IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

STATE OF LOUISIANA, ET AL. Plaintiffs, v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, ET AL. Defendants.	Case No. 2:21-cv-00778 Honorable Judge Terry A. Doughty Magistrate Judge Kathleen Kay

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE AND COMPEL COMPLIANCE WITH PRELIMINARY INJUNCTION

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INTRODUCTION

When this Court's preliminary injunction decision issued on June 15, the Department of the Interior immediately announced it would comply with that decision, and it has. Although Defendants respectfully disagree with the Court's ruling, they are proceeding with leasing consistent with the Court's injunction pending their appeal. Over the last ten weeks, Interior has devoted more than 650 person-hours toward holding further proposed sales under the operative five-year program, including Lease Sales 257 and 258. The agency has also directed considerable resources toward onshore leasing activities. And that work has put Interior on track to publicly announce both onshore and offshore leasing activity by August 31. Interior is complying with the June 15 Order (Doc. 140), and Plaintiffs have not justified the need for an order of enforcement, much less the extraordinary remedy of contempt.

Plaintiffs nonetheless argue that Interior has "acted as if this Court's findings, conclusions of law, and compulsory order do not exist," Doc. 149-1 at 4, and rely heavily on Secretary Haaland's testimony before the Senate Committee on Energy and Natural Resources despite her testifying at least six times that the Interior Department was complying with the Court's Order. Neither Plaintiffs' assertions nor a proper read of the Secretary's testimony lend support to their motion.

Because Plaintiffs have no evidence that Interior has acted or failed to act in violation of the Court's Order, the Court should deny their motion. The Court should also decline Plaintiffs' requests to modify its Order in ways that would exceed the Court's jurisdiction.

BACKGROUND

After this Court issued its preliminary injunction decision on June 15, 2021, Interior immediately stated its intention to "comply with the decision."[1] And complying with that decision is precisely what Interior has done: "Since the Court's Order, the Department has taken no action implementing the pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208, Executive Order 14008 or action implementing said pause with respect to Lease Sale 257, Lease Sale 258 and to all eligible onshore properties." Declaration of Principal Deputy Assistant Secretary for Land and Mineral Management Laura Daniel-Davis (Daniel-Davis Decl.) ¶ 12. Interior has also expended significant agency resources, including many hundreds of employee-hours, preparing to hold oil and gas lease sales. *Id.* ¶ 30, 36, 46–49. Although Defendants have appealed the Court's preliminary injunction, Doc. 152, they have indicated that they "will proceed with leasing consistent with the district court's injunction during the appeal."[2] And they presently intend to announce both onshore and offshore lease sale activity within one week, *i.e.*, by August 31, 2021, Daniel-Davis Decl. ¶¶ 31, 48, as further explained below.

A. Offshore Leasing

Under the current five-year program, the process to hold an offshore lease sale "can take between 3 and 5 years to complete, and contains [fifteen] steps and decision points." 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program (Program), Nov. 2016, Doc. 129-2, at 1-15 to 1-16. Of these fifteen steps, Interior had taken only eleven with respect to

[1] Ex. A, *Louisiana judge blocks Biden administration's oil and gas leasing pause*, Washington Post, June 15, 2021, https://www.washingtonpost.com/climate-environment/2021/06/15/louisiana-judge-blocks-biden-administrations-oil-gas-leasing-pause/.
[2] Ex. B, Interior Issues Statement on Oil and Gas Leasing Program, Aug. 16, 2021, https://www.doi.gov/pressreleases/interior-issues-statement-oil-and-gas-leasing-program.

Lease Sale 257 at the time Executive Order 14,008 issued. Daniel-Davis Decl. ¶ 19. The remaining steps to occur include corresponding with the Governors of affected states, publishing the final notice of sale, and holding the lease sale. *Id.* ¶ 20; Program, at 1-16. The Bureau of Ocean Energy Management (BOEM) presently anticipates sending a new Record of Decision to the Federal Register by August 31, 2021, publishing the final notice of sale for Lease Sale 257 in September and holding the lease sale in October or November 2021. Daniel-Davis Decl. ¶ 31. That anticipated timeline accords with the schedule set out in the Program, which proposes holding Lease Sale 257 sometime in 2021, not any particular month in 2021:

Table S-1: 2017–2022 Proposed Final Program Lease Sale Schedule

	Year	Program Area	Sale Number
8.	2021	Gulf of Mexico	257
9.	2021	Cook Inlet	258

Program, at S-4.

Consistent with the Program's recognition that some of the fifteen prelease "steps may . . . be repeated, based on the particular needs of the lease sale and area," *id.* at 1-15, Interior is currently in the process of preparing another Record of Decision and Final Notice of Sale for Lease Sale 257. Daniel-Davis Decl. ¶ 31. As Plaintiffs' Proposed Order recognizes, the prior Notice of Sale cannot simply be published, as it would need "appropriate amendments to reflect the new timeline." Doc. 149-2, at 1. Similarly, the March 17, 2021, date in the prior Record of Decision, Doc. 129-3, at 14, must be amended to account for the new sale date. Additionally, key factual information in the prior Record of Decision was significantly outdated by the time the Court's Order issued on June 15, 2021.[3]

[3] For example, the prior Record of Decision "acknowledge[d] that recent, significant drops in oil prices may affect the number of leases sold in Lease Sale 257." Doc. 129-3, at 5. But that drop off in oil prices had largely subsided by the time the Court issued its decision. (The Court can

Because certain aspects of the prior Record of Decision were outdated, BOEM has devoted significant effort to preparing a new Record of Decision for Lease Sale 257. Since June 15, 2021, BOEM employees have devoted at least 525 person-hours to planning further proposed Gulf of Mexico sales under the Program, including Lease Sale 257, *i.e.* "over 13 person-hours of work per business day, on average, since the Court's Order." Daniel-Davis Decl. ¶ 30. That work "included (but has not been limited to), preparing possible new lease stipulations, evaluating potential sale areas, geographic information system ('GIS') analysis, review of [National Environmental Policy Act (NEPA)] analysis, and revision of documents." *Id.* ¶ 32. Again, BOEM anticipates submitting a new Record of Decision for publication within a week. *Id.* ¶ 31. In sum, Interior is committed to continuing the process required by law before a lease may be issued.

Similarly, for Lease Sale 258, BOEM has spent at least 130 person-hours since June 15 preparing to advance Lease Sale 258 to the comment stage. Daniel-Davis Decl. ¶ 36. This "work has included reviewing and revising existing exploration and development scenarios to account for the May 2021 Oil and Gas Assessment (BOEM's annual estimate of undiscovered, technically and economically recoverable oil and natural gas resources outside of known oil and

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take judicial notice that oil prices had risen by approximately 50% from January to June of this year. Ex. C, *U.S. crude oil prices top $75 a barrel, the highest since 2018*, CNBC, July 1, 2021, https://www.cnbc.com/2021/07/01/us-crude-oil-prices-top-75-a-barrel-the-highest-since-2018.html.) Additionally, the prior Record of Decision analyzed greenhouse gas emissions with respect to two scenarios based on the United States Environmental Protect Agency's (EPA's) rules: a scenario in which the Clean Power Plan was being implemented; and a scenario considering the "repeal of the Clean Power Plan and issuance of the Affordable Clean Energy Rule." Doc. 129-3, at 6. But by June 15, neither of those scenarios accurately reflected a world in which the D.C. Circuit had vacated the Affordable Clean Energy Rule and the Clean Power Plan was not in effect. *Am. Lung Ass'n v. Env't Prot. Agency*, 985 F.3d 914, 995 (D.C. Cir. 2021); *see also* Ex. C, Feb. 22, 2021 Order (holding mandate for vacatur of Clean Power Plan repeal so that the Clean Power Plan was not reinstated).

gas fields on the outer continental shelf) and recalculating the probabilities of discharge as part of the Bureau's Oil Spill Risk Analysis." *Id.* ¶ 37 (footnote omitted). Based on that substantial work, BOEM presently anticipates opening the public comment period for a revised Draft Environmental Impact Statement for Lease Sale 258 in September or October 2021. *Id.* ¶ 38.

B. Onshore Leasing

Although Plaintiffs' motion does not address onshore leasing in any substance, Defendants have continued their progress in addressing the NEPA issues affecting the onshore leasing program. In light of that progress, Bureau of Land Management (BLM) leadership recently directed BLM state offices to finalize parcel lists for upcoming sales, in order to publicly post those parcel lists for NEPA scoping by August 31, 2021. Daniel-Davis Decl. ¶ 48. Following scoping, BLM anticipates publishing draft NEPA documents for public comment in October 2021, followed by a notice of sale published in December 2021. *Id.*

STANDARD OF REVIEW

Although federal courts have the inherent power to punish for contempt, that power "must be exercised with restraint and discretion" because it is "shielded from direct democratic controls." *Roadway Express, Inc. v. Piper,* 447 U.S. 752, 764 (1980). Rather than stemming from a "broad reservoir," it is an "implied power squeezed from the need to make the court function." *Crowe v. Smith,* 151 F.3d 217, 226 (5th Cir. 1998).

"The civil contempt sanction is coercive rather than punitive and is intended to force a recalcitrant party to comply with a command of the court." *Whitfield v. Pennington*, 832 F.2d 909, 913 (5th Cir. 1987). "A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (internal quotation marks and citation omitted).

"To obtain a civil contempt order, [a movant must] prove, by clear and convincing evidence, that: (1) the preliminary injunction was in effect at the time of the government's supposedly contemptuous conduct; (2) the injunction, neither vaguely nor ambiguously, required the government to perform or abstain from certain conduct; and (3) the government failed to comply with the injunction's requirement(s)." *Oaks of Mid City Resident Council v. Sebelius,* 723 F.3d 581, 585 (5th Cir. 2013) (internal references omitted). Clear and convincing evidence is "that weight of proof which produces in the mind of the trier of fact a firm belief or conviction . . . so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of precise facts of the case." *Hornbeck Offshore Servs., L.L.C. v. Salazar*, 713 F.3d 787, 792 (5th Cir. 2013) (internal reference omitted).

ARGUMENT

I. Plaintiffs Have Not Established Even A Prima Facie Case Of Contempt, Let Alone A Clear And Convincing Case Of Contempt.

Plaintiffs provide no evidence that Defendants have taken a single action in violation of the Court's Order; nor could they, as the Principal Deputy Assistant Secretary for Land and Minerals Management has confirmed that "[s]ince the Court's Order, the Department has taken no action implementing the pause." Daniel-Davis Decl. ¶ 12. Instead, Plaintiffs' Motion presents only (1) out-of-context snippets of Congressional testimony, Doc. 149-1, at 3, and (2) unfounded allegations about *inaction* by Interior, *id.*, at 2. Neither argument demonstrates even a prima facie case of contempt, let alone provides the requisite "clear and convincing evidence" necessary to establish civil contempt. *Hornbeck*, 713 F.3d at 792.

First, Plaintiffs claim that "Defendants' noncompliance with the Court's order" is established by the Secretary's statement during a budget hearing that "the [p]ause is still in place." Mot. at 3. That is incorrect. The Secretary's testimony simply recognized that no

competitive lease sale had occurred since Executive Order 14,008 issued: "I mean you can say that as soon as one lease sale happens, that the pause is over." Doc. 148-1, at 59:50–59:57. Her statement about the pause being "in place" did not describe any agency policy, but instead merely "technically . . . suppose[d] [what] you could say" about the lack of lease sales. *Id.* at 1:00:15–1:00:21. And she did not at all suggest that the Department was continuing to implement the pause in contravention of this Court's Order. To the contrary, she testified six times during the same three-minute colloquy that the Department was complying with the Court's Order. [4] As she explained, although "there is a lot of work that goes into even having a

[4] The full colloquy between Senator Hyde-Smith and Secretary Haaland is set out below (Doc. 148-1, at 58:30–1:02:03):

Q: I'd like to discuss the report that your Department is set to release. For clarification, is this report a final report or is it an interim report?

A: Senator, thank you for the question. And the report that we are set to release is an interim report. And it will be released soon.

Q: But it's totally an interim report. And does this report bring the Department into compliance with current law?

A: We are actually in compliance with the Court Order currently. We are complying with the Court order right now. As we speak, the Department is working. As I mentioned, there is a lot of work that goes into even having a lease sale. And so, they are complying with the Court order now, today.

Q: So the ban has been released?

A: I suppose that the pause that you're referring to—that President Biden ordered in his Executive Order—is, I suppose it's in effect. I mean you can say that as soon as one lease sale happens, that the pause is over. But what I can say is we are complying with the Court order and we are doing the work necessary to move in that direction.

Q: So the pause is not in place at this time?

A: Well, technically, I suppose you could say the pause is still in place. However, we are complying with the Court order to move forward on releasing the report and moving this issue forward.

Q: Does the report contain formal binding decisions or anything that will be enforceable?

lease sale," the Department was "doing the work necessary to move in that direction." Doc. 148-1, at 59:12–1:00:10; *see also id.* at 26:55–27:53 (leasing is "not a switch you can turn on" as "there's a lot of work that goes into a lease sale").

The Fifth Circuit's *Hornbeck* decision demonstrates that the Secretary's testimony is no evidence of contempt. 713 F.3d at 792–96 (reversing district court contempt finding). There, the district court enjoined Interior from enforcing a drilling moratorium. *Id.* at 790. The day the injunction issued, the Secretary announced his view that the "decision to impose a moratorium on deepwater drilling was and is the right decision," and his intention to "issue a new order in the coming days that eliminates any doubt that a moratorium is needed, appropriate, and within our authorities." *Id.* (internal quotation marks and citation omitted). In subsequent Congressional testimony, the Secretary confirmed his "resolve to reissue the moratorium" and "referred to the moratorium as 'in place.'" *Id.* at 794. Despite the Secretary's stated intention to overcome the preliminary injunction by issuing a new moratorium, the Fifth Circuit found his conduct not contemptuous because the "court order did not explicitly prohibit a new, or even an identical, moratorium." *Id.* at 795.

A: As I mentioned earlier Senator, the report is in its final internal draft and I am unable to comment on it at the moment.

