19 plain language of Section 705 of the APA and should be invalidated. That action has the potential  
20 for far-reaching consequences that impact the very stability and predictability the APA seeks to  
21

1 foster in regulatory systems. This Court should reverse this expansive and illegal interpretation  
2 of APA authority by granting Plaintiffs' Motion for Summary Judgment.

3  
4 RESPECTFULLY SUBMITTED this 22nd day of August 2017.

5 ROBERT W. FERGUSON  
6 Attorney General

7 s/ Kelly T. Wood  
8 KELLY T. WOOD, WSBA #40067  
9 WILLIAM R. SHERMAN, WSBA #29365  
10 STACEY BERNSTEIN, WSBA #40143  
11 Assistant Attorneys General  
12 Counsel for Environmental Protection Unit  
13 Attorneys for Amicus Curiae  
14 State of Washington

15 ADDITIONAL COUNSEL:

16 FOR THE STATE OF MARYLAND

17 BRIAN E. FROSH  
18 Attorney General of the State of Maryland  
19 Steven M. Sullivan  
20 Solicitor General  
21 Office of the Attorney General  
22 200 Saint Paul Place, 20<sup>th</sup> Floor  
23 Baltimore, Maryland 21202  
24 Tel: (410) 576-6427  
25 Email: ssullivan@oag.state.md.us

26 FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for Amicus Curiae State of New York  
MONICA WAGNER  
Deputy Bureau Chief  
LEMUEL M. SROLOVIC  
Bureau Chief  
Environmental Protection Bureau  
Office of the Attorney General of the State of New York  
120 Broadway  
New York, NY 10271

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FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
ATTORNEY GENERAL  
Paul Garrahan  
Attorney-in-Charge  
Natural Resources Section  
Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
Tel: (503) 947-4593

1 ROBERT W. FERGUSON  
Attorney General of Washington  
2 KELLY T. WOOD, WSBA #40067  
WILLIAM R. SHERMAN, WSBA #29365  
3 STACEY S. BERNSTEIN, WSBA #40143  
Assistant Attorneys General  
4 800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
5 Telephone: (206) 326-5494  
Fax: (206) 587-5088  
6

7  
8 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

9 STATE OF CALIFORNIA, by and through  
XAVIER BECERRA, ATTORNEY  
10 GENERAL; and STATE OF NEW MEXICO,  
by and through HECTOR BALDERAS,  
11 ATTORNEY GENERAL,  
Plaintiff,

12 v.

13 UNITED STATES BUREAU OF LAND  
MANAGEMENT; KATHARINE S.  
14 MACGREGOR, Acting Assistant Secretary  
for Land and Minerals Management, United  
15 States Department of the Interior; and RYAN  
ZINKE, Secretary of the Interior,  
16 Defendants.

Case No. 3:17-cv-03804-EDL

Consolidated with:

Case No. 3:17-cv-03885-EDL

[PROPOSED] ORDER

Judge: Hon. Elizabeth D. Laporte

17 This matter having come before the Court by motion of proposed *amici curiae* State of  
18 Washington, State of Oregon, State of Maryland, and State of New York, seeking leave to file  
19 an brief *amicus curiae* in the above-captioned matter, and the Court having reviewed the file  
20 and pleadings herein, and being otherwise fully advised in the matter, hereby finds good cause  
21 to allow *amici* participation.

22 IT IS HEREBY ORDERED:

23 The Motion to File an *Amicus Curiae* Brief In Support of Plaintiffs is GRANTED.

24 This \_\_\_\_ day of \_\_\_\_\_, 2017.

25 \_\_\_\_\_  
26 The Hon. Elizabeth D. Laporte  
United States Magistrate Judge

## General Information

<b>Court</b>	United States District Court for the Northern District of California; United States District Court for the Northern District of California
<b>Federal Nature of Suit</b>	Other Statutes - Administrative Procedure Act/Review or Appeal of Agency Decision[899]
<b>Docket Number</b>	3:17-cv-03804
<b>Status</b>	CLOSED