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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STATE OF WYOMING, et al., *Petitioners*, 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 BRIEF IN OPPOSITION TO INDUSTRY PETITIONERS' MOTION FOR 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 hereby submit their supplemental citations to the Administrative Record in support of their Brief in Opposition (ECF No. 20 in Case No. 15-CV-41-SWS) to the Motion for Preliminary Injunction filed by Petitioners Independent Petroleum Association of America and Western Energy Alliance (ECF Nos. 11-13 in Case No. 15-CV-41-SWS).[1]

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 Noticed and Certified on August 27, 2015 (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 in this brief are organized within the section headings matching those of Respondents' Brief in Opposition, and refer to the page number, paragraph number, and sentence number of that Brief in Opposition.[2] 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.

[1] Petitioners Motion and Respondents' Brief in Opposition were filed in *Independent Petroleum Association of America, et al., v. Jewell, et. al.*, Case No. 15-CV-41-SWS, before that case was consolidated with this one, *State of Wyoming, et al., v. U.S. Dept. of the Interior, et al*., Case No. 15-CV-43-SWS, by the Court's Order granting the parties' Joint Motion to Consolidate these cases (ECF No. 33 in Case No. 15-CV-41-SWS).

[2] 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.

The citations contained herein supplement those citations to the Final Rule and Preamble (available in the Administrative Record at DOIAR0101929-DOIAR0102024) and other documents already provided with Respondents' Brief in Opposition – which are incorporated by reference here. For the Court's convenience, we also provide here information on where these other documents, provided with the Respondents' Brief, may also be located in the Administrative Record. For one, the Regulatory Impact Analysis for [the Final] Hydraulic Fracturing Rule (provided as Attachment A to Tichenor Declaration) may be located at DOIAR0100522-DOIAR0100640.

With respect to the attachments to [First] Wells Declaration, they may be located as follows: Incident report for frack hit (Attachment 1 to [First] Wells Declaration) is at DOIAR0096370-DOIAR0096371; Incident report for frack hit (Attachment 2 to [First] Wells Declaration) is at DOIAR0081207-DOIAR0081208; Incident report for frack hit (Attachment 3 to [First] Wells Declaration) is at DOIAR0012722-DOIAR0012723; Letter from Dugan Production Corp. to the New Mexico Oil Conservation Division listing 36 of Dugan's wells in New Mexico experiencing frack hits (Attachment 4 to [First] Wells Declaration) is at DOIAR0066834-DOIAR0066837; Letters from Encana Oil & Gas, Inc., to New Mexico Oil and Gas Division listing and mapping Encana operated wells responsible for frack hits in New Mexico (Attachment 5 to [First] Wells Declaration) are at DOIAR0079981-DOIAR0080054; Comment letter from the Center for Effective Government, et al. (Attachment 7 to [First] Wells Declaration) is at DOIAR0057110-DOIAR0057113; Comment letter from the Wilderness Society (Attachment 8 to [First] Wells Declaration) is at DOIAR0056304-DOIAR0056324; Comment letter from the Environmental Defense Fund (Attachment 9 to [First] Wells Declaration) is at DOIAR0056072-DOIAR0056116; Comment letter from the Pueblo of Santa

Ana (Attachment 10 to [First] Wells Declaration) is at DOIAR0074258; Comment letter from the Saginaw Chippewa Indian Tribe (Attachment 11 to [First] Wells Declaration) is at DOIAR0049636-DOIAR0049639; and Comment letter from the High Country Citizens' Alliance, et al. (Attachment 12 to [First] Wells Declaration) is at DOIAR0057699-DOIAR0057719.

ADMINISTRATIVE RECORD CITATIONS

Section II.A. Petitioners fail to demonstrate a likelihood of success on the merits

p. 8 First full paragraph, third sentence (Petitioners' argument that the BLM Rule fails to consider the relevant statutory factors "ignores the substantial discussion of the applicable statutes in the preamble to BLM's final rule and either ignores or misinterprets the governing statutes"). *See, e.g.*, Final Rule Preamble, DOIAR0101939 (discussing the Federal Land Policy and Management Act, the Mineral Leasing Act, the Mineral Leasing Act for Acquired Lands, the Indian Mineral Leasing Act, and the Indian Mineral Development Act).