Q: OK, and what action has the Department taken to be in compliance with the Judge's ruling? Have there been any decisions to reinstate lease sales? Specifically, I'm referring to Lease Sale 257?

A: Thank you Senator. Unfortunately, Senator, I can't comment specifically on the question that you're asking. We'd be more than happy to be back in touch with you as soon as we do have specific answers to your questions. I know that overall, the Department is working on ensuring that we are complying with the Court order.

Q: And with the Lease Sale 257? Are you familiar with that Lease Sale 257?

A: Senator, I understand the question you're asking, and I want to assure you that we are doing our best to move forward.

In contrast to *Hornbeck*—where the court found that Secretary Salazar had explicitly intended to overcome a preliminary injunction through subsequent agency action—Secretary Haaland has repeatedly affirmed her intention to comply with the Court's Order. *See supra* pp. 2, 7–8 & n.4. And the Department in fact has been diligently working to comply with the Court's Order by expending over 650 person-hours to prepare future lease sales. *See supra* pp. 4–5. Against that backdrop, the Secretary's observation that "Well, technically, I suppose you could say the pause is still in place," Doc. 149-1, at 59:36–59:50, cannot be contemptuous when the Fifth Circuit found the testimony in *Hornbeck*—that an enjoined moratorium was "in place" coupled with an explicit intent to re-implement a similar moratorium—not contemptuous. *Hornbeck*, 713 F.3d at 794.[5]

Tellingly, Plaintiffs hide their entire discussion of the Fifth Circuit's *Hornbeck* decision in a footnote of their compliance motion, Doc. 149-1, at 4–5 n.4, even as they repeatedly relied on the *Hornbeck* line of cases in their preliminary injunction motion, *see* Doc. 3-1, at ii. Plaintiffs attempt to distinguish *Hornbeck* as being about a procedural, rather than a substantive, failure. Doc. 149-1, at 4–5 n.4. But this attempted distinction is unavailing because the Court's decision relied, in relevant part, on an alleged procedural failure of the agency. *See* Doc. 139, at 27 ("the Secretary of the DOI cannot make any significant changes to the Five-Year Plan without going through the same procedure by which the Five-Year Plan was developed").

[5] Additionally, because Executive Order 14,008 has not been rescinded, it is at least "in some sense accurate," *Hornbeck*, 713 F.3d at 794, to state that "the pause . . . that President Biden ordered in his Executive Order is, I suppose it's in effect," Doc. 149-1, at 59:36–59:50. *See Hornbeck*, 713 F.3d at 794 ("Moreover, because the May Directive had not been rescinded, saying the moratorium was 'in place' was in some sense accurate."). Nor does the Court's Order require the rescindment of Executive Order 14,008, as it does not apply to President Biden. *See* Doc. 140 (naming all Defendants but President Biden). Although the Executive Order remains in place, that does not change the fact that "the Department has taken no action implementing the pause," Daniel-Davis Decl. ¶ 12, as required by the injunction.

Second, Plaintiffs allege without any evidence or apparent investigation that "BOEM has taken no action whatsoever to hold Lease Sale 257." Doc. 149-1, at 2. Plaintiffs improperly equate the fact that no competitive lease sale has yet been held with complete inaction by the Department.[6] The latter is untrue as the very testimony that Plaintiffs cite make plain. The Secretary testified that Interior was "doing [its] best to move forward" on Lease Sale 257. Doc. 148-1, at 1:01:40–1:02:03. This work includes the following:

- Devoting at least 525 person-hours to planning for proposed Gulf of Mexico sales under the Program, including Lease Sale 257, *i.e.* "over 13 person-hours of work per business day since the Court's Order," Daniel-Davis Decl. ¶ 30;
- "[P]reparing possible new lease stipulations, evaluating potential sale areas, geographic information system ('GIS') analysis, and review of NEPA analysis and documents," *id.*; and
- Preparing to publish a new Record of Decision for Lease Sale 257 by August 31, 2021, followed by subsequent steps necessary to hold Lease Sale 257 this year, *id.* ¶ 31.

Similarly, for Lease Sale 258, BOEM has spent at least 130 person-hours since June 15 preparing to advance that sale to the comment stage, by accounting for intervening information including BOEM's May 2021 Oil and Gas Assessment and recalculated oil discharge probabilities. Daniel-Davis Decl. ¶ 37.

Given Interior's significant efforts to prepare for the lease sales in question, Plaintiffs have not and cannot approach the clear and convincing showing that would be needed to support an order of civil contempt—as demonstrated by *Sebelius*, where the Fifth Circuit reversed a district court's contempt ruling. There, the agency was preliminarily enjoined from "taking any action on the basis of [a] Notice of Termination." 723 F.3d at 585. With such an injunction,

[6] Plaintiffs' counsel did not engage with Defendants' counsel seeking to understand what work Interior had done to move forward the process for holding Lease Sale 257. Had Plaintiffs' counsel done so, their motion may have been obviated.

"contempt was appropriate only if [the movant] proved, by clear and convincing evidence, that the Notice affected the government's conduct while the injunction was in effect." *Id.* The movant nonetheless overreached, arguing that the injunction against certain actions also required the government to take action. *Id.* ("Oaks treats the injunction as requiring the government *to pay* for services."). But the Fifth Circuit found that argument "rests on a misreading of the injunction." *Id.*

Similarly here, Plaintiffs misread the Court's Order as requiring government action on a specific timeline, when there is no such command in the Court's Order. *See* Doc. 140. Because Fifth Circuit law establishes that civil contempt is available only when "the injunction, neither vaguely nor ambiguously, required the government to perform or abstain from certain conduct," *Sebelius*, 723 F.3d at 585, Plaintiffs cannot establish contempt on their inaction theory. The fact that Interior has not completed Lease Sales 257 and 258 does not indicate contempt; such sales involve a series of administrative steps, which are required by the relevant federal statutes and regulations. The Court's order does not compel the agency to act in contravention of these other authorities.

II. Plaintiffs' Compliance Motion Improperly Requests That The Court Modify Its Injunction To Exceed Its Jurisdiction.

Although styled as a contempt motion, Plaintiffs' motion actually seeks to modify the Court's Order to obtain additional relief that it did not seek or obtain during the preliminary injunction proceedings. As explained below, much of Plaintiffs' additional requested relief is neither required by the Court's Order nor within the Court's jurisdiction, and would not be appropriate for an order of enforcement.

To comply with Rule 65(d), a "court's order granting the injunction must 'state its terms specifically' and 'describe in reasonable detail' the conduct restrained or required." *Daniels*

Health Scis., L.L.C. v. Vascular Health Scis., L.L.C., 710 F.3d 579, 586 (5th Cir. 2013) (quoting Fed. R. Civ. P. 65(d)). The Supreme Court has repeatedly emphasized that "the specificity provisions of Rule 65(d) are no mere technical requirements." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). "The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Id.* Because "[t]he rule embodies the elementary due process requirement of notice," *U.S. Steel Corp. v. United Mine Workers of Am.*, 519 F.2d 1236, 1246 (5th Cir. 1975), "an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed," *Scott v. Schedler*, 826 F.3d 207, 211–12 (5th Cir. 2016) (quoting *U.S. Steel Corp.*, 519 F.2d at 1246 n.20). "Since the language employed in Rule 65(d) strongly suggests that only those acts specified by the order will be treated as within its scope and that no conduct or action will be prohibited by implication, all omissions or ambiguities in the order will be resolved in favor of any person charged with contempt." 11A Wright & Miller, Form and Scope of Injunctions or Restraining Orders, Federal Practice & Procedure Civil § 2955 (3d ed.).

Here, the Court's Order proscribes Interior "from implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208, Executive Order 14008, 86 Fed. Reg. 7619, 7624-25 (Jan. 27, 2021) and as set forth in all documents implementing the terms of said Executive Order by said defendants, as to all eligible lands." Doc. 140, at 1. There can be no genuine dispute that Interior has complied with that requirement. *See* Daniel-Davis Decl. ¶ 12 ("Since the Court's Order, the Department has taken no action implementing the pause of new oil and natural gas leases on public lands or in offshore

waters as set forth in Section 208, Executive Order 14008 or action implementing said pause with respect to Lease Sale 257, Lease Sale 258 and to all eligible onshore properties.").

Given the absence of objectionable actions, Plaintiffs' compliance motion focuses instead on allegedly contemptuous "inactions." Doc. 149-1, at 3. Specifically, Plaintiffs contend that Interior is in contempt because it has "taken no actions to reinstitute Lease Sale 257" such as "publish[ing] the Final Notice of Sale." *Id.*, at 4. But Plaintiffs identify no terms in the Court's Order that "specifically" and "in reasonable detail" require Interior to take those actions, as required by Rule 65(d). While the Order *enjoins* and *restrains* Interior from implementing the Pause, it does not *compel* Interior to take the actions specified by Plaintiffs, let alone on the urgent timeline specified in Plaintiffs' contempt motion. *See Sebelius*, 723 F.3d at 585–86 (holding that an injunction against acting should not be "misread[]" into a command to take action).

Instead, what Plaintiffs actually seek, under the guise of a contempt motion, is an order modifying the Court's injunction in several ways that exceed the Court's jurisdiction.[7] *See* Doc. 149-1, at 6–7. *First*, Plaintiffs seek to compel the agency to rely on the prior, outdated Record of Decision for Lease Sale 257, rather than preparing a new Record of Decision. *See id.* at 5 ("No new record of decision, lease terms, or notice of sale would have to be prepared—those documents already exist."). But the Court's Order does not bind the agency to the prior Record of Decision, as the Order in no way compels the content of the Record of Decision for Lease Sale 257.[8] Nor would the Court have the power to do so. *See Norton v. S. Utah Wilderness All.*,

[7] Defendants also preserve—without seeking to relitigate—their prior jurisdictional objections. *See generally* Doc. 120.

[8] Nor is the prior Record of Decision immutable, given the agency's well-established "power to reconsider that decision." *ConocoPhillips Co. v. U.S. EPA,* 612 F.3d 822, 832 (5th Cir. 2010).

542 U.S. 55, 65 (2004) ("when an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be").

Moreover, issuing a new Record of Decision for Lease Sale 257 allows BOEM to ensure compliance with NEPA by reviewing developments since the issuance of the prior Record of Decision. As discussed *supra* pp. 3–4 n.3, the prior Record of Decision relies on outdated scenarios regarding EPA rules, and relying on an outdated decision carries litigation risk that would place a cloud over any resultant leases. *See, e.g.*, Ex. D, *Healthy Gulf v. Haaland*, No. 1:19-cv-707, Am. Second Supp. Compl., Doc. No. 37 ¶¶ 107–125 (D.D.C. Jan. 27, 2021) (challenging certain previously-held offshore sales for failing to consider changes to rules where the Records of Decision were allegedly issued after the rule changes were finalized). By addressing potential issues now, BOEM could save years of litigation later, not to mention legal fees.

Second, Plaintiffs seek to impose onerous weekly status report obligations on Interior "detailing all efforts and activities related to lease sales, including progress on environmental analyses and noticing sales, and progress on the new five year plan under OCSLA." Doc. 149-2, at 2. The Court previously declined a much narrower request for the agency to provide "a report in writing setting forth in detail the manner in which Defendants have complied with the terms of this Preliminary Injunction." *Compare* Doc. 3-7, at 2, *with* Doc. 140. The Court should similarly decline Plaintiffs' broader request, as "[t]he prospect of pervasive oversight by federal courts over the manner and pace of agency compliance with [broad statutory mandates] is not contemplated by the APA." *Norton*, 542 U.S. at 67. Indeed, in moving for the preliminary injunction, Plaintiffs disclaimed "seek[ing] to enlist the Court in an ongoing supervision of the

Department's administration" of its oil and gas leasing programs, Doc. 126, at 3, thus demonstrating how their compliance motion seeks to modify—not enforce—the Court's Order.

Third, in expanding this case to address "progress on the new five year plan under OCSLA," Doc. 149-2, Plaintiffs would have the Court intrude upon the exclusive jurisdiction of the D.C. Circuit. Congress has required challenges involving the adoption of the next five-year program to be brought "only in the United States Court of Appeal for the District of Columbia." 43 U.S.C. § 1349(c)(1); *see also In re Howard*, 570 F.3d 752, 757 (6th Cir. 2009) (holding that even when language in a jurisdictional provision "does not specifically cover the agency's failure to [act], . . . the court of appeals' jurisdiction is exclusive" over claims of "agency inaction" because "[o]therwise claims for agency inaction could still be filed in the district court and the court of appeals could not properly 'protect its future jurisdiction.'" (quoting *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 76 (D.C. Cir. 1984))).

Fourth, Plaintiffs spend considerable time discussing BOEM's actions regarding offshore wind projects, apparently suggesting that the Court should redirect agency resources from wind-related projects to oil-and-gas-related activities. Doc. 149-1, at 2, 5. But the Court's Order does not require anything of the sort. Nor can the Court compel agency allocation of resources among competing priorities, as "[a]n agency has broad discretion to set its agenda and to first apply its limited resources to the regulatory tasks it deems most pressing." *Nat'l Grain & Feed Ass'n, Inc. v. Occupational Safety & Health Admin.*, 903 F.2d 308, 310 (5th Cir. 1990) (quoting *Cutler v. Hayes,* 818 F.2d 879, 896 (D.C. Cir. 1987)). In any event, Plaintiffs overlook that BOEM began work on many of these wind-related actions before the Court's Order issued on June 15, and that different BOEM offices address offshore wind issues from those that are responsible for offshore oil and gas lease sales.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs' Motion for Order to Show Cause and to Compel Compliance with Preliminary Injunction.

Respectfully submitted this 24th day of August, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 24, 2021, I filed the foregoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Michael S. Sawyer
Michael S. Sawyer

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

STATE OF LOUISIANA, ET AL. Plaintiffs, v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, ET AL. Defendants.	Case No. 2:21-cv-00778 Honorable Judge Terry A. Doughty Magistrate Judge Kathleen Kay

DECLARATION OF PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR LAND AND MINERAL MANAGEMENT LAURA DANIEL DAVIS

1. My name is Laura Daniel-Davis. Since January 20, 2021, I have exercised the delegable functions and duties of the Assistant Secretary for Land and Mineral Management at the United States Department of the Interior ("Department"). The Assistant Secretary for Land and Mineral Management oversees the Bureau of Ocean Energy Management ("BOEM") and the Bureau of Land Management ("BLM"), the Departmental agencies responsible for offshore and onshore mineral leasing on the outer continental shelf and on public lands, respectively.

