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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING, et al.,

*Petitioner,*

v.

UNITED STATES DEPARTMENT OF  
THE INTERIOR; et al.,

*Respondents.*

Civil Case No. 15-CV-43-SWS  
(consolidated with 15-CV-41-SWS)

**RESPONDENTS’ SUPPLEMENTAL  
CITATIONS TO  
ADMINISTRATIVE RECORD IN  
SUPPORT OF THEIR  
OPPOSITION TO UTE  
INDIAN TRIBE’S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

Respondents S.M.R. Jewell, Secretary of the Interior, the United States Department of the Interior, the United States Bureau of Land Management (“BLM”), and Director of the BLM Neil Kornze (collectively “Respondents”) hereby submit their supplemental citations to the Administrative Record in support of their Opposition to Intervenor-Petitioner Ute Indian Tribe’s Motion for Temporary Restraining Order and Preliminary Injunction (“Opp’n”) (ECF No. 102).

In its June 24, 2015, Order (ECF No. 97), the Court directed that “[w]ithin seven (7) calendar days of the lodging of the Administrative Record, the parties may file citations to the record in support of their respective positions” and that “[n]o further argument will be considered.” That deadline was extended until September 18, 2015 by this Court’s Order of September 2, 2015 (ECF No. 115). The Administrative Record was served on August 27, 2015, *see* Notice, (ECF No. 113), and lodged with the Clerk of Court on August 28, 2015 (ECF No. 113).

Consistent with the Court’s Order, the supplemental citations herein are organized by the section headings in Respondents’ opposition, and refer to the page number, paragraph number, and sentence number of that brief.<sup>1</sup> Per the Court’s instructions, we have not included any additional argument. However, for the Court’s convenience, we have included parenthetical indications of the specific language or contents to which we draw the Court’s attention in our record citations.

The citations contained herein supplement those citations to the Final Rule, Rule Preamble and other documents already provided with Respondents’ opposition—which are incorporated by reference here. For the Court’s convenience, the Final Rule and Preamble in the

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<sup>1</sup> When we refer to a page number from our previous brief herein, we refer to the number at the bottom of the page generated by the word processing system by which the document was created, not the page number at the top of the page generated by the Court’s ECF system.

Federal Register may be located at pages DOIAR0101929-DOIAR0102024 in the Administrative Record. The Regulatory Impact Analysis for [the Final] Hydraulic Fracturing Rule may be located at DOIAR0100522-DOIAR0100640.

## **ADMINISTRATIVE RECORD CITATIONS**

### **Section I. Introduction**

p. 2           First paragraph, second sentence (“The BLM Rule amended existing onshore oil and gas permitting regulations that currently apply to all federal and Indian lands”). *See, e.g.,* Hydraulic Fracturing On Public Lands, Tribal Consultation Session, January 10, 2012, Tulsa Oklahoma, DOIAR0009607 (transcript of BLM consultation with tribe regarding BLM Rule); Tribal Consultation-Hydraulic Fracturing on Public Lands, January 12, 2012, Billings, Montana, DOIAR0010290 (transcript of BLM consultation with tribe regarding BLM Rule); Tribal Consultation-Hydraulic Fracturing, January 19, 2012, Farmington, New Mexico, DOIAR0010872 (transcript of BLM consultation with tribe regarding BLM Rule); Tribal Consultation-Hydraulic Fracturing on Public Lands, June 14, 2012, Billings, Montana, DOIAR0024889 (transcript of BLM consultation with tribe regarding BLM Rule); Summary of Tribal Consultation Sessions to Date, July 16, 2012, DOIAR0026578 (memorandum summarizing consultation conducted with tribes up to July 2012 regarding BLM Rule); Tribal Consultation-Hydraulic Fracturing, June 18, 2013, Dickinson, North Dakota, DOIAR0050425 (transcript of BLM consultation with tribe regarding BLM Rule); Tribal Consultation-Hydraulic Fracturing, June 20, 2013, Farmington, New Mexico, DOIAR0053662 (transcript of BLM consultation with tribe regarding BLM Rule); DOIAR0014559 (email discussing tribal consultation efforts by BLM regarding BLM Rule); DOIAR0015152 (tribal consultation letter from BLM

regarding BLM Rule); DOIAR0014508 (introductory remarks for tribal consultation meetings on BLM Rule); DOIAR0023299 (summary of consultation meeting in Utah with tribes regarding BLM Rule).