p. 8 Second full paragraph, second sentence (BLM's Rule "carries forward the applicable preexisting standard" for "usable water," and "BLM offered ample explanation for continuing to apply that standard in the final rule . . . ."). *See, e.g.*, Final Rule Preamble, DOIAR0101943 (Explaining that the "requirement in the CFR was inconsistent with the requirement in Onshore Order 2. . . . This rule corrects the inconsistency between the two . . . ."), DOIAR0101944-DOIAR0101946 (discussing comments as to 10,000 ppm [total dissolved solids ("TDS")] standard from Onshore Order 2 and providing reasons and justification to continue using that standard). *See also infra*, citations for Section II.A.3.

p. 8 Second full paragraph, fourth sentence (Petitioners' arguments ignore "extensive discussion in the final rule preamble of the risks and concerns motivating the rule and the linkages drawn between those concerns and the provisions of the final rule"). *See, e.g.*, Final Rule Preamble, DOIAR0101995-DOIAR0101996 (citing concerns about leaks in the wellbore casing, frack hits, management of recovered fluids, disclosure of chemicals injected into Federal and Indian lands, fluid or gas migration, and contamination of underground sources of drinking water and surface water under section titled "Need for Policy Action"). *See also infra*, citations for pp. 27-28.

p. 9 First paragraph, third sentence (operators' proprietary or confidential information "has long been submitted to BLM and protected from public disclosure, pursuant to applicable statutes, preexisting regulations, and BLM policies"). *See infra*, citations for p. 32.

p. 9 First paragraph, fourth sentence ("for each of the requirements of the final rule addressed in their brief, BLM examined the costs of that requirement and provided a reasoned and rational basis for their conclusions"). *See* Regulatory Impact Analysis for Final Rule, DOIAR0100606-DOIAR100607 (describing the costs of the BLM Rule), DOIAR0100612-DOIAR01000615 (describing the costs per activity and costs per operation of the BLM Rule).

p. 10 First full paragraph, third sentence ("to facilitate efficient and ongoing drilling operations," BLM's Rule has "incorporated numerous provisions to minimize regulatory duplication and expense to operators"). *See, e.g.*, Final Rule Preamble, DOIAR0101932 (stating that "[t]o address concerns from states and tribes about possible duplicative efforts, the final rule provides that in situations in which specific state or tribal

regulations are demonstrated to be equal to or more protective than the BLM's rules, the state or tribe may obtain a variance."), DOIAR0101935 (listing 20 states that are using FracFocus and four states considering using FracFocus for fracking chemical disclosure, which would enable operators to meet both these requirements and the same requirement in the BLM Rule), DOIAR0101947 (stating that "[a]dditionally, section 3162.3-3(e)(2)(i) has been revised to provide flexibility for the authorized officer to approve other appropriate cement evaluation methods or devices" than those specified in the BLM Rule, in order to increase flexibility and lower the burden on operators while maintaining the requisite level of protection), DOIAR0101952 (describing when BLM will accept, for the purposes of the BLM Rule, the same information that a state requires, citing §§ 3162.3-3(d) and 3162.3-3(k)), DOIAR0101970 (noting that, as advocated by some commenters, the rule allows operators to submit chemical information through FracFocus, which will not impose additional costs in states that require operators to report on FracFocus), DOIAR0101977–DOIAR0101978 (discussing variances, both those for state and tribal regulations and those for individual operators, which are designed to reduce the burden on operators while maintaining the requisite protection). *See also* Final Rule Preamble, DOIAR0101980 (discussing comments in favor of state regulation in lieu of BLM regulation), DOIAR0101956 (discussing duplication of state requirements, and the fact that states' regulations are not consistent).

Section II.A.1. BLM considered the statutorily-required factors in promulgating the final rule

p. 14 First paragraph, first full sentence ("BLM introduced a state variance provision to address concerns regarding duplicative regulation of hydraulic fracturing under state, tribal, and federal rules and the resulting burden on operators"). Proposed Rule Preamble,

DOIAR0018408 (stating that "BLM recognizes the ongoing efforts of states to regulate hydraulic fracturing operations. In implementing this rule, the BLM intends to avoid duplication of existing state requirements and will continue to engage states in cooperative efforts to avoid duplication."). *See also supra*, citations for p. 10.