2. In my official capacity, I am familiar with the Department's compliance with the Court's June 15, 2021 Order and can testify truthfully and accurately regarding that compliance.

3. On January 27, 2021, President Biden issued Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*. Section 208 of the Executive Order directed that the Department "[t]o the extent consistent with applicable law . . . shall pause new oil and natural

gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices."

4. The Department explicitly relied on the instruction in Section 208 of the Executive Order to rescind the record of decision for proposed offshore lease sale 257 ("Sale 257"). 86 Fed. Reg. 10132 (Feb. 18, 2021). The Federal Register notice does not make the rescission contingent on any additional action by the Department. Instead, it notes that, "[a]fter completion of the review specified in the Executive Order, BOEM may reevaluate . . . Lease Sale 257 and publish an appropriate [record of decision] in the Federal Register." *Id*.

5. The Department also relied on the instruction in Section 208 of the Executive Order to cancel the scheduled public comment period on the draft environmental impact statement for proposed offshore lease sale 258 ("Sale 258"). 86 Fed. Reg. 10994 (Feb. 23, 2021). As with the rescission of proposed Sale 257, the cancellation of the public comment period for Sale 258 did not depend on additional Departmental action. Instead, the Federal Register Notice indicated that "if BOEM resumes its environmental review of Lease Sale 258, a notice will be published in the Federal Register." *Id*.

6. Finally, the Department cited Executive Order 14008 when exercising its discretion not to hold second quarter onshore lease sales. *See* BLM Statement on Second Quarter Oil and Gas Lease Sales (Apr. 21, 2021). Previously, Bureau of Land Management State Offices and the Office of the Principal Deputy Assistant Secretary for Land and Mineral Management had deferred certain first quarter lease sales pending further review to ensure compliance with the National Environmental Policy Act ("NEPA").

7. On June 15, 2021, this Court issued a preliminary injunction in this matter. The associated order ("Order") enjoined two categories of agency action pending judgment.

8. First, the Court's Order "enjoined and restrained" Defendants from "implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208, Executive Order 14008 . . . and as set forth in all documents implementing the terms of said Executive Order."

9. Second, the Order enjoined and restrained Defendants from "implementing said Pause with respect to Lease Sale 257, Lease Sale 258 and to all eligible onshore properties."

10. The Court's Order did not purport to set aside or reverse any prior agency decisions or documents, nor did it command the Department to affirmatively render any particular agency decisions, e.g., the decision to offer particular parcels or areas for leasing as part of a sale.

11. Within an hour of the Court's decision, I and BLM and BOEM leadership were provided a copy of the Court's Order and advised that the Court had enjoined implementation of the pause described in Executive Order 14008.

12. Since the Court's Order, the Department has taken no action implementing the pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208, Executive Order 14008 or action implementing said Pause with respect to Lease Sale 257, Lease Sale 258 and to all eligible onshore properties.

13. Additionally, the Department has been evaluating future onshore and offshore lease sales according to the statutory requirements of the Outer Continental Shelf Lands Act ("OCSLA") and the Mineral Leasing Act ("MLA").

14. To begin, the Department has expended substantial time deliberating on and planning for proposed Lease Sale 257.

15. The planning process for offshore lease sales is lengthy. Although the five-year program under OCLSA sets out a schedule for potential sales in broad terms, "[e]ach lease sale that is scheduled in the . . . Program [is] subject to an established prelease evaluation and decision process whereby interested and affected parties . . . have multiple opportunities to participate" 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program (Nov. 2016), Doc. 129-2, at 1-15 ("Program").

16. As set forth in the most recent five-year program, the prelease process includes 15 individual steps and "can take between 3 and 5 years to complete." *Id.* The steps, which are detailed more fully in the 2017-2022 Program itself and which are governed by BOEM regulations, include: (1) a call for information and nominations; (2) notice of intent to prepare a document to comply with NEPA, such as an environmental assessment or environmental impact statement; (3) identification of the area of the Proposed Action to be analyzed in the NEPA document; (4) preparation of the draft NEPA document; (5) public review and comment on the NEPA document; (6) government-to-government consultations; (7) environmental consultations (i.e., consultation with other Federal agencies and under the National Historic Preservation Act); (8) preparation and publication of a final NEPA document; (9) proposed notice of sale; (10) consistency determination under the Coastal Zone Management Act (for states other than Alaska); (11) record of decision or finding of no significant impact; (12) letters to governors; (13) final notice of sale; (14) sale; and (15) lease issuance. *Id.* at 1-15-1-17.

17. In certain scenarios, applicable law and/or a lawful exercise of the discretion of the Secretary of the Interior ("Secretary") may require the Department to repeat certain steps. For example, the Secretary can make changes to a sale any time before it is held, and, if the Secretary determines between the proposed notice of sale and the final notice of sale to make

changes to the sale that would depart significantly from the terms of the proposed notice of sale—and if the Department determines that prior notice to the public and environmental analysis did not adequately anticipate the terms of the final sale—the Department may reissue the draft NEPA documents and proposed notice for comment.

18. As a general matter, the Department does not render formal announcements regarding the pace or substance of its internal deliberative process between these steps.

19. When the Department rescinded the record of decision for Sale 257, BOEM had completed eleven of the fifteen steps for the Sale.

20. The remaining preleasing steps for Lease Sale 257 included transmission of letters to governors and a final notice of sale.

21. The final notice for any offshore sale, including Sale 257, must be published at least 30 days before the sale. *See* 43 U.S.C. § 1337(l); 30 C.F.R. § 556.308(a).

22. Consistent with this timeline, the Department anticipated scheduling Sale 257 on March 17, 2021—or roughly two months after the record of decision—even before the Department rescinded the record of decision.

23. Because the recission of the record of decision for Sale 257 requires no further action to implement its terms, there is no record of decision for the Sale. The most recent documents issued in connection with the Sale include the proposed notice of sale, 85 Fed. Reg. 73508 (Nov. 18, 2020) and the NEPA documents for the sale, which were prepared in 2016, 2017, and 2018. *See* 86 Fed. Reg. 6365 (Jan. 21, 2021) (record of decision, referencing prior NEPA documentation).

24. To proceed with Sale 257, therefore, BOEM must conclude all of the preleasing process. That process includes, for example, "consideration of all comments and recommendations received in response to the proposed notice of sale." 30 C.F.R. § 556.307(a).

25. BOEM must also ensure that the NEPA analysis for Sale 257 is current and adequate. Although the prior NEPA documentation for Sale 257 purports to consider the environmental consequences of the sale, BOEM, like other Federal agencies, has an ongoing obligation to update NEPA analysis if "major Federal action remains to occur." 40 C.F.R. § 1502.9(d)(1). Specifically, BOEM must ensure that there are no "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Id.* § 1502.9(c)(1).

26. When the document undergirding a proposed Federal action is an Environmental Impact Statement—as is the case for Sale 257 (and Sale 258)—the relevant agency must consider several categories of effects from the proposed action, including: the environmental impacts of the proposed action and reasonable alternatives; any adverse environmental effects that cannot be avoided should the proposal be implemented; the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented; possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned; energy requirements and conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures; urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various

alternatives and mitigation measures; means to mitigate adverse environmental impacts; and economic and technical considerations, including the economic benefits of the proposed action. 40 C.F.R. § 1502.16(a).

27. These factors are merely a summary: additional NEPA regulations and caselaw include other requirements for and refinements of the requisite NEPA analysis.

28. Based on comments on the proposed Sale 257 and a review of valid NEPA documents, the Secretary will take action on the proposed notice of sale by selecting and announcing a sale that "considers the Governor's comments[] [and] . . . the oil and gas resource potential in context with social, environmental, economic, and environmental values, impacts, and concerns, and the terms and conditions of the lease sale." Program at 1-16. *See generally* 43 U.S.C. § 1332.

29. Since rescinding the record of decision for Sale 257, BOEM has continued to review existing NEPA analysis for Sale 257—now several years old—to ensure that the analysis appropriately describes the potential impacts from the proposed leasing, including by evaluating whether there is new information released since the initial record of decision that requires inclusion or consideration. BOEM has also deliberated regarding the potential scope of Sale 257 and proposed future sales in the Gulf of Mexico.

30. BOEM estimates that agency staff have, since June 15, 2021 and as of August 11, 2021, expended over 525 person-hours on deliberative work for further proposed sales in the Gulf of Mexico under the operative five-year program, including proposed Sale 257. That figure amounts to over 13 person-hours of work per business day, on average, since the Court's Order.

31. Consistent with its substantial work to date, BOEM anticipates sending a new Record of Decision for Sale 257 to the Federal Register by August 31, 2021. Once the new

Record of Decision is published, BOEM anticipates publishing a final notice of sale in September 2021 and holding the lease sale in October or November 2021.

32. Work performed in conjunction with further action on Sale 257 has included (but has not been limited to), preparing possible new lease stipulations, evaluating potential sale areas, geographic information system ("GIS") analysis, review of NEPA analysis, and revision of documents.

33. Simultaneously, BOEM has continued work on proposed Sale 258. That sale had proceeded only to the area identification and draft NEPA stages of the preleasing process. When BOEM cancelled the public comment period for the Sale 258 draft environmental impact statement, it had received zero expressions of interest from potential bidders.

34. At a minimum, therefore, Sale 258 requires circulation of and comment on proposed NEPA analysis.

35. To ensure that any such comment period considers the best available information and solicits the feedback necessary to inform BOEM's decision-making and ensure compliance with NEPA, the Department has continued to work on Sale 258.

36. BOEM estimates that agency staff have, since June 15, 2021 and as of August 11, 2021, expended approximately 130 hours on Sale 258.

37. That work has included reviewing and revising existing exploration and development scenarios to account for the May 2021 Oil and Gas Assessment (BOEM's annual estimate of undiscovered, technically and economically recoverable oil and natural gas resources outside of known oil and gas fields on the outer continental shelf) and recalculating the probabilities of discharge as part of the Bureau's Oil Spill Risk Analysis.

38. BOEM anticipates opening the public comment period for a revised Draft Environmental Impact Statement for Lease Sale 258 in September or October 2021.

39. While not as lengthy as planning for offshore sales under OCSLA, planning for onshore sales typically takes nine months.

40. In a typical process, BLM first considers expressions of interest from interested bidders.

41. Second, BLM prepares NEPA documents to evaluate the environmental consequences of leasing parcels, including by releasing lists of parcels for public scoping (e.g., circulating parcels alongside proposed stipulations for any lease). This process can take several months.

42. Third, BLM seeks comment on the draft NEPA documents, typically for periods of at least 30 days.

43. Fourth, BLM responds to public comment and otherwise updates NEPA analysis for the proposed sale. This step can take several weeks or, in some cases, months.

44. Fifth, BLM provides 45 days' notice of a final competitive lease sale consistent with the Mineral Leasing Act, 30 U.S.C. § 226(f) and BLM regulations, 43 CFR 3120.4-2.

45. Sixth, BLM considers and renders decisions on formal, administrative protests of proposed parcels for sale. *See* 43 C.F.R. § 3120.1-3. BLM usually seeks to resolve protests within 30 days of the protests' submission, and may not issue leases for the protested parcels until resolution of any applicable protest. *See* Bureau of Land Management Instruction Memorandum 2021-027, *Oil and Gas Leasing – Land Use Planning and Lease Parcel Reviews* (April 30, 2021).

46. The Department does not read the Court's Order to displace the Department's ordinary discretion with respect to onshore lease sales, only to forbid the Department from implementing the Pause from Section 208 of Executive Order 14008 in future leasing decisions. The Department has therefore continued to evaluate the next round of onshore lease sales independent of the Executive Order, including by considering whether to offer for sale parcels at issue in proposed first and second quarter leases.

47. BLM has continued to receive expressions of interest since the Court's Order and is preparing new lists of proposed parcels for scoping ahead of possible sale.

48. On August 17, 2021, BLM leadership directed BLM state offices to compile parcel lists from deferred first-quarter and second-quarter lease sales. BLM presently anticipates that state offices will publicly post parcel lists for scoping by August 31, 2021. In October 2021, BLM anticipates, draft NEPA documents for those parcel lists will be released, followed by a 30-day comment period. BLM then anticipates that it will publish notices of competitive sale in December 2021, followed by holding a lease sale approximately forty-five days after the lease sale notices are posted.

49. BLM has also spent considerable time deliberating how best to adjust its NEPA processes for onshore leasing going forward. As explained in the Declaration of Peter Cowan, BLM's onshore leasing program has faced significant NEPA litigation challenges, with over 5,000 leases covering nearly five million acres of land being challenged across dozens of lawsuits.

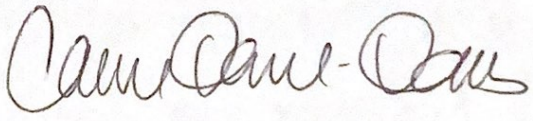
50. To develop more robust NEPA practices going forward, BLM began inventorying the leases subject to challenges in March 2021. BLM has also been revising its approaches to accounting for greenhouse gas emissions when preparing NEPA for proposed lease sales. As the

Department has previously noted, numerous judicial decisions have faulted BLM for its historic analysis of these emissions, and the Department is concerned about ensuring that future lease sales fully comply with NEPA, including by appropriately analyzing greenhouse gas emissions from proposed sales.

51. Thus, BLM has begun preparing an inventory of GHGs from fossil fuels produced on lands managed by the BLM in fiscal year 2020 and from reasonably foreseeable fossil fuel production and leasing over the next 12 months, as well as preparing an assessment of future GHG emissions trends from federal fossil fuel development and potential climate change impacts. BLM may use any final assessments as a tool in evaluating the cumulative impact of GHG emissions from BLM's fossil fuel energy leasing and development authorizations and supporting NEPA analysis.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on August 24, 2021 in Alexandria, VA



Laura Daniel-Davis

EXHIBIT A

The Washington Post Democracy Dies in Darkness

Louisiana judge blocks Biden administration's oil and gas leasing pause

The judge ruled that a pause on new leasing on federal lands harms oil-producing states.