**Section IV.A.4. The Secretary appropriately consulted with tribes**

p. 15 First paragraph, first sentence (“Even if the Court were to consider the merits of Petitioner’s tribal consultation claim, Petitioner’s claim should still fail because BLM engaged in extensive tribal consultation when promulgating the BLM Rule”). *See, e.g.*, BLM Statement before House Natural Resources Subcommittee on Indian and Alaska Native Affairs, April 19, 2012, DOIAR0013815-816 (describing BLM’s extensive tribal consultation efforts in the development of the BLM Rule); DOIAR0013821 (stating key messages on tribal consultation for the BLM rule); BLM Memorandum, May 30, 2012, DOIAR0022597-DOIAR0022599 (describing tribal consultation efforts with tribes on the BLM Rule through May 2012); DOIAR0026578-DOIAR0026585 (summarizing tribal consultations undertaken with tribes on the BLM Rule through July 16, 2012); DOIAR0014559 (email discussing tribal consultation efforts with tribes regarding the BLM Rule); DOIAR0015152 (tribal consultation letter from BLM regarding the BLM Rule); DOIAR0014508 (containing introductory remarks for tribal consultation meetings on BLM Rule); DOIAR0023299 (summarizing the consultation meeting in Utah with tribes regarding the BLM Rule).

p. 15 First full paragraph, second sentence (“In January 2012, BLM held four regional tribal consultation meetings”). DOIAR0023694-DOIAR0023699 (memorandum summarizing steps taken for, attendance at, and issues raised at the consultation meetings held with tribes in January 2012 in Tulsa, OK, Billings, MT, Salt Lake City, UT, and

Farmington, NM to discuss the BLM Rule); DOIAR0009607-DOIAR0009789 (transcript of January 10, 2012 tribal consultation meeting on the BLM Rule in Tulsa, OK); DOIAR0009990-DOIAR0010277 (transcript of January 12, 2012 tribal consultation meeting on the BLM Rule in Billings, MT); DOIAR0010973-DOIAR0011103 (transcript of January 19, 2012 tribal consultation meeting on the BLM Rule in Farmington, NM).

p. 15           Second full paragraph, first sentence (“In June 2012, BLM held additional tribal consultation meetings, including one in Salt Lake City, Utah, near Petitioner’s reservation”). DOIAR0023694-DOIAR0023699 (memorandum summarizing steps taken for, attendance at, and issues raised at further tribal consultation sessions held in February through June 2012 with respect to the BLM Rule); DOIAR0034423-DOIAR0034580 (transcript of June 5, 2012 tribal consultation meeting in Salt Lake City on the BLM Rule); DOIAR0024889-DOIAR0025030 (transcript of June 14, 2012 tribal consultation meeting regarding the BLM Rule in Billings, MT).

p. 15           Second full paragraph, third sentence (“Thereafter, BLM engaged in additional individual tribal consultations, including consultations with Petitioner”). DOIAR0026594- DOIAR0026596 (notes from the July 11, 2012 consultation on the BLM Rule with the California Valley Miwok Tribe); DOIAR0033321-DOIAR0033323 (notes from the July 19, 2012 consultation on the BLM Rule with the Crow Tribe); DOIAR0040156-DOIAR0040166 (notes from the October 17-18, 2012 BLM Regional Intertribal Workshop in Spearfish, SD, at which various issues, including the BLM Rule and hydraulic fracturing on tribal lands, were discussed).

p. 15           Third full paragraph, first sentence (“Additional tribal consultation meetings were held after BLM published the supplemental proposed rule”). DOIAR0049740 (notes from

the June 10, 2013 meeting with the Coalition of Large Tribes in Albuquerque, NM); DOIAR0050425 -DOIAR0050548 (transcript of the June 18, 2013 tribal consultation meeting in Dickinson, ND on the BLM Rule); DOIAR0053662-DOIAR0053794 (transcript of the June 20, 2013 tribal consultation meeting in Farmington, NM regarding the BLM Rule); DOIAR0051842-DOIAR0051843 (notes from the June 24, 2013 tribal meeting in Norman, OK on the BLM Rule); DOIAR0056594-DOIAR0056595 (notes from the August 19, 2013 meeting with the Ft. Peck Tribes in Poplar, MT on the BLM Rule); DOIAR0029955 (notes from the September 7, 2012 meeting with the Ute Mountain Tribe in Towaoc, CO on the BLM Rule).