p. 14 First full paragraph, first sentence ("BLM addressed comments regarding the potential for the final rule to result in delays in obtaining permits," considered source of potential delay, and incorporated measures to avoid delays and reduce burden on operators). *See, e.g.*, Comments by Western Energy Alliance, DOIPS0000200, and IPAA, et al., DOIPS0010651 (stating that "[t]he potential for delay resulting not from any direct operational activity, but rather from waiting for permits and paperwork to be processed, could lead to significant financial costs for both operators and investors."); Final Rule Preamble, DOIAR101957 (explaining that "the rule would make several changes to the permitting process that could reduce the potential for processing delays."), DOIAR0101979 (explaining that "the revisions made from the supplemental rule to the final rule would reduce the amount of staff time required to implement the rule and limit any permitting delays. The changes include eliminating the type well concept and the requirement for a [cement evaluation log] to be run and submitted for a type well prior to completing additional wells.").

p. 14 First full paragraph, second sentence ("BLM observed that '[t]he operational requirements of the final rule generally conform to industry guidance on hydraulic fracturing and state regulations.'"). *See, e.g.*, API Guidance Document HF1, DOIAR0002075 (providing applicable industry guidance); Final Rule Preamble, DOIAR101979 (table comparing requirements of the BLM Rule to API HF-1 guidance);

BLM, "Regulation Requirements from Major States Compared to the BLM Draft Final HF Rule (2-19-2015)," DOIAR0096023 (comparing state regulations to the BLM Rule); Regulatory Impact Analysis for Final Rule, DOIAR0100575–DOIAR0100580 (comparing state regulations). *See also infra*, citations for p. 29 second paragraph, second sentence, and p. 30, first paragraph, first full sentence.

p. 14 First full paragraph, third sentence ("BLM also evaluated as part of its economic analysis the potential for the rule to 'negatively affect jobs, revenue, and effective government[,]' and 'found the impacts to be nominal in relation to current overall costs of drilling operations'"). DOIAR0072361 (summarizing BLM's Regulatory Impact Analysis for the Final Hydraulic Fracturing Rule); *see generally* Regulatory Impact Analysis for Final Rule, DOIAR0100522-DOIAR0100640.

Section II.A.2.a. It is not impossible for operators to comply with the certification requirement when invoking trade secret protection

p.17 Last paragraph, second sentence ("because the operator will not always be in the best position to declare why certain information should be withheld, the final rule allows the operator to submit an affidavit from the owner of the information attesting to the confidential status of the information in addition to the affidavit required from the operator"). *See* Comments by Fidelity Exploration, DOIPS0301548 (stating that certification of proprietary information by contractors allows those most familiar with how the process occurred to certify it); Comments by IPAA & WEA, DOIPS0178980 (requesting "that BLM allow multiple individuals to certify the various aspects over which they will have responsibility").

p. 18 First paragraph, last sentence ("Petitioners are mistaken that 'BLM has not explained how operators can make certifications about the nature of the chemicals on

lease, when the operators are not in possession of information necessary to make those certifications'"). Final Rule Preamble, DOIAR0101975 (describing how operators and the owners of information would certify the information in their possession).

p. 18 Second paragraph, first sentence ("operators already are responsible, under . . . preexisting BLM regulatory requirements, to maintain, maintain access to, or provide to BLM information that may be in the possession of contractors, service companies, or other third parties and which may contain proprietary information"). Final Rule Preamble, DOIAR0101961 (recalling that, "[b]y definition, in existing section 3160.0-5, the operator is the entity that is responsible for the operations conducted under the terms and conditions of the lease.").

p. 19 First paragraph, last sentence ("operators voluntarily undertake responsibility for their operations conducted on leased lands, a commitment which also covers any contractors retained by the operator"). *See, e.g.*, Comments by Nature Conservancy, DOIPS0393499 (noting that operators are responsible for contractors with respect to certification and disclosure).

p. 19 Second paragraph, second sentence (operator is responsible under existing regulations for all operations "conducted under the terms and conditions of the lease" and thus "for all aspects of hydraulic fracturing operations, regardless of the party that conducts the work"). Final Rule Preamble, DOIAR0101961 (recalling that "[b]y definition, in existing section 3160.0-5, the operator is the entity that is responsible for the operations conducted under the terms and conditions of the lease.").

Section II.A.2.b. The temporary recovered fluid storage requirement is neither impossible nor irrational

p. 20 Last paragraph, fourth sentence. ("BLM promulgated the temporary storage provision in the final rule for operations for which there is a gap between completion of hydraulic fracturing operations, and approval of a permanent disposal plan"). Final Rule Preamble, DOIAR0101966 (explaining that "proper management of recovered fluids on the surface is necessary to prevent leaks and spills that could contaminate surface waters and shallow aquifers; the BLM needs to fill the existing regulatory gap between completion of a hydraulic fracturing operation and the implementation of an approved plan for permanent disposal of produced water"); *accord,* DOIAR0101964 (explaining the changes from the supplemental proposed rule to the final rule).