By Joshua Partlow and Juliet Eilperin

June 15, 2021 at 9:47 p.m. EDT

612

A federal judge in Louisiana on Tuesday issued a preliminary injunction to block the Biden administration's policy of pausing the sale of new oil and gas leases on federal land while reviewing how to reform the program.

The ruling by U.S. District Judge Terry A. Doughty, a Trump appointee, was a blow to the Biden administration because reforming the oil leasing program is a key part of its fight against climate change and to try to get more for taxpayers from fossil-fuel development on public lands. The president and his aides had moved swiftly to curb oil and gas development in the past six month, rescinding a permit for the Keystone XL pipeline and suspending drilling leases in Alaska's Arctic National Wildlife Refuge.

Doughty said that the administration cannot stop leasing without congressional approval and that the fossil fuel-producing states that sued to challenge the Interior Department's policy have "demonstrated a substantial threat of irreparable injury."

Biden directed the Interior Department to suspend its leasing program during his first week in office. Interior Department officials had said the leasing hiatus would allow them to conduct a comprehensive review of how the leasing program works and to identify improvements. One of the key issues is whether to increase royalty rates for drilling onshore; those rates have been the same for a century. An interim report on the program is expected this summer.

"Although there is certainly nothing wrong with performing a comprehensive review, there is a problem in ignoring acts of Congress while the review is being completed," Doughty wrote in his ruling.

Interior Secretary Deb Haaland has called the federal oil and gas program "fundamentally broken" and said that "taxpayers deserve to make the most out of their public lands." Interior officials have stressed that the review is temporary and that the policy did not affect existing leases.

But the policy was soon challenged in court by several states — including Texas, Utah, West Virginia, Montana and Louisiana — that rely on oil-and-gas royalties.

In response to Doughty's ruling, Interior Department spokeswoman Melissa Schwartz said in a statement: "We are reviewing the judge's opinion and will comply with the decision."

"The Interior Department continues to work on an interim report that will include initial findings on the state of the federal conventional energy programs, as well as outline next steps and recommendations for the Department and Congress to improve stewardship of public lands and waters, create jobs, and build a just and equitable energy future," Schwartz added.

Attorney General Patrick Morrisey of West Virginia, one of the states that sued the Biden administration, described the ruling as "the first of many major victories against the Biden administration."

"For our country's sake, we must prevail over the Biden Administration's radical, anti-fossil fuel, China First energy policies," Morrisey said in a statement.

Oil industry groups called on the Biden administration to restart leases immediately.

"As we emerge from the pandemic and move forward with economic growth, it is more important than ever that we seize the opportunity to produce oil and gas here in the U.S. to help avert potential inflationary risks and proactively ensure affordable energy for all walks of life, especially low-income communities," National Ocean Industries Association President Erik Milito, whose members include offshore drilling companies, said Tuesday.

Fossil fuels extracted from public lands and waters account for about a quarter of the country's greenhouse gas emissions. But the program also generated nearly $8.1 billion for federal, state, local and tribal governments last year, according to the Interior Department's Office of Natural Resources Revenue.

"Millions and possibly billions of dollars are at stake," Doughty wrote in his ruling. "Local government funding, jobs for Plaintiff State workers, and funds for the restoration of Louisiana's Coastline are at stake."

Environmental groups promised to fight the decision and said the Biden administration has the authority to pause the leasing program.

"The judge's order turns a blind eye to runaway climate pollution that's devastating our planet," Randi Spivak, public lands program director at the Center for Biological Diversity, said in a statement. "We'll keep fighting against the fossil-fuel industry and the politicians that are bought by them."

By Josh Partlow

Joshua Partlow is a reporter on the The Washington Post's national desk. He has served previously as the bureau chief in Mexico City, Kabul, Rio de Janeiro, and as a correspondent in Baghdad. Twitter

By Juliet Eilperin

Juliet Eilperin is a Pulitzer Prize-winning senior national affairs correspondent for The Washington Post, covering environmental and energy policy. She has written two books, "Demon Fish: Travels Through the Hidden World of Sharks" and "Fight Club Politics: How Partisanship is Poisoning the House of Representatives." Twitter

View more

EXHIBIT B

Press Releases

Share

Interior Issues Statement on Oil and Gas Leasing Program

8/16/2021
Last edited 8/16/2021

Date: Monday, August 16, 2021
Contact: Interior_Press@ios.doi.gov

WASHINGTON — Please see below for a statement from the Department of the Interior:

"The Department of the Interior (Interior) confirmed today that the Department of Justice (DOJ) has appealed the preliminary injunction entered by the district court in *Louisiana v. Biden*, which enjoined Interior from implementing the pause in new federal oil and gas leasing as set forth in Section 208 of Executive Order 14008. DOJ is appealing that decision to the United States Court of Appeals for the Fifth Circuit. Federal onshore and offshore oil and gas leasing will continue as required by the district court while the government's appeal is pending.

"The appeal of the preliminary injunction is important and necessary. Together, federal onshore and offshore oil and gas leasing programs are responsible for significant greenhouse gas emissions and growing climate and community impacts. Yet the current programs fail to adequately incorporate consideration of climate impacts into leasing decisions or reflect the social costs of greenhouse gas emissions including, for example, in royalty rates. Furthermore, past operation of the programs did not adequately reflect the breadth of the Interior Secretary's stewardship responsibilities, including conserving wildlife habitat, protecting historic and cultural resources, ensuring that public lands are available for multiple uses, protecting marine, coastal, and human environments, meeting trust responsibilities to American Indian and Alaska Native Tribes, and providing a fair return to taxpayers. Moreover, the federal oil and gas programs inadequately account for environmental harms to lands, waters, and other resources, foster speculation by oil and gas companies, and frequently leave impacted communities out of important conversations about how they want the public lands and waters managed.

"These issues have been the subject of numerous critical reports over decades by the Government Accountability Office (GAO), Interior's Office of Inspector General (OIG), Congressional Committees, and other independent reviewers. For example, the federal oil and gas program has been on GAO's 'High Risk List' for more than a decade, which notes programs and operations that are 'vulnerable to waste, fraud,

abuse, or mismanagement, or in need of transformation.' GAO has issued frequent reports outlining serious concerns with the onshore and offshore oil and gas leasing programs. As far back as 1989, GAO noted that BLM 'is not exercising balanced stewardship over the public lands.' In just the last three years, GAO has highlighted deficiencies with noncompetitive leasing, royalty relief policies, data collection, ensuring a fair return, and bonding and reclamation practices in the onshore program, and about decommissioning liabilities, safety and environmental oversight, fiscal returns from the leasing program, and pipeline safety and decommissioning in the offshore program.

"The OIG has regularly highlighted energy management in its annual reports of 'Major Management and Performance Challenges facing the U.S. Department of the Interior,' stating, 'many of DOI's energy programs are vulnerable to waste, fraud, and mismanagement, which can jeopardize public safety and environmental integrity and increase the financial burden on the American public.'

"Interior will proceed with leasing consistent with the district court's injunction during the appeal. In complying with the district court's mandate, Interior will continue to exercise the authority and discretion provided under the law to conduct leasing in a manner that takes into account the program's many deficiencies. Separately, Interior continues to review the programs' noted shortcomings, including completing a report. The Department also will undertake a programmatic analysis to address what changes in the Department's programs may be necessary to meet the President's targets of cutting greenhouse gas emissions in half by 2030 and achieving net zero greenhouse gas emissions by 2050.

"Pursuant to resolution of another litigation matter involving leasing activity on the public lands, Interior will release a notice of intent to conduct a review of the federal coal leasing program later this week."

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PRESS RELEASE

Interior Department Announces Next Steps for Idaho Onshore Wind Energy Project

PRESS RELEASE

Secretary Haaland, CEQ Chair Mallory Highlight Offshore Wind Developments in California with Federal, Tribal, State and Local Officials

PRESS RELEASE

Interior Department Advances Three Solar Projects in California, Continuing Efforts to Develop a Robust Clean Energy Economy

EXHIBIT C

MARKETS

U.S. crude oil prices top $75 a barrel, the highest since 2018

PUBLISHED THU, JUL 1 2021•7:27 AM EDT UPDATED THU, JUL 1 2021•2:36 PM EDT

Yun Li
@YUNLI626

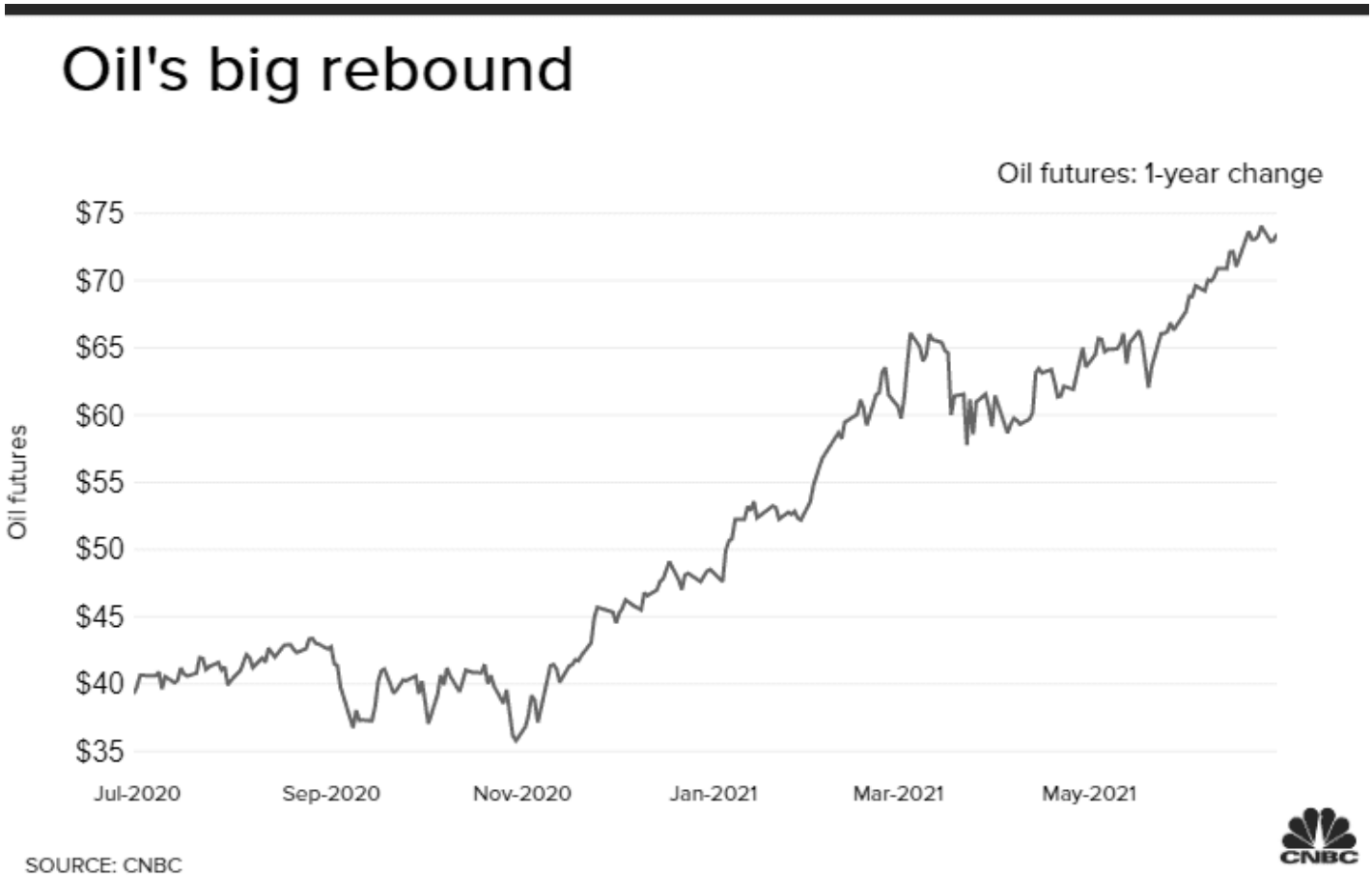
VIDEO 04:21
How OPEC+ decision could impact the broader markets

Oil prices broke above $75 a barrel on Thursday to a near three-year-high ahead of a decision from key producers on production policy for the second half of 2021.

U.S. West Texas Intermediate crude for August settled up 2.4%, or $1.76, at $75.23 a barrel, hitting its highest

increased as people take to the roads amid the economic reopening, and a rebound in goods transportation and air travel also have supported prices.

Gasoline prices are jumping on the back of a post-pandemic driving spree and $75 crude prices could mean even higher prices at the pump. The current average price for a gallon of unleaded gasoline is at $3.123 per gallon, compared to $2.179 per gallon a year ago, according to AAA.



The advance came ahead of a meeting among OPEC and non-OPEC partners, an energy alliance often referred to as OPEC+, who have been positive about improved market conditions and the outlook for fuel demand growth following a sharp rebound in oil prices this year.

OPEC+ meeting has been postponed to Friday.

Jeff Currie, global head of commodities research at Goldman Sachs, said on CNBC's "Worldwide Exchange" that the expected OPEC production hike of 500,000 barrels per day might not be enough to keep prices down.

"During the month of June, we estimate that the market was in a 2.3 million barrel per day deficit... The bottom line, demand is surging as we head into the summer travel season, and that is against a nearly inelastic supply

Bank of America recently said oil can climb all the way to $100 per barrel amid accelerating demand.

— CNBC's Jesse Pound contributed reporting.

EXHIBIT D

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1140 **September Term, 2020**

EPA-84FR32520

Filed On: February 22, 2021

American Lung Association and American Public Health Association,

Petitioners

v.