- p. 15 Third full paragraph, third sentence (“In March 2014, BLM held another tribal consultation meeting in Denver, Colorado”). DOIAR0075037-DOIAR0075041 (meeting notes from BLM’s March 18, 2014 Tribal Fracturing Rule Outreach Meeting in Lakewood, CO).

#### **Section IV.C. The Balance of Equities and Public Interest Support Denying the Injunction**

- p. 19 First full paragraph, second sentence (“A preliminary injunction would frustrate the public interests motivating the BLM Rule and deny BLM the tools needed to respond to risks and public concerns associated with the growth of hydraulic fracturing of oil and gas wells[,] []among them, potential groundwater contamination, use of chemicals during the fracturing process, frack hits, and spills of recovered fluids on the surface[.]”). *See, e.g.,* Environmental Defense Fund comments on supplemental proposed rule, pp. 37-38, DOIAR0056108-09 (explaining that the “disclosure of chemicals used in hydraulic fracturing[,]” such as through FracFocus, “enhances public safety, promotes transparency, and will ultimately lead to the use of less deleterious chemicals”), pp. 7-8,

DOIAR0056078-79 (noting that an “area of review” concept as in the BLM rule and state regulatory regimes is an increasingly utilized approach to minimize the risk of “[s]ubsurface communication of hydraulic fracturing fluid through existing boreholes and natural fractures [i.e., frack hits,]” which “is a serious concern” in light of “reports from Pennsylvania, Colorado, and Alberta, among other states [which] have documented incidences of . . . frack hits”); Western Urban Water Coalition comments on supplemental proposed rule, pp. 2-7, DOIAR0056735-40 (noting that hydraulic fracturing could potentially impact water sources used by Coalition members and urging that BLM’s final rule contains the necessary tools to minimize that risk through chemical disclosure, monitoring of hydraulic fracturing activities, and isolation and protection of groundwater); Sportsmen for Responsible Energy Development comments on supplemental proposed rule, pp. 2-6, DOIAR0055814-18 (endorsing measures in BLM rule to protect surface waters, groundwater and other resources, including full disclosure of fracturing chemicals, cement evaluation logs, and mechanical integrity testing, among others); The Wilderness Society comments on supplemental proposed rule, pp. 1, 3-4, DOIAR0056304, DOIAR0056306-07 (asserting that BLM regulation is a necessary baseline to ensure that hydraulic fracturing is conducted pursuant to robust standards to protect resources, as required under the Federal Land Policy and Management Act), pp. 5-14, DOIAR0056308-17 (explaining the need for disclosure of fracturing chemical information, storage of recovered water in tanks, mechanical integrity testing, and ensuring cement integrity, among others); Environmental Working Group comments on supplemental proposed rule, pp. 1-2, DOIAR0056063-64 (explaining that oil and gas production and drilling operations are inherently risky activities that can cause significant

damage to the environment and human health and therefore require updated BLM regulations to address these risks and meet BLM's statutory mandate); Tip of the Mitt Watershed Council comments on supplemental proposed rule, p. 2, DOIAR0056184 (explaining that hydraulic fracturing may endanger groundwater, surface water, clean air, human and animal health, fish and wildlife habitat, and recreation opportunities); Sierra Club, et al. comments on supplemental proposed rule, p. 2, DOIAR0056815 (explaining that hydraulic fracturing presents risks to groundwater, surface water, air, soil, fish and wildlife habitat, and human and animal health); Center for Biological Diversity comments on supplemental rule, p. 2, DOIAR0057115 (explaining that fracking and the resulting toxic wastewater have developed an extensive track record of spills, accidents, leaks, pollution, and property damage – resulting in severe and often irreversible impacts to air, water, wildlife, and health); High Country Citizens' Alliance, et al. comments on rule, p. 1, DOIAR0057699 (expressing familiarity with the water contamination concerns related to hydraulic fracturing).

Respectfully submitted, September 18, 2015,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> of September 2015 a copy of the foregoing **Respondents' Supplemental Citations to Administrative Record in the Support of Their Opposition to Ute Indian Tribe's Motion for Temporary Restraining Order and Preliminary Injunction** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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