Section II.A.2.c. The pre-operations mechanical integrity test is defined, feasible, and justified

p. 22 First paragraph, first full sentence ("'[i]ndustry guidance and many state regulations' including those in Texas, Louisiana, Colorado, and Wyoming 'are consistent with'" the mechanical integrity test in the BLM Rule). *See, e.g.*, Comments by North Dakota Industrial Commission, DOIPS0000302 (noting that North Dakota regulations already require a mechanical integrity test); Comments by QEP Energy Co., DOIPS0389250 (noting that states require mechanical integrity tests); API Guidance Document HF1, DOIAR0002083 (addressing mechanical integrity testing of production casing); DOIAR0080243 (chart showing states with mechanical integrity test requirements); Comments by Black Hills Exploration, DOIPS0301190 (noting that "[s]uccessful MITs are already completed as a matter of industry practice prior to any pumping procedure").

p. 23 First paragraph, first full sentence (it is essential to ensure casing integrity prior to hydraulic fracturing, and "the only way to verify the integrity of the casing is to require a test to the anticipated hydraulic fracturing pressure"). *See* API Guidance Document HF1, DOIAR0002083 (stating that "[p]rior to perforating and hydraulic fracturing operations, the production casing should be pressure tested (commonly known as a casing pressure test). This test should be conducted at a pressure that will determine if the casing integrity is adequate to meet the well design and construction objectives."); Final Rule Preamble, DOIAR0101961 (discussing the mechanical integrity test and BLM's agreement with the guidance in API HF1). *See also* EPA Groundwater Section Guidance No. 39, pp. 1, 3, DOIAR0000587, DOIAR0000589 (requiring, under EPA's Underground Injection Control Program, a mechanical integrity test of an injection well to maximum anticipated pressure for thirty minutes to ensure that the well casing, tubing, and packer will not leak into underground water layers – as is required in the BLM Rule).

Section II.A.3. The definition of "usable water" is neither unexplained nor a departure from existing rules

p. 25 Second paragraph, first sentence ("the final rule's use of an 'up to 10,000 ppm TDS' standard to define 'usable water' zones for the purposes of isolating them during wellbore operations is no departure from existing regulatory authorities."). Onshore Order 2, DOIAR0000278 (setting standard for "usable water" at 10,000 ppm TDS). *See also* Final Rule Preamble, DOIAR0101944-DOIAR0101946 (discussing comments as to 10,000 ppm TDS standard from Onshore Order 2 and providing reasons and justification to continue using that standard); DOIAR0006106, DOIAR0006112 (April 22, 2011 BLM presentation on hydraulic fracturing regulation in development, noting that the 10,000 ppm standard applies to the isolation and protection of usable water under Onshore Order

2); DOIAR0032255 (draft responses to comments indicating that the existing definition of "Usable Water" is 10,000 ppm TDS).

p. 26 First paragraph, fourth sentence ("while BLM affirms the reasoning for the standard applied in Onshore Order 2 . . . it supplied additional and independent reasoning for its continued use of that standard in its final rule"). Final Rule Preamble, DOIAR0101944-DOIAR0101946 (discussing comments as to 10,000 ppm TDS standard from Onshore Order 2 and providing reasons and justification to continue using that standard).

Section II.A.4. BLM provided a reasonable and rational justification for the final rule

p. 26 First paragraph, second sentence ("the rule defers to the determinations of states (on Federal lands) and tribes (on Indian lands) as to whether" particular groundwater "zones must be protected."). *See, e.g.*, Comments by The Nature Conservancy, DOIPS0393496 (noting that "[t]here are no prescribed limits" in the BLM Rule "on which aquifers can be exempted by the states or tribes . . . .").