Environmental Protection Agency and Jane Nishida, Acting Administrator,

Respondents

AEP Generating Company, et al.,
Intervenors

Consolidated with 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188

BEFORE: Millett, Pillard, and Walker, Circuit Judges

O R D E R

Upon consideration of respondents' unopposed motion for a partial stay of issuance of the mandate, it is

ORDERED that the motion be granted. The Clerk is directed to withhold issuance of the mandate with respect to the vacatur of the Clean Power Plan Repeal Rule until the EPA responds to the court's remand in a new rulemaking action. It is

FURTHER ORDERED that the Clerk is directed to issue a partial mandate in the normal course as to the vacatur of the ACE Rule and the vacatur of the challenged timing provisions within the implementing regulations. It is

FURTHER ORDERED that respondents file status reports at 90-day intervals, beginning 90 days from the date of this order. Respondents are further directed to notify the court promptly upon completion of the agency rulemaking so that the remainder of the mandate may issue.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HEALTHY GULF, *et al.*, *Plaintiffs* v. DAVID BERNHARDT, *at al.*, *Defendants* and AMERICAN PETROLEUM INSTITUTE, *et al*., *Intervenor-Defendants*.	Civil Action No. 1:19-cv-00707-RBW **AMENDED SECOND SUPPLEMENTAL COMPLAINT**

1. Plaintiffs Healthy Gulf, Sierra Club, and Center for Biological Diversity challenge the unlawful decision by Acting Secretary of the Interior David Bernhardt, acting through his delegated authority to the Department of the Interior and Bureau of Ocean Energy Management ("BOEM") (collectively, "Interior"), to hold Lease Sales 252, 253, and 254 in the Gulf of Mexico in reliance on arbitrary environmental analyses, in violation of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA").

2. The Gulf of Mexico is an ecologically rich area that is vitally important to the economy of coastal communities all along the Gulf Coast. The Gulf is home to thousands of species of fish, sea turtles, whales, dolphins, and sea birds, many of which are already threatened or endangered with extinction. Millions of people who live in the states along the Gulf Coast depend on this productive marine environment to support coastal fisheries, tourism, and recreation, the backbones of the Gulf States' economies.

3. At the same time, the Gulf is host to nearly 2,000 oil platforms pumping oil and gas from more than 2,500 active leases. This development comes with a huge cost to the environment, as well as to the coastal communities that rely on the Gulf for tourism, fishing, and their livelihoods. Over 2,100 oil and chemical spills occur each year in the Gulf of Mexico, some of which are catastrophic, like the 2010 BP *Deepwater Horizon* disaster.

4. In 2017, Interior began to offer for sale essentially all unleased acres in the Western and Central Gulf of Mexico in each of ten lease sales to be held between August 2017 and March 2022. Around the same time, Interior also began engaging in a series of efforts to unravel critical drilling safety protections and to boost oil and gas development in shallow waters in the Gulf.

5. On January 30, 2019, Interior signed a Record of Decision to hold Offshore Oil and Gas Lease Sale 252 on March 20, 2019. On July 1, 2019, Interior signed a Record of Decision to hold Offshore Oil and Gas Lease Sale 253 on August 21, 2019. And on January 30, 2020, Interior signed a Record of Decision to hold Offshore Oil and Gas Lease Sale 254 on March 18, 2020. Interior purported to have assessed the environmental effects of the lease sales, as required by NEPA, before reaching its decisions to hold the sales for over 78 million acres, making them the largest lease sales in U.S. history.

6. Interior's NEPA analyses suffer from two fundamental defects. First, Interior turned a blind eye to the policies it had adopted and begun implementing—such as repealing significant drilling safety regulations and reducing royalty rates to spur development of marginal, shallow-water oil fields—that will considerably increase the effects and risks to the environment from oil and gas activities resulting from the lease sales. Interior's irrational reliance on the false assumptions that preexisting, safer policies would remain in place led it to underestimate the

likely effects and risks resulting from the lease sales.

7. Second, Interior irrationally assumed that the same environmental effects would occur even if it did not hold the lease sales. As a result, Interior failed to meaningfully consider the degree to which Lease Sales 252, 253, and 254 would affect the environment compared to not holding the sales.

8. Interior's arbitrary and capricious assumptions in its environmental analyses violate NEPA and resulted in Interior making its lease sale decisions without an adequate understanding of the environmental effects, including how modifying the scope of the sales or the conditions on leases could minimize harms and risks to the environment and coastal communities. Plaintiffs are currently in the midst of litigation challenging two lease sales Interior held in 2018 that relied on this same, flawed NEPA analyses.

9. Plaintiffs therefore ask this Court to declare that Interior's decisions to hold Lease Sales 252, 253, and 254 violate NEPA and the APA, to vacate the unlawful decisions to hold Lease Sales 252, 253, and 254, and to vacate or enjoin the leases issued pursuant to unlawful Lease Sales 252, 253, and 254.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. §§ 702–706 (APA).

11. Venue is appropriate under 28 U.S.C. § 1391(e).

12. This Court has authority to grant the requested relief in this case pursuant to the APA, 5 U.S.C. § 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

PARTIES

13. Plaintiff HEALTHY GULF (formerly known as Gulf Restoration Network) is a

network of community, conservation, environmental, and fishing groups and individuals committed to empowering people to protect and restore the natural resources of the Gulf of Mexico. Healthy Gulf has been actively involved in efforts to strengthen oversight of the offshore oil and gas industry and end new oil and gas leasing in this region. Healthy Gulf is headquartered in New Orleans, La., with offices in Pensacola, Fla., and Jackson, Miss. Healthy Gulf's members live in the five Gulf states of Texas, Louisiana, Mississippi, Alabama, and Florida, and nationwide. Healthy Gulf brings this action for itself and as representative of its members.

14. Plaintiff SIERRA CLUB is a not-for-profit organization dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club is one of the oldest and largest conservation groups in the country, with about 800,000 members nationally in 64 chapters in all of the 50 states, the District of Columbia, and Puerto Rico. Sierra Club members use the public lands and waters throughout the Gulf, including those that would be affected by oil and gas activities, for quiet recreation, aesthetic pursuits, and spiritual renewal. Sierra Club brings this action for itself and as representative of its members.

15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("Center") is a nonprofit corporation that maintains offices across the country, including in: Washington, D.C.; California; Arizona; Florida; New York; Oregon; Washington; and Baja California Sur, Mexico. The Center advocates for the protection of threatened and endangered species and their habitats through science, policy, and environmental law. The Center's mission also includes protecting

air quality, water quality, and public health. The Center's Oceans Program focuses specifically on conserving marine ecosystems, and seeks to ensure that imperiled species such as marine mammals, corals, and sea turtles are properly protected from destructive practices in our oceans. The Oceans Program also works to protect coastal communities from the air pollution, water pollution, and other impacts that result from such practices. In pursuit of this mission, the Center has been actively involved in protecting the Gulf of Mexico from the harmful impacts of offshore oil and gas drilling. The Center has more than 69,500 members, including members who live and recreate throughout the Gulf of Mexico region. The Center brings this action for itself and as representative of its members.

16. Plaintiffs and Plaintiffs' members and staff regularly use, enjoy, and benefit from the marine and coastal environments of the Gulf of Mexico, including waters within and adjacent to the five Gulf states. Plaintiffs and Plaintiffs' members and staff regularly enjoy and benefit from the presence of healthy marine and avian life within those environments for recreational, aesthetic, commercial, scientific, and environmental purposes, including whale watching, bird watching, scientific study, boat touring, underwater diving, fishing, photography, and beach bathing. Lease Sales 252, 253, and 254 will directly and irreparably injure these interests. The abilities of Plaintiffs and Plaintiffs' members and staff to pursue these interests hinge on the health of the marine, coastal, and estuarine ecosystems (with clean water and oil-free beaches) and the well-being of the species that live, migrate, feed, and breed in areas affected by oil and gas activities. Interior continues to hold Gulf oil and gas lease sales and to authorize Gulf oil and gas activities in the absence of an adequate NEPA analysis; the agency is authorizing additional oil and gas development without a full and accurate analysis of its impacts or reasoned consideration of how to avoid or mitigate those impacts. As a result, Interior is enabling new oil

and gas development to negatively impact the environment in which Plaintiffs and Plaintiffs' members and staff have an interest. The interests of Plaintiffs and Plaintiffs' members and staff have been, are being, and will be adversely affected by Interior's violations of federal law, as described herein. These harms can only be remedied if Interior is forced to comply with the requirements of NEPA and the APA. Plaintiffs have no other adequate remedy at law.

17. Defendant DAVID BERNHARDT is sued in his official capacity as the Secretary of the Interior. He is the chief officer of the Department of the Interior charged with overseeing the proper administration and implementation of the Outer Continental Shelf Lands Act ("OCSLA"). OSCLA vests authority in the Secretary of the Interior to hold lease sales for oil and gas rights on the Outer Continental Shelf and to issue leases. The Secretary of the Interior is required to comply with NEPA when taking any action affecting the environment.

18. Defendant CASEY HAMMOND[1] is sued in his official capacity as the Acting Assistant Secretary of the Interior for Land and Minerals Management. The Assistant Secretary for Land and Minerals Management is the official to whom the Secretary had delegated authority to sign records of decision to hold lease sales under OCSLA. The Assistant Secretary for Land and Minerals Management is required to comply with NEPA when taking any action affecting the environment.

19. Defendant U.S. DEPARTMENT OF THE INTERIOR is the federal department with authority, through the Secretary, under OCSLA to hold lease sales for oil and gas rights on the Outer Continental Shelf and to issue leases. The Department of the Interior is required to comply with NEPA when taking any action affecting the environment.

20. Defendant BUREAU OF OCEAN ENERGY MANAGEMENT is the federal

[1] Casey Hammond is substituted for Joseph Balash pursuant to Fed. R. Civ. P. 25(d).

agency within the Department of the Interior to which the Secretary has delegated authority under OCSLA to hold lease sales for oil and gas rights on the Outer Continental Shelf and to issue leases. BOEM is required to comply with NEPA when taking any action affecting the environment.

STATUTORY BACKGROUND

I. NATIONAL ENVIRONMENTAL POLICY ACT

21. NEPA is this country's "basic national charter for protection of the environment." 40 C.F.R. § 1500.1; *see* 42 U.S.C. § 4331 *et seq.* Its purpose is to "promote efforts which will prevent or eliminate damage to the environment." 42 U.S.C. § 4321. The Council on Environmental Quality has promulgated regulations implementing NEPA, which are "binding on all federal agencies." 40 C.F.R. § 1500.3; *see id.* §§ 1500.1–1508.28.

22. Congress enacted NEPA to ensure that federal agencies incorporate environmental concerns into the decisionmaking process. 42 U.S.C. § 4331(a)–(b). To that end, NEPA compels agencies to evaluate prospectively the environmental impacts of proposed actions that they carry out, fund, or authorize and give the public a meaningful opportunity to participate in the decision-making process.

23. NEPA requires all agencies of the federal government to prepare a "detailed statement" regarding all "major federal actions significantly affecting the quality of the human environment." *Id.* § 4332(2)(C). This statement, known as an Environmental Impact Statement ("EIS"), must describe: (1) the "environmental impact of the proposed action"; (2) any "adverse environmental effects which cannot be avoided should the proposal be implemented"; (3) alternatives to the proposed action; (4) "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity"; and (5) any "irreversible or irretrievable commitment of resources which would be involved in the

proposed action should it be implemented." *Id.*; *see also* 40 C.F.R. § 1502.1.

24. Under NEPA, "agencies must 'take a "hard look" at [the] environmental consequences' of their actions, and 'provide for broad dissemination of relevant environmental information.'" *Pub. Emps. for Envtl. Responsibility v. Hopper*, 827 F.3d 1077, 1082 (D.C. Cir. 2016) (alteration in original) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). The EIS must fully consider and disclose the potential environmental impacts of proposed actions and alternatives to that action to take the "hard look" NEPA requires. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.4, 1502.1(b), (c), 1502.5.

25. NEPA requires agencies to use high quality, accurate scientific information and to ensure the scientific integrity of their analyses. 40 C.F.R. §§ 1500.1(b), 1502.24.

26. In considering alternatives to the proposed action, the agency must examine the alternative of no action. *Id.* § 1502.14(d). The agency must compare the impacts of the proposed action with those of the no action alternative. *See* Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981).

27. To comply with NEPA, an agency must consider the site-specific impacts of the action as well as the cumulative impact of the proposed action when combined with other past, present, and reasonably foreseeable future actions. 40 C.F.R. §§ 1508.7, .8, .25, .27.

28. An EIS must analyze the direct, indirect, and cumulative effects of the proposed action and any identified alternatives thereto. *Id.* § 1508.25. Direct effects are those effects "which are caused by the action and occur at the same time and place." *Id.* § 1508.8(a). Indirect effects are those effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). Cumulative effects are those

that "result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* § 1508.7. "Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." *Id.* § 1508.8.

29. NEPA requires agencies to disclose and analyze measures to mitigate the impacts of proposed actions. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1502.14(f), 1502.16(h). An agency's analysis of mitigation measures must be reasonably complete in order to properly evaluate the severity of the adverse effects of an agency's proposed action and to inform the public and decision-makers of ways to avoid or minimize harmful effects prior to the agency making a final decision. *See* 40 C.F.R. §§ 1502.1, 1502.16, 1508.20.

30. NEPA and its implementing regulations impose a continuing duty on agencies to prepare a supplemental environmental impact statement whenever "(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §§ 1502.9(c)(1)(i), (ii).

31. NEPA requires that an agency incorporate its environmental analysis into its decision-making process. "NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action." *Id.* § 1500.1(c); *see also id.* ("Ultimately . . . it is not better documents but better decisions that count."); *id.* § 1502.1 ("primary purpose" of an EIS is to "serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. . . . An environmental

impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.").

32. The NEPA data and analyses supporting an agency's decision must be presented in the EIS. *See id.* § 1502.1. An agency may not rely on its record of decision to alter or augment its analyses or cure deficiencies in an EIS.

II. OUTER CONTINENTAL SHELF LANDS ACT

33. OCSLA governs the leasing, exploration, and development of oil and gas deposits in the Outer Continental Shelf. 43 U.S.C. § 1331 *et seq.* The Outer Continental Shelf extends from the outer boundary of state waters—typically three nautical miles from shore—to the outer boundary of the United States' Exclusive Economic Zone, 200 nautical miles from shore. *Id.* §§ 1301(a)(2), 1331(a); 48 Fed. Reg. 10,605 (Mar. 14, 1983).

