California Environmental Protection Agency, Oregon Department of Environmental Quality and Attorneys General of Illinois, Massachusetts, New Mexico, New York, Oregon, Rhode Island and Vermont

February 6, 2017

By Facsimile, Electronic Mail and First Class Mail
Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Re: S.J.Res.11 - A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Bureau of Land Management relating to "Waste Prevention, Production Subject to Royalties, and Resource Conservation"

Dear Senator McConnell and Senator Schumer:

We, the undersigned state environmental protection agencies and Attorneys General, write to urge you to oppose Senate Joint Resolution 11, which would disapprove the U.S. Bureau of Land Management's ("BLM") Waste Prevention, Production Subject to Royalties and Resource Conservation Rule (the "Rule") pursuant to the Congressional Review Act ("CRA"). Repeal of the Rule would contradict the clear statutory mandate that Congress gave BLM in the Mineral Leasing Act of 1920, which requires BLM to take action to prevent waste of oil and gas resources. Such a move would also constitute a nearly unprecedented and overly-expansive use of CRA authority to effectively condone the waste of a valuable energy resource that belongs to the American people.

BLM developed the Rule in response to calls from the nonpartisan and independent Government Accountability Office ("GAO") and other agencies to update BLM's "insufficient and outdated" regulations regarding waste and royalties, which date back to 1979. 81 Fed. Reg. 83,008-83,009 (Nov. 18, 2016). It is designed to limit the amount of gas that is wasted through venting, flaring, and leakage, requiring oil and gas producers to put these resources to productive use. Congress explicitly delegated authority to BLM to ensure that when federal oil and gas resources are developed, they are productive and royalty-producing rather than wasted. 30 U.S.C. §§ 187, 225; 30 U.S.C. § 1756. Congress also directed BLM to manage public lands in a way that promotes the national interest, and to protect the quality of the lands' ecological, environmental, air, and atmospheric values. 43 U.S.C. § 1701(a). That is precisely what the

Rule does. BLM estimates that the federal government will collect up to an additional $14 million in royalties annually, half of which will be allocated to those states where oil and gas development is taking place on federal or Indian land. 81 Fed. Reg. at 83,014.

Voluntary measures to reduce wasted natural gas are not viable alternatives to the Rule. The GAO found that oil and gas operators often did not employ even the most cost-effective measures to reduce natural gas waste from public lands, and, applications from oil and gas operators to vent or flare royalty-free on Federal and Indian lands increased from just 50 applications in 2005 to 1,248 applications in 2014. *Id.* at 83,015. Further, the Rule complements, rather than contradicts, existing state rules. The Rule provides an even playing field among states with significant federal and Indian lands, and allows BLM to grant variances for states that have adopted or subsequently adopt equally effective requirements. *Id.* at 83,010. Similarly, BLM minimized overlap with other federal regulations, including EPA's methane rule, which does not apply to the existing sources or routine flaring of associated gas from oil wells that the BLM Rule covers. *Ibid.*

The Rule also has the benefit of reducing emissions of methane, which, pound for pound, warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the most recent Intergovernmental Panel on Climate Change report, and on a twenty-year time frame, has about eighty-six times the global warming potential of carbon dioxide. All States have a strong interest in preventing and mitigating harms that climate change poses to human health and the environment, including increased heat-related deaths, damaged coastal areas, disrupted ecosystems, more severe weather events, and longer and more frequent droughts. Additionally, the Rule protects public health by limiting the release of air pollutants that are associated with respiratory and cardiovascular illnesses.

Repealing the Rule using the CRA would be a drastic—and nearly unprecedented—measure that could have longstanding consequences. Because no courts have ruled on the impact of a CRA disapproval on subsequent rules that may be "substantially similar," 5 U.S.C. § 801(b)(2), we have significant concerns that a CRA disapproval of the Rule could indefinitely bar BLM from regulating in the area of resource waste prevention—a task which it is statutorily mandated to perform. 30 U.S.C. §§ 187, 225; 30 U.S.C. § 1756. And, existing regulations would become even more out-of-step with technology as the oil and gas sector continues to evolve and expand.

The BLM Rule is a carefully vetted, balanced, common-sense update to thirty-eight-year-old controls on the extraction of oil and gas from our nation's public lands. Repeal of the Rule using a blunt instrument like the CRA would be irresponsible and could prevent BLM from carrying out its statutorily-mandated duties. We urge you to vote against such action.

Thank you for your consideration of our concerns.

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