p. 27 Final paragraph, second sentence ("the final rule raises the risk of groundwater contamination as a result of hydraulic fracturing operations as one of the concerns motivating many of its provisions"). *See, e.g.*, National Academy of Sciences, DOIAR0063436-DOIAR0063457 (chapter addressing "Potential Impacts of Hydraulic Fracturing on Water Resources"); U.S. Environmental Protection Agency, DOIAR0008749 (reporting on an Investigation of Ground Water Contamination near Pavillion, Wyoming); U.S. Government Accountability Office, DOIAR0027915 (noting groundwater contamination from an oilfield in Poplar, Montana caused by plumes of produced water in the East Poplar aquifer); DOIAR0042868 (discussing several studies

on groundwater contamination); DOIAR0050108 (stating that "[i]mpacts to groundwater contamination can come from point sources, such as chemical spills, chemical storage tanks (aboveground and underground) . . . oil and gas well sites, and associated fluid pits, and mining activities. Groundwater contamination may occur through a variety of operational sources which may include, but are not limited to, pipeline and well casing failure, well (oil, gas and/or water) drilling and construction of related facilities, and spills. Similarly, improper construction and management of open fluids pits and production facilities could degrade ground water quality through leakage and leaching."); NGWA Issue Paper, DOIAR0070836 (discussing "Constraints on Upward Migration of Hydraulic Fracturing Fluid and Brine"); NRDC Issue Brief, DOIAR0017315 (discussing why "New Rules are Needed to Protect Our Health and Environment from Contaminated Wastewater" from hydraulic fracturing).

p. 27 Last paragraph, last sentence ("The rule references and discusses recent studies by the National Academy of Sciences which identify several potential pathways for hydraulic fracturing operations to contaminate water resources . . . ."). DOIAR0004211 (study titled "Methane contamination of drinking water accompanying gas-well drilling and hydraulic fracturing"); DOIAR0009465 (study titled "Geochemical evidence for possible natural migration of Marcellus Formation brine to shallow aquifers in Pennsylvania").

p.28 Second paragraph, second sentence ("Frack hits have occurred recently, resulting in the spill of fracturing fluids, the interruption of well operations, and the stranding and waste of oil and gas resources"). *See, e.g.*, DOIAR0012724 (listing recent recorded Frack Hits in New Mexico); BLM Undesirable Event Inspection Form, DOIAR0012722

(reporting that "[f]racking operations at another well communicated to the wellbore on the Hackberry 18 Federal 1. . . . Frac fluids were vented and blown out on the well pad from the separator. . . . The oil tanks over ran, the berm breached on the unlined tank battery berm, and oil was released in a second spill into the pasture south of the location."); Comments by Environmental Defense Fund, DOIPS0179311 (explaining that "[s]ubsurface communication of hydraulic fracturing fluid through existing boreholes and natural fractures is a serious concern[,]" and citing reports and regulatory proposals under development); DOIAR0045604 (stating that "[a] few cases of suspected contamination by chemicals in shallower zones are known, with many, if not all, linked to poor isolation of the well during well construction phase and not to fracture penetration" (citing April 2012 Journal of Petroleum Technology)); DOIAR0054034-DOIAR0054035 (*E&E* story on frack hit in Weld County, Colorado); DOIAR0065730 (*E&E* story on frack hit in Sandoval County, New Mexico); DOIAR0066043- DOIAR0066044 (*E&E* story on Exxon Mobil Corp. studies on minimizing frack hits); DOIAR0075052-DOIAR0075054 (*E&E* story titled "In N.M., a sea of 'frack hits' may be tilting production"); DOIAR0078346-DOIAR0078348 (including "List of 'Frac Hits'"); Comments by Sierra Club, et al., DOIPS0365444 (explaining that "[c]ommunication between offset wells during stimulation is a serious problem, risking blow outs in adjacent wells and/or aquifer contamination during hydraulic fracturing."); DOIAR0095539-DOIAR0095540 (containing Frack Hits Synopsis).

p. 28 Second paragraph, last sentence ("Other concerns identified as bases for the final rule include, for example, 'whether the chemicals used in fracturing pose risks to human health[] and whether there is adequate management of well integrity and the fluids that

return to the surface during and after fracturing operations.'"). *See, e.g.*, Final Rule Preamble, DOIAR0101930 (discussing reasons for the rulemaking, including increasing public concern about risks to water sources, human health, well integrity, and management of recovered fluids); Comments by The Nature Conservancy, DOIPS0393495-DOIPS0393496 (discussing threats to water resources), DOIPS0393497 (discussing cement integrity), DOIPS0393498 (discussing recovered fluids); Comments by National Wildlife Federation, DOIPS0010183- DOIPS0010185 (same); Comments by The Wilderness Society, DOIPS0179045-DOIPS0179058 (same).

p. 29 First paragraph, first full sentence ("the preamble explains how hydraulic fracturing operations could contaminate groundwater and presents technical evidence supporting its conclusion that this is a risk"). *See supra*, citations for p. 27.

p. 29 Second paragraph, second sentence ("BLM did not ignore state regulations – on the contrary, it acknowledged and discussed state regulations in the final rule"). Final Rule, DOIAR0101932 (reporting that "[s]ome states, including Alaska, Arkansas, Colorado, Illinois, Michigan, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas, Utah, and Wyoming have regulations in place addressing hydraulic fracturing operations."); DOIAR0013726 (chart showing state regulations which also address requirements in the rule); DOIAR0101931 (stating that provisions of the rule are "consistent with what several states, including California, Colorado, and Wyoming, are already doing"); DOIAR0101932 (reporting that "[m]any of the requirements [of the rule] generally are consistent with industry guidance, the voluntary practice of operators, and some are required by state regulations."); DOIAR0101957 (similar); DOIAR0101961 (stating that "[t]he threshold of 30 minutes with no more than 10 percent loss of applied pressure" –

i.e., the mechanical integrity test required in the BLM Rule – "is used by many states (TX, LA, CO, WY, and others)"); DOIAR0101963 (reporting that "[m]any states, including Colorado, Wyoming, Montana, and North Dakota, require bradenhead monitoring during hydraulic fracturing . . . .").

p. 29 Final sentence, which carries over to p. 30 ("the growth of state regulatory regimes for hydraulic fracturing operations in recent years suggests the need to update BLM's preexisting regulations as BLM has done in the final rule "). *Cf*., Final Rule Preamble, DOIAR0101982 (noting "that those commenters' arguments [that there is no need for BLM's rule because of alleged lack of evidence of contamination] would apply equally to state regulations which the same commenters champion.").

p. 30 First paragraph, first full sentence ("the preamble observes that state requirements are not uniform and that the existence of some regulations on hydraulic fracturing does not necessary fulfill BLM's obligations under its statutory responsibilities as a steward of federal land and trustee of Indian lands and resources"). DOIAR0032258 (draft responses to comments explaining necessity for federal regulation even with existence of state regulations); Comments by Tip of the Mitt Watershed Council on supplemental proposed rule, DOIAR0056190 (explaining and endorsing the need for consistent federal regulations in addition to state and tribal regulations); Comments by The Nature Conversancy on supplemental proposed rule, DOIAR0057184 (asserting the need for uniform federal regulations in light of varying, inconsistent state regulatory regimes); Comments by The Wilderness Society on the supplemental proposed rule, DOIAR0056306-DOIAR0056308 (asserting that BLM regulation setting uniform, minimum standards for hydraulic fracturing on federal lands is necessary because the

existing patchwork of state regulations leaves gaps, can be changed at any time by states, and does not meet BLM's statutory stewardship responsibilities); Regulatory Impact Analysis for Hydraulic Fracturing, DOIAR0100575–DOIAR0100580 (comparing state hydraulic fracturing regulations); Resources for the Future, The State of State Shale Gas Regulation – Executive Summary, May 2013, DOIAR0045522-DOIAR0045529 (independent study of state shale gas regulations, including regulation of hydraulic fracturing, finding substantial variability or heterogeneity in requirements and stringency, as well as a lack of transparency); U.S. Government Accountability Office, Draft Report, Unconventional Oil and Gas Development - Key Environmental and Public Health Requirements, September 2012, DOIAR0027877-DOIAR0027879 (comparing hydraulic fracturing regulations in six states); Comments by Sportsmen for Responsible Energy Development on supplemental proposed rule, DOIAR0055813-DOIAR0055814 (recalling that federal lands are a public trust to be managed for multiple uses and that BLM has this stewardship responsibility, for which it must provide a uniform baseline of regulation and cannot abdicate on the basis that states regulate hydraulic fracturing).

p. 30 First paragraph, sentence after block quote ("[t]he provisions in this final rule provide for the BLM's consistent oversight and establish a baseline for environmental protection across all public and Indian lands undergoing hydraulic fracturing."). Final Rule Preamble, DOIAR0101956 (discussing the need for the BLM Rule to meet BLM's statutory responsibilities for managing public lands and minerals, notwithstanding the existence of state regulatory regimes), DOIAR0101932 (recognizing and identifying the states with hydraulic fracturing regulations, and noting BLM's efforts to reduce duplication, including through the state variance provision in the BLM Rule).

Section II.A.5. BLM's treatment of trade secrets and proprietary information complies with applicable laws

p. 31 Final paragraph, second sentence ("Both pre- and post-operation submissions" of proprietary and confidential information by operators "share the same level of protection from disclosures"). Final Rule Preamble, DOIAR010973–DOIAR010977 (explaining and discussing comments on § 3162.3-3(j), the provision enabling withholding of information from the required post-fracturing disclosures).

p. 31 Final paragraph, third sentence ("the final rule sets out a process by which operators may withhold from their post-operation public submission of fracturing fluid composition information any trade secrets or other proprietary information"). Final Rule Preamble, DOIAR010968-DOIAR010977 (discussing post-fracturing reporting obligations under the final rule, as well as § 3162.3-3(j), the provision enabling withholding of information from those required post-fracturing disclosures).

p. 32 Second paragraph, third and fourth sentence ("other submissions that operators make directly to BLM are already subject to the protections of public records laws, as implemented in the existing regulations and policies of the Department and BLM. The regulation thus required no special provisions for these types of submissions, which include the pre-operation submissions of concern to Petitioners"). Comment Response, DOIAR0110494 (Responding to industry comments by noting that "[t]he BLM has amended the proposed rule to allow for certain information to remain confidential under 43 CFR 3162.3-3(i). Other information must go in the record as well data, but is exempt from FOIA disclosure under Exemption 9."); Final Rule Preamble, DOIAR0101973 (explaining that 18 U.S.C. 1905 is a criminal statute which prohibits federal employees from divulging trade secrets), DOIAR0101975 (explaining that "[t]he rule provides the

same procedural safeguards for hydraulic fracturing information as for all other information obtained by the Department. . . . Similar to the Department's FOIA regulations, the final rule requires a minimum of 10 business days' notice prior to releasing information determined not to be exempt from disclosure."), DOIAR0101936-DOIAR0101937 (summarizing information requirements under Onshore Oil and Gas Order No. 1 and 43 C.F.R. 3162.3-1), DOIAR0101938 (summarizing the information requirements of Onshore Oil and Gas Order No. 2). *See also* Comments by Sierra Club, et al., DOIPS0365438 (noting that, for operator information submitted to BLM under the proposed rule, the "standard process under the Freedom of Information Act (FOIA)" should apply).

Section II.A.6. The final rule complies with procedural requirements and its treatment of costs is rational and substantiated

p. 35 Final sentence, which continues to p. 36 (Final Rule regulatory impact analysis "compares the industry's costs of compliance with the final rule with the costs for drilling and hydraulic fracturing operations without the final rule (including costs for compliance with state regulations and for meeting industry standards)"). Final Rule Regulatory Impact Analysis, DOIAR0100606 (RIA analysis comparing the cost of compliance with the cost for drilling and fracturing a well).

p. 37 Third full paragraph, second sentence (the existing requirement on operators, pursuant to Onshore Order 2, is "to isolate and protect (with casing and cement) water-bearing strata with total dissolved solids 'up to 10,000 ppm TDS'"). Onshore Order 2, DOIAR0000278 (setting the standard for "usable water" at 10,000 ppm TDS).

Section II.B.2. There is no imminent risk of disclosure of confidential information

See supra, citations for p. 32.

Section II.C. The balance of harms and public interest do not favor a preliminary injunction

p. 53 Final sentence, which carries over to p. 54 ("the rule responds to a number of risks and concerns posed by the current practice of hydraulic fracturing – among them potential groundwater contamination, use of chemicals during the process, frack hits, and issues related to the management of recovered water"). *See, e.g.*, Testimony of John Amos (Skytruth) to U.S. Congress - Committee on Natural Resources, DOIAR0045826 (explaining that "[a]ccurate, timely, and comprehensive information about the chemicals used in hydraulic fracturing would be useful across a broad range of societal interests"); Comments by NRDC et al., DOIPS0063816 (stating that "[t]he risks presented by hydraulic fracturing may endanger groundwater, surface water, clean air, human and animal health, soil, fish and wildlife habitat, and recreation opportunities"). *See also supra*, citations for pp. 27-28.

Respectfully submitted this 18th day of September 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September 2015 a copy of the foregoing **Respondents' Supplemental Citations to Administrative Record in Support of Brief in Opposition to Industry Petitioners' Motion for 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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