34. In 1978, Congress amended OCSLA to provide, in part, for the development of resources on the Outer Continental Shelf "subject to environmental safeguards." 43 U.S.C. § 1332(3); *see* Pub. L. No. 95-372, 92 Stat. 632 *et seq.*

35. OCSLA charges the Secretary of the Interior with managing oil and gas rights and activities on the Outer Continental Shelf. *E.g.*, 43 U.S.C. §§ 1334(a), 1344(a).

36. OCSLA prescribes four, tiered stages for the Secretary to sell and allow development of offshore oil and gas deposits: 1) five-year leasing programs; 2) lease sales; 3) exploration plans; and 4) development and production plans. *Id.* §§ 1337, 1340, 1344, 1351.

37. At the five-year program stage, the Secretary designates "the size, timing, and location of leasing activity" over an upcoming five-year period. *Id.* § 1344(a).

38. At the lease sale stage, the Secretary offers for sale leases that "entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area," subject to certain approvals. *Id.* § 1337. A lessee may conduct ancillary activities on its lease without any

further federal approval under OCSLA. 30 C.F.R. §§ 250.105, .207–.209. These activities include geological and geophysical exploration, such as seismic reflection and refraction to detect the presence of oil or gas, and other surveys that are needed to determine how to explore or develop a lease. *Id.* §§ 250.105, .207.

39. The Secretary may cancel a validly issued lease only if he "determines, after a hearing, that (i) continued activity pursuant to the lease or permit would probably cause serious harm or damage . . . to the marine, coastal, or human environment; (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force." 43 U.S.C. § 1334(a)(2)(A). The Secretary first must suspend operations under the lease before canceling the lease. OCSLA states that if the Secretary cancels a lease on the basis of these factors, the lessee is entitled to compensation. *Id.* § 1334(a)(2)(B)–(C).

40. BOEM is the federal agency within the Department of the Interior to which the Secretary has delegated authority to manage leasing, exploration, development, and production of oil and gas resources on the Outer Continental Shelf under OCSLA. 30 C.F.R. § 550.101. The Bureau of Safety and Environmental Enforcement ("BSEE"), also within the Department of the Interior, is the federal agency to which the Secretary has delegated authority to enforce safety and environmental standards for offshore oil and gas activities and to approve some activities. *Id.* § 250.101.

41. BOEM begins the lease sale process by preparing and publishing a proposed notice of lease sale. *Id.* § 556.304.

42. BOEM publishes a final notice of sale at least 30 days before holding the lease sale. *Id.* § 556.308(a).

43. BOEM awards and executes leases once the winning bidder files the necessary paperwork and fees. *Id.* § 556.520. A lease becomes effective on the first day of the month after BOEM executes the lease. *Id.* § 556.521.

III. ADMINISTRATIVE PROCEDURE ACT

44. The APA confers a right of judicial review on any person who is adversely affected by agency action. 5 U.S.C. § 702.

45. The APA provides that the reviewing court "shall . . . 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." *Id.* § 706(2)(A).

46. Under the APA, a court shall also "hold unlawful and set aside" any agency action that was promulgated "without observance of procedure required by law." *Id.* § 706(2)(D).

47. The APA also provides that the reviewing court "shall compel agency action unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

48. The adequacy of an agency's NEPA analysis is reviewed under the APA.

STATEMENT OF FACTS

I. THE GULF OF MEXICO ECOSYSTEM

49. The Gulf of Mexico is an extraordinary aesthetic, economic, and environmental resource to the five Gulf Coast states and the nation, supporting some of the most productive and biodiverse tropical and temperate ecosystems in the United States.

50. The Gulf of Mexico is home to thousands of marine species, ranging from simple invertebrates, such as conchs and sponges, to complex and highly evolved fish and marine mammals. The Gulf contains thousands of species of invertebrates, at least 600 species of fish, and 29 species of marine mammals. In addition, five of the world's seven species of sea turtles,

as well as hundreds of shore and coastal bird species, reside in or migrate through the Gulf of Mexico. Over 300 species of coral, as well as other hard-bottom communities, wetlands, seagrass beds, mangroves, and soft bottom communities, provide the habitats necessary to support this rich assemblage of marine life. These diverse and highly complex habitats provide food, shelter, and spawning grounds for these species at various points during their life histories.

51. Twenty-three marine species and two coastal bird species living in the Gulf of Mexico are listed as endangered or threatened under the Endangered Species Act.

52. The Gulf of Mexico's environmental beauty and productivity also support a robust economy. The region produces more than one-third of the nation's domestic seafood supply. The Gulf's commercial fisheries and coastal tourism generate more than $40 billion annually in economic activity in the five Gulf Coast states.

II. A PATTERN OF ENVIRONMENTAL HARMS FROM OIL AND GAS DEVELOPMENT

53. Existing oil and gas exploration, development, and production on the Gulf of Mexico Outer Continental Shelf is extensive. As of this date, there are nearly 2,000 active offshore oil and gas platforms and more than 2,500 active oil and gas leases in the Gulf.

54. Oil and gas leasing, exploration, development, and production, along with their associated operations, involve numerous activities that individually and collectively have myriad adverse effects on the Gulf's species and habitats. Lessees conduct seismic surveys to locate oil and gas deposits; drill wells; install pipelines and other structures on the seafloor and through coastal wetlands; pump oil and gas to the surface; load and transport oil, gas, and cargo on ships; produce liquid, solid, and gaseous waste; and conduct other activities with harmful environmental effects.

55. Effects from these activities on the environment include vessel strikes, noise

(from vessels, seismic surveys, construction, and general operations), oil spills (both large and small), bottom habitat destruction, and marine debris and other water pollution. Oil and gas activities also degrade air quality, contribute to climate change, erode coastal wetlands, impair commercial and recreational fishing opportunities, harm archaeological resources, and degrade recreational and aesthetic experiences.

56. The harms from oil and gas activities can become catastrophic, as when the *Deepwater Horizon* rig exploded and sank on April 20, 2010, killing eleven people and causing the biggest environmental disaster in the history of the Gulf. *See generally In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 21 F. Supp. 3d 657 (E.D. La. 2014).

57. The *Deepwater Horizon* explosion caused oil to gush from the well on the seabed, nearly 5,000 feet below the ocean's surface, for months until the well finally was capped in mid-July 2010. The result was the largest oil spill in the history of the United States and a cleanup and containment effort that at its height enlisted 50,000 workers on land and sea.

58. Over the 87 days during which the well remained uncapped, over 100 million gallons of oil and unquantified amounts of natural gas flowed freely into the Gulf. In an effort to break apart large concentrations of oil, responders released 1 million gallons of toxic dispersants into Gulf waters.

59. The spill contaminated over 112,000 square kilometers of ocean waters and over 2,100 kilometers of shoreline in the Gulf.

60. As Interior described:

> [T]he Spill caused impacts to coastal and oceanic ecosystems ranging from the deep ocean floor, through the oceanic water column, to the highly productive coastal habitats of the northern Gulf, including estuaries, shorelines and coastal marshes. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf and along the coastal areas of Texas, Louisiana, Mississippi, Alabama, and Florida. These fish

> and wildlife species and their supporting habitats provide a number of important ecological and recreational use services.

U.S. Dep't of Interior, et al., *Deepwater Horizon Oil Spill Natural Resource Damage Assessment: Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement* Ch. 1, p. 1 (2014).

61. Scientists estimate the spill caused death or serious harm to billions, if not trillions, of animals, including over 100,000 individuals of species listed as threatened or endangered. The spill marred coastal and bottom habitats, causing severe damage to the ecosystems that support the Gulf's biodiversity.

62. The harm from the spill to marine and coastal species and the environment persists to this day.

63. While the *Deepwater Horizon* disaster's effects were, and remain, catastrophic, oil and gas operations in the Gulf of Mexico continue to experience accidents, spill oil, and otherwise cause environmental harm on a daily basis. Each year on average, approximately 2,100 oil and chemical spills in the Gulf are reported to the Coast Guard and three workers die from accidents in Gulf oil and gas operations. Gulf Restoration Network, *Oil and Gas in the Gulf of Mexico* 3 (2018), *available at* https://healthygulf.org/sites/healthygulf.org/files/oilgasreportweb_final.pdf.

64. From 2011 through 2016, Interior's records show more than four losses of well control per year on average in the Gulf, and Interior's records show there is a fire offshore in the Gulf every three days on average.

65. In recent years, drilling activity has been shifting to deeper waters and into high-heat and high-pressure geologic formations, where the risks of well blowouts and catastrophic oil spills are greater.

66. Oil and gas development and production in the Gulf also contribute significantly to climate change. In addition to greenhouse gases emitted by exploration, development, and production operations, the oil and gas produced in the Gulf is shipped and burned throughout the world, emitting hundreds of millions of tons of greenhouse gases annually.

III. BSEE'S INITIAL RESPONSE TO THE DEEPWATER HORIZON DISASTER AND SUBSEQUENT REVERSAL OF SAFETY REGULATIONS

67. In the aftermath of the *Deepwater Horizon* disaster, BSEE promulgated several safety regulations to implement recommendations for reducing the risks of another major oil spill made by various expert working groups on the disaster.

68. On April 29, 2016, BSEE issued its Blowout Preventer Systems and Well Control Rule [hereinafter Well Control Rule] "to prevent future well-control incidents, including major incidents like the 2010 *Deepwater Horizon* catastrophe." 81 Fed. Reg. 25,888, 25,890 (Apr. 29, 2016). The rule created a number of new safety measures—such as requiring safe drilling margins and real-time monitoring—and substantially strengthened requirements for blowout preventers and well cementing and casing. *Id.* at 25,894. Each of the new measures improves drilling safety by a considerable degree.

69. On September 7, 2016, BSEE issued its Oil and Gas Production Safety Systems Rule [hereinafter Production Safety Rule] to "improve worker safety and protection of marine and coastal ecosystems by helping to reduce the number of production-related incidents resulting in oil spills, injuries, and fatalities." 81 Fed. Reg. 61,834, 61,838 (Sept. 7, 2018). The rule, among other things, "[u]pdated and improved safety and pollution prevention equipment (SPPE) design, maintenance, and repair requirements," including adding a new standard that the equipment be inspected and certified by a third party. *Id.* at 61,834. Each of the new measures improves production safety by a considerable degree.

70. But less than one year later, President Trump issued Executive Order 13,783 directing the heads of every federal agency to review all policies and regulations "that potentially burden the development or use of domestic" fossil fuels. Exec. Order No. 13,783, 82 Fed. Reg. 16,093, 16,093 (Mar. 31, 2017). The Executive Order required agency heads to, "as soon as practicable, suspend, revise, or rescind" those policies or regulations. *Id.* at 16,094.

71. On May 1, 2017, the Secretary of the Interior issued Secretarial Order 3350 specifically directing BSEE to review, reconsider, and recommend revising or rescinding provisions of the Well Control Rule to ensure that "exploration and development [of oil and gas on the Outer Continental Shelf] is promoted and not unnecessarily delayed or inhibited." Sec'y of Interior, Secretarial Order 3350, at 2 (May 1, 2017).

72. By late November 2017, BSEE had developed concrete proposals to substantially revise and repeal many of the most important safety provisions from the Production Safety Rule and Well Control Rule.

73. In December 2017, BSEE asked the Office of Management and Budget to review its proposed rule to rescind many of the safety measures BSEE previously had enacted through the Well Control Rule.

74. On December 29, 2017, BSEE published a proposed rule to revise and rescind parts of the Production Safety Rule. 82 Fed. Reg. 61,703 (Dec. 29, 2017). As Plaintiffs, along with others, explained in comments on the proposed rule, the proposed changes would increase the risk of drilling safety system failures by removing requirements that ensure the systems will function effectively. Specifically, the proposed rule would eliminate inspection requirements and defers to industry guidance on system designs. *See id.* at 61,704.

75. BSEE finalized these changes to the Production Safety Rule in 2018. 83 Fed.

Reg. 49,216 (Sept. 28, 2018).

76. On May 11, 2018, BSEE published its proposed rule to rescind many of the safety measures—and revise others—it had enacted through the Well Control Rule. 83 Fed. Reg. 22,128 (May 11, 2018). Most critically, BSEE proposed to: (1) eliminate requirements to obtain regulator approval before taking certain higher-risk, alternative drilling actions; (2) eliminate required improvements to blowout preventers (the primary piece of equipment that failed in the *Deepwater Horizon* disaster); (3) remove requirements to monitor wells in real-time to detect potential problems; (4) eliminate required independent certifications that certain equipment will function properly; and (5) eliminate or revise the requirement to ensure that well pressures are kept at a commonly accepted safe level. *See id.* at 22,132–42.

77. BSEE submitted its final rule revising the Well Control Rule to the Office of Management and Budget for review on December 13, 2018. BSEE published a final rule on May 15, 2019, repealing or substantially revising many of the 2016 Well Control Rule's important provisions: 71 in all. 84 Fed. Reg. 21,908 (May 15, 2019).

78. The safety measures that BSEE has rescinded or revised in the Well Control Rule are critically important for preventing spills, reducing the impacts of spills that may occur, and protecting worker safety.

79. BOEM has repeatedly recognized that reducing regulatory oversight of offshore drilling makes both losses of well control and catastrophic oil spills more likely.

IV. NEW POLICIES TO INCREASE OFFSHORE OIL AND GAS DEVELOPMENT

80. Against this backdrop, Interior has begun to execute an unprecedented oil and gas leasing program in the Gulf of Mexico.

81. Prior to 2017, Interior had never held a lease sale encompassing the entire Gulf of Mexico (excepting the area subject to a Congressional moratorium). Rather, it held separate

lease sales for the three discrete planning areas of the Gulf: the Western, Central, and Eastern Planning Areas.

82. The Western Planning Area extends offshore from the Texas-Louisiana border to the Mexico border. The Central Planning Area extends offshore from the Texas-Louisiana border to the Alabama-Florida border. The Eastern Planning Area covers Gulf waters offshore of Florida eastward of the state's border with Alabama. Most of the Eastern Planning Area is presently subject to a Congressional moratorium on new leasing from 2006–2022.

83. Interior changed its leasing approach on March 16, 2016, when it published a proposed five-year leasing program for 2017–2022 that would offer essentially all unleased acres in the Central and Western Planning Areas, as well as the portion of the Eastern Planning Area not subject to a Congressional moratorium for lease in each of ten lease sales: two per year. *See* 81 Fed. Reg. 14,881 (Mar. 16, 2016). Increasing the supply of available acreage in each lease sale has the effect of reducing the competition among oil companies for the leases, which consequently drives down bid prices and enables companies to acquire broader swaths of oil and gas leases.

84. Interior also took action to boost offshore oil and gas production on July 6, 2017, when it announced it was reducing the royalty rate that companies pay the federal treasury for oil and gas extracted from leases in shallow waters (<200 meters) from 18.75% to 12.5%, effective beginning with Gulf of Mexico Offshore Lease Sale 249. The purpose of the reduction was to encourage additional oil and gas leasing and development in shallow Gulf waters, where exploration and development had been in decline.

V. NEPA PROCESS FOR GULF OF MEXICO OIL AND GAS LEASING

85. During the multi-stage process leading up to Lease Sales 252, 253, and 254, BOEM prepared three separate EISs to evaluate both the 2017–2022 Program and the Gulf of

Mexico lease sales under that program: a programmatic EIS on the nationwide 2017–2022 Program, a programmatic EIS on the Gulf of Mexico lease sales under the Program, and a 2018 supplemental EIS on the effects of a proposed lease sale. BOEM relied on the 2018 Supplemental Lease Sale EIS in reaching its decisions to hold Lease Sales 252, 253, and 254, which in turn tiered to and incorporated by reference the two programmatic EISs.

86. A number of conservation groups, including Plaintiffs, filed comments with BOEM on all three EISs during the public comment periods. These comments highlighted BOEM's failure to fully disclose, evaluate, or consider numerous factors, and detailed serious problems with the agency's analyses and consideration of available mitigation for the myriad environmental harms caused by oil and gas development.

1. Programmatic EIS for the 2017–2022 Program

87. BOEM released a draft programmatic EIS on the 2017–2022 Program on March 18, 2016. *See* 81 Fed. Reg. 14,885 (Mar. 18, 2016). The EIS's stated purpose was to assess at a general level the effects of activities that could occur under leases issued pursuant to the Program, including exploration, development, and production activities.

88. BOEM finalized the programmatic EIS for the 2017–2022 Program [hereinafter 5-Year Program EIS] in late 2016. *See* 81 Fed. Reg. 83,870 (Nov. 22, 2016).

89. On January 17, 2017, the Secretary of the Interior approved the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program, which provided for ten region-wide lease sales in the Central and Western Planning Areas in the Gulf of Mexico, as well as the portion of the Eastern Planning Area in the Gulf not subject to a Congressional moratorium, and issued a Record of Decision for the 5-Year Program EIS. *See* 82 Fed. Reg. 6643 (Jan. 19, 2017).

2. Programmatic EIS for Gulf of Mexico 2017–2022 Leasing

90. On April 22, 2016, BOEM provided notice of availability of a draft programmatic

EIS purporting to evaluate the environmental effects of a single given lease sale in the Gulf of Mexico under the 2017–2022 Program. 81 Fed. Reg. 23,747 (Apr. 22, 2016). The stated purpose of this draft programmatic EIS was to assess at a general level the effects of activities likely to occur on leases executed in a single given lease sale in the Gulf pursuant to the 2017–2022 Program under certain oil and gas price and demand scenarios, including exploration, development, and production activities. The EIS did not assess the combined effects of all ten proposed lease sales.

91. On March 10, 2017, BOEM published notice of availability of the final programmatic EIS on the environmental effects of a single given lease sale planned for the Gulf of Mexico in 2017–2022 [hereinafter Gulf Program EIS]. 82 Fed. Reg. 13,363 (Mar. 10, 2017).

3. 2018 Supplemental EIS

92. On August 19, 2016, BOEM published a notice of intent to prepare a supplemental EIS to "focus on new information released since the publication" of the Gulf Program EIS. 81 Fed. Reg. 55,480 (Aug. 19, 2016).

93. On March 31, 2017, BOEM published notice of availability of a draft supplemental EIS. 82 Fed. Reg. 16,060 (Mar. 31, 2017). The draft supplemental EIS stated that it analyzed the effects of a single region-wide lease sale under the 2017–2022 Program, and was intended to tier from and update the 5-Year Program EIS and Gulf Program EIS. The stated purpose of the draft supplemental EIS was to assess the effects of activities likely to occur on leases executed in a single given lease sale, including broadly the effects of exploration, development, and production activities.

94. BOEM accepted public comments on the draft EIS through May 15, 2017.

95. On December 15, 2017, BOEM announced the availability of the final supplemental EIS [hereinafter Lease Sale EIS]. 82 Fed. Reg. 59,644 (Dec. 15, 2017).

VI. BOEM'S DECISIONS TO HOLD OFFSHORE LEASE SALES 252, 253, AND 254

96. On September 27, 2018, BOEM announced the availability of the Proposed Notice of Sale for Lease Sale 252 in the Gulf of Mexico. 83 Fed. Reg. 48,863 (Sept. 27, 2018). On March 14, 2019, BOEM announced the availability of the Proposed Notice of Sale for Lease Sale 253 in the Gulf. 84 Fed. Reg. 9374 (March 14, 2019). On October 8, 2019, BOEM announced the availability of the Proposed Notice of Sale for Lease Sale 254 in the Gulf. 84 Fed. Reg. 53,748 (Oct. 8, 2019). All three notices proposed to offer for lease nearly all unleased blocks in the Western and Central Planning Areas, as well as additional unleased blocks in the Eastern Planning Area not subject to Congressional moratorium.

97. The Proposed Notices of Sale announced a royalty rate of 12.5% for leases situated in water depths less than 200 meters and 18.75% for leases situated in water depths of 200 meters and deeper.

98. BOEM did not provide any opportunity for public comment or participation after it issued its Proposed Notices of Lease Sale.

99. On January 30, 2019, Defendant Assistant Secretary of the Interior for Land and Minerals Management—at the time, Joseph Balash—signed a Record of Decision to hold Lease Sale 252 on March 20, 2019, as proposed, relying on the flawed analyses in the Lease Sale EIS. *See* 84 Fed. Reg. 4531 (Feb. 15, 2019). On July 1, 2019, Joseph Balash signed a Record of Decision to hold Lease Sale 253 on August 21, 2019, as proposed, also relying on the flawed analyses in the Lease Sale EIS. *See* 84 Fed. Reg. 34,935 (July 19, 2019). And, on January 30, 2020, Defendant Acting Assistant Secretary of the Interior for Land and Minerals Management—at the time, Casey Hammond—signed a Record of Decision to hold Lease Sale 254 on March 18, 2020, as proposed, also relying on the flawed analyses in the Lease Sale EIS. *See* 85 Fed. Reg. 8017 (Feb. 12, 2020).

100. The Records of Decision relied on BOEM's analysis of the environmental effects of holding Lease Sales 252, 253, and 254 in the Lease Sale EIS, which in turn tiered from and incorporated by reference the 5-Year Program EIS and Gulf Program EIS.

101. On February 15, 2019, BOEM published a Final Notice of Sale for Lease Sale 252 to hold the sale according to the terms proposed in the Proposed Notice of Sale. 84 Fed. Reg. 4525 (Feb. 15, 2019). The area made available for lease was approximately 78.4 million acres. Likewise, BOEM published a Final Notice of Sale for Lease Sale 253 on July 19, 2019, making available approximately 78.7 million acres, making it the largest oil and gas lease sale in U.S. history. 84 Fed. Reg. 34,937 (July 19, 2019). BOEM similarly published a Final Notice of Sale for Lease Sale 254 on February 12, 2020, offering for sale approximately 78.1 million acres. 85 Fed. Reg. 8010 (Feb. 12, 2020).

102. The 12.5% shallow-water royalty rate and proposed weakened safety measures will apply to oil and gas operations conducted under leases purchased in Lease Sales 252, 253, and 254.

103. Lease Sales 252, 253, and 254 are the third, fourth, and fifth lease sales BOEM is holding that rely on the flawed Lease Sale EIS. On July 16, 2018, Plaintiffs filed litigation challenging the two lease sales BOEM held in 2018 (Offshore Lease Sales 250 and 251) that also relied on that EIS.

VII. BOEM'S ARBITRARY AND CAPRICIOUS ANALYSES OF THE ENVIRONMENTAL EFFECTS OF LEASE SALES 252, 253, AND 254

104. Several analyses in the three, tiered EISs are based on incorrect and illogical assumptions, fatally undermining the analyses and causing BOEM to significantly underestimate and otherwise misjudge and misstate the effects that a lease sale in the Gulf of Mexico will have on the human and natural environment.

105. It is critical that BOEM accurately assess the effects of oil and gas exploration, development, and production likely to result from a lease sale at the lease sale stage because that is the last opportunity the agency has to adjust the number or locations of blocks it offers for lease to avoid unacceptable environmental impacts. *See, e.g.*, 81 Fed. Reg. at 55,480 ("During the pre-lease sale process, the size of any individual lease sale could be reduced, and a smaller area offered for leasing, should circumstances warrant.").

A. Flawed Assessments and Misleading Disclosures Regarding the Risks of Accidental Events

106. BOEM's assessments and disclosures of the risks of blowouts, catastrophic oil spills, and losses of well control, as well as other accidental events that could affect the environment in the three EISs are fatally flawed and misleading due to BOEM's incorrect assumptions regarding critical safety measures.

1. Irrational Reliance on Outdated Regulations

107. BOEM relied substantially on safety measures previously enacted through the Production Safety Rule and Well Control Rule when assessing and disclosing the risks of blowouts, catastrophic oil spills, and losses of well control in each of the EISs.

108. In the 5-Year Program EIS, BOEM stated that a catastrophic oil spill was not expected to occur as a result of leasing activities. BOEM explained that "[r]ecently implemented safeguards, including [new blowout preventer and well safety requirements], and additional regulatory oversight make [a significant loss of well control and oil spill] less likely than in the past."

109. In the Gulf Program EIS, BOEM concluded that blowouts and losses of well control are rare and of short duration and that blowouts resulting in catastrophic oil spills are not reasonably foreseeable. BOEM cited the Well Control Rule's safety measures in its discussion

of the likelihood of blowouts and losses of well control.

110. BOEM also concluded in the Lease Sale EIS that blowouts and losses of well control are rare and of short duration and that blowouts resulting in catastrophic oil spills are not reasonably foreseeable. In its response to comments on its analysis of blowout and oil spill risks in the Lease Sale EIS, BOEM stated that the Well Control Rule "decrease[s] the probability" of those risks.

111. In both the Gulf Program EIS and Lease Sale EIS, BOEM noted "reforms" implemented since the *Deepwater Horizon* disaster when discussing the allegedly low risks of blowouts, large oil spills, and losses of well control. The sources BOEM cited for detail on these "reforms" list both the Production Safety Rule and Well Control Rule as significant measures to reduce risks of accidental events from oil and gas activities.

112. BOEM's reliance on the Production Safety Rule and Well Control Rule led it to conclude in each EIS that blowouts and losses of well control are rare and not reasonably foreseeable or likely to occur as a result of a lease sale.

113. In the three EISs, BOEM did not consider how the proposed revisions to the Production Safety Rule and Well Control Rule would affect the environmental risks from the oil and gas activity expected to occur under a lease sale.

114. Plaintiffs submitted comments on the draft Lease Sale EIS stating that BOEM must consider how planned rollbacks of the Production Safety Rule and Well Control Rule will affect risks to the environment. BOEM stated in its response to comments in the Lease Sale EIS that it was aware of the Secretary's concurrent review of and plan to repeal or revise the Production Safety Rule and Well Control Rule but did not consider those planned rescissions when considering, assessing, or disclosing drilling risks.

115. By December 2017, BSEE had drafted and submitted to the Office of Management and Budget for review proposed rules to substantially revise and rescind parts of the Production Safety Rule and Well Control Rule.

116. The revisions and rescissions of those rules' safety provisions were identified proposals and were reasonably foreseeable actions when BOEM finalized the Lease Sale EIS.

117. Because the Secretary has ultimate responsibility for all actions taken under OCSLA and because BOEM and BSEE both act under the Secretary's delegated OCSLA authority, BOEM knew or should have known that BSEE was substantially revising and rescinding the two safety rules when it finalized the Lease Sale EIS.

118. BSEE's proposals to substantially revise and rescind important safety measures in the Production Safety Rule and Well Control Rule fatally undermine BOEM's assumptions and disclosures in the three EISs regarding the risks of blowouts, catastrophic oil spills, and losses of well control. As a result, BOEM's disclosures of these risks are arbitrary and misleading.

119. BSEE's proposals to substantially revise and rescind important safety measures in the Production Safety Rule and Well Control Rule fatally undermine BOEM's assumptions in the three EISs that the two rules will significantly reduce the risks of blowouts, catastrophic oil spills, and losses of well control. As a result, BOEM's assessments of these risks are arbitrary and capricious.

120. In the Records of Decision for Lease Sales 252, 253, and 254, Interior acknowledged that it did not consider, assess, or disclose the revisions of the Production Safety Rule and Well Control Rule in any of the three EISs. However, Interior asserted that BOEM's previous assessment of the environmental effects of the proposed lease sales remains valid because BOEM agreed with BSEE's statements in the environmental assessments for the

proposed Production Safety Rule and Well Control Rule revisions that the revisions would not change environmental risks. BOEM did not independently assess whether BSEE's statements are accurate or reasonable.

121. Interior signed the Records of Decision for Lease Sales 252, 253, and 254 after BSEE finalized changes to the Production Safety Rule in September 2018.

122. Likewise, Joseph Balash signed the Record of Decision for Lease Sale 252 after BSEE had taken public comment on its proposed Well Control Rule revisions and submitted the final revisions to the Office of Management and Budget in December 2018. And, officials at Interior signed the Records of Decision for Lease Sales 253 and 254 after BSEE finalized changes to the Well Control Rule in May 2019.

123. The revisions and rescissions of those rules' safety provisions constituted significant new information relevant to the environmental impacts of the Lease Sales.

124. BOEM did not supplement its Lease Sale EIS to account for the finalized revisions to the Production Safety and Well Control Rules.

125. BOEM held Lease Sales 252, 253, and 254, relying on the outdated Lease Sale EIS that does not account for the significant safety changes that increase the chances of a catastrophic spill in the Gulf.

2. Irrational Reliance on Presumed Enforcement of Safety Regulations

126. In each of the three EISs, BOEM relied substantially on the implementation and enforcement of all of Interior's offshore safety regulations when assessing and disclosing the risks of accidental events, like oil spills, on the environment. BOEM specifically cited BSEE's enforcement of the safety regulations when discussing accidental events in each EIS.

127. A February 2016 Government Accountability Office ("GAO") report found that BSEE was not adequately enforcing its safety regulations.

128. Commenters on all three EISs, including Plaintiffs, asked BOEM to consider and analyze whether the GAO report undermined BOEM's assumptions in the EISs that Interior's safety regulations would be effective.

129. BOEM never did so. In the 5-Year Program EIS, BOEM stated that it would consider the GAO report's findings at the lease sale stage. But in the Gulf Program EIS and Lease Sale EIS, BOEM stated it would not consider the GAO report's findings at the lease sale stage.

130. BOEM's failure to consider or analyze the findings in the GAO report on BSEE's inadequate enforcement of its safety regulations fatally undermines BOEM's assumptions and disclosures in the three EISs that safety regulations would be implemented adequately and effectively reduce the risks and occurrences of accidental harms to the environment.

B. BOEM's Failure to Incorporate Effects of the Royalty Rate Reduction into its Forecasts of Oil and Gas Exploration, Development, and Production Activities

131. BOEM used an incorrect royalty rate in the Lease Sale EIS to forecast the levels of oil and gas exploration, development, and production activities likely to result from a lease sale, leading to a significant underestimate of those levels and, accordingly, the environmental effects of the sale.

132. To assess the likely effects of a lease sale in the Gulf of Mexico, BOEM first had to identify the potential oil and gas exploration, development, and production activities that would occur as a result of the lease sales and forecast the levels of those activities.

133. BOEM characterized each of the different types of activity or process that could occur as a result of the lease sales as an "impact-producing factor." BOEM uses "impact-producing factor" as a term of art and defines it to mean "an activity or process, as a result of a proposed lease sales, that could cause impacts on the environmental or socioeconomic setting."

Impact-producing factors, as defined by BOEM, include activities or processes that are routine (*e.g.*, drilling a well or operating a pipeline), as well as those that are accidental or unexpected (*e.g.*, an oil spill, spill response, or vessel collision).

134. BOEM created different "scenarios" of activity levels for all impact-producing factors that could result from a lease sale depending on a number of elements, including, specifically, the price of oil, the cost of development, and "factors that influence oil and gas product-price." BOEM forecast the activity levels that could occur under different scenarios by varying the values of the elements used in the forecast; for example, by using a higher or lower price of oil. BOEM evaluated a "low activity scenario" and a "high activity scenario" for each of the action alternatives. In turn, BOEM used those scenarios to evaluate the context and intensity of the sale's environmental impacts. A greater level of an impact-producing factor by definition will result in a greater magnitude of environmental impacts from that factor.

135. A significant cost of development is the royalty rate a lessee must pay the federal treasury for extracted oil or gas. A lower royalty rate reduces the cost of development. A lower cost of development increases the amount of oil and gas exploration, discovery, development, and production activities ("oil and gas activity") expected to occur and therefore the levels of the impact-producing factors.

136. The royalty rate also influences the oil and gas product-price. Cost savings due to a lower royalty rate can be passed on to the consumer, resulting in a lower product-price. A lower product-price will result in higher oil and gas demand, thereby increasing the amount of oil and gas activity expected to occur and, consequently, the levels of the impact-producing factors.

137. When BOEM published its draft Lease Sale EIS in March 2016, the royalty rate for leases in less than 200 meters of water was 18.75%.

138. BOEM assumed a royalty rate of 18.75% for leases in less than 200 meters of water when it calculated the cost of development and the factors influencing oil and gas product-price in its forecasts of oil and gas activity expected to occur and the associated levels of impact-producing factors in the draft Lease Sale EIS and the two programmatic EISs.

139. On July 6, 2017, BOEM announced it was reducing the royalty rate for leases in less than 200 meters of water from 18.75% to 12.5%. The royalty rate decrease reduced the cost of development and increased the marginal rate of return for leases in waters less than 200 meters. Indeed, BOEM decreased the royalty rate with the express intent to spur increased exploration, development, and production in waters less than 200 meters by reducing the cost to lessees of development and thereby increasing the marginal rate of return.

140. The royalty rate reduction therefore considerably modified at least two of the primary factors BOEM used to forecast levels of impact-producing factors expected to occur: the cost of development and the oil and gas product-price.

141. BOEM's forecast of the levels of impact-producing factors expected to occur did not change between the draft Lease Sale EIS and final Lease Sale EIS. BOEM therefore did not incorporate the new 12.5% royalty rate for leases in less than 200 meters of water into its forecasts of the levels of impact-producing factors expected to occur in the Lease Sale EIS. Rather, the final Lease Sale EIS assumed the outdated 18.75% royalty rate still applied.

142. In its Records of Decision for Lease Sales 252, 253, and 254, Interior acknowledged that BOEM assumed a royalty rate of 18.75% for leases in less than 200 meters when it "modeled the range of anticipated oil and natural gas production volumes and associate levels of exploration, development, and decommissioning activity" in the three EISs. Interior asserted—without further explanation or evidence—that at some time after issuance of the EIS,

BOEM had "reanalyzed" the expected activity from Lease Sales 252, 253, and 254 under the reduced royalty rate and concluded the activity under the lower royalty rate was within the range of its original analyses in the three EISs.

143. BOEM's failure to incorporate the lower royalty rate into its forecast in the Lease Sale EIS of oil and gas activity and the associated levels of impact-producing factors expected to occur caused it to significantly underestimate the degrees of exploration, development, production, and other impact-producing factors likely to occur from leases in less than 200 meters of water. The underestimate of oil and gas activity and levels of impact-producing factors expected to occur prevented BOEM from accurately assessing in the Lease Sale EIS the environmental effects likely to result from a proposed lease sale, and led BOEM to significantly underestimate and misstate in the Lease Sale EIS the environmental effects from activities under leases sold in less than 200 meters of water.

C. BOEM's Arbitrary and Inconsistent Assumptions that Cancelling Lease Sales 252, 253, and 254 Would Have the Same Environmental Effects as Holding the Sales

144. BOEM purported to assess the environmental effects of not holding a proposed lease sale in the Gulf (i.e., a "no action alternative") in the Gulf Program EIS and Lease Sale EIS. BOEM paradoxically concluded that not holding the lease sales would result in essentially the same environmental effects as holding the lease sales.

145. BOEM did not rationally explain why the no action alternative would result in the same increase in environmental impacts as holding the lease sales.

146. Rather, BOEM irrationally speculated that, although the no action alternative would prevent new oil and gas activities, those activities would inevitably occur in the same manner and magnitude under an unspecified future lease sale. BOEM provided no rational support for the proposition that an unspecified lease sale would be held in the future and would

sell the same projected number of lease blocks as the proposed lease sales, or that the same manner and degree of impact-producing factors would result.

147. BOEM's assumptions of identical future impacts for its proposed lease sales and the no action alternative are particularly unreasonable given the expansive scope of the proposed lease sales. The Secretary's practice for nearly four decades had been to offer smaller, discrete portions of the Gulf of Mexico in each lease sale. Offering essentially all unleased acres in the Western and Central Planning Areas is the exception to the rule. BOEM cannot rationally assume this deviation from the typical leasing practice will become the established regime in future five-year programs and thus result in the same leases and effects occurring if the proposed lease sales were not held.

148. BOEM's assumptions of identical future impacts also are particularly unreasonable given the highly volatile nature of oil and gas supply and demand over time. For example, lower oil and gas demand or increased supply from elsewhere in the future would result in lower industry interest in purchasing leases in the Gulf of Mexico. BOEM cannot rationally assume industry will have the same demand for and acquire the same offshore leases in the future when U.S. and worldwide supply and demand and prices for oil and gas will be different.

149. BOEM's assumptions of identical future impacts also are particularly unreasonable given advances in drilling technology and geologic information over time. For example, there is significantly more industry interest in deepwater tracts now than there was several years ago, resulting in significantly different patterns of lease bidding and, subsequently, risks and effects from development of those leases. BOEM cannot rationally assume industry will seek to lease in the future the same areas it projects for leasing in 2019 and 2020, as opposed to seeking deepwater leases at a higher rate.

150. BOEM's conclusion that the no action alternative and proposed lease sales would have the same environmental effects also is irreconcilably inconsistent with its conclusions about the amount of oil and gas exploration, development, and production activities that would result from the two alternatives.

151. BOEM concluded that selecting the no action alternative would prevent any new oil and gas activities in the areas that would be offered for lease under the proposed lease sales. Conversely, BOEM forecasted that holding a single lease sale in the Gulf in 2019 or 2020 would substantially increase the amount of oil and gas exploration, development, and production in the area. For example, BOEM projected that a single lease sale would result in between 53 and 984 new exploration and delineation wells, between 61 and 767 new development and production wells, and between 355 and 2,144 kilometers of new pipelines. BOEM did not explain how drilling hundreds of new wells and installing supporting infrastructure on the one hand will have the same environmental effects as preventing these activities on the other hand.

152. BOEM's faulty assumption that the same effects would occur under the no action alternative as under the proposed lease sales created an improper standard against which to compare the expected effects of the proposed lease sales, as required by NEPA. *See* 46 Fed. Reg. at 18,027. This faulty assumption prevented BOEM from accurately assessing the environmental effects likely to result from the proposed lease sales. BOEM's equation of the effects of the proposed lease sales with those of the no action alternative caused it to significantly underestimate and undervalue the environmental effects of the proposed lease sales and violates its duty to take a hard look at the environmental effects of the action and alternatives to that action.

CLAIMS FOR RELIEF

First Cause of Action

Violation of NEPA and APA: Failure to Take a Hard Look at the Effects of the Action Using Accurate Assumptions

153. The allegations made in paragraphs 1–152 are realleged and incorporated by this reference.

154. The Records of Decision for Lease Sales 252, 253, and 254 are final agency actions for which there is no other adequate remedy in a court. *See* 5 U.S.C. § 704.

155. BOEM was required to complete an EIS prior to reaching its decisions to hold Lease Sales 252, 253, and 254. 42 U.S.C. § 4332(2)(C); *see Sec'y of the Interior v. California*, 464 U.S. 312, 338 (1984); *Native Vill. of Point Hope v. Jewell*, 740 F.3d 489, 494 (9th Cir. 2014).

156. NEPA requires that BOEM take a "hard look" at the environmental consequences of its actions in its EIS before action is taken. *Pub. Emps. for Envtl. Responsibility v. Hopper*, 827 F.3d 1077, 1082 (D.C. Cir. 2016). NEPA and its implementing regulations require BOEM to assess the environmental impacts of the proposed action, including direct, indirect, and cumulative effects, which are reasonably foreseeable in its EIS. 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1502, 1508.7, 1508.8; *see also Point Hope*, 740 F.3d at 494. NEPA and its implementing regulations further require BOEM to use high quality, accurate scientific information in its EIS and to ensure the scientific integrity of this analysis. 40 C.F.R. § 1500.1(b); *see also* 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.24.

157. NEPA requires BOEM to disclose and analyze an action's environmental effects in an EIS; the agency may not conduct post-EIS analysis to support its conclusions.

158. The presentation of incomplete or misleading information in an EIS violates

NEPA.

159. BOEM relied on the Lease Sale EIS in reaching its decisions to hold Lease Sales 252, 253, and 254, which in turn tiered to and incorporated by reference the 5-Year Program EIS and Gulf Program EIS.

160. BOEM based each of its analyses and conclusions about the environmental effects of Lease Sales 252, 253, and 254 in its Lease Sale EIS on the forecasted levels of oil and gas activity and other impact-producing factors likely to result from the sale under various scenarios.

161. BOEM's forecasts in the Lease Sale EIS of the levels of oil and gas activity and other impact-producing factors likely to result from Lease Sales 252, 253, and 254 and the resulting environmental effects were based on the incorrect and unsubstantiated assumptions that the Well Control Rule and Production Safety Rule would remain in place and apply to operations under leases executed pursuant to Lease Sales 252, 253, and 254, that BSEE had and would continue to vigorously enforce Interior's safety regulations, that the royalty rate for leases in less than 200 meters of water would remain at 18.75%.

162. The flaws in the scenarios BOEM analyzed in the Lease Sale EIS caused BOEM to underestimate and understate the potential impacts of the lease sales to the environment and wildlife of the Gulf of Mexico and to the communities of the Gulf States that rely on the economic benefits from Gulf ecosystems. The EIS is thus misleading or incomplete.

163. Interior may not rely on subsequent statements presented for the first time in the Records of Decision for Lease Sales 252, 253, and 254 to cure the flaws in BOEM's NEPA analyses and the Lease Sale EIS. The information and rationalizations that Interior presented in the Records of Decision for Lease Sales 252, 253, and 254 do not provide the necessary support to sustain BOEM's flawed NEPA review or the Lease Sale EIS.

164. BOEM's reliance on unsubstantiated and incorrect assumptions in estimating the levels of oil and gas activity and other impact-producing factors expected to occur and environmental effects likely to result from Lease Sales 252, 253, and 254 violates its duties to use "[a]ccurate scientific analysis" and "high quality" information and to take a hard look at the environmental effects of its actions, in violation of NEPA and its implementing regulations, and is arbitrary and capricious, in violation of the APA. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.1(b), 1502.24.

165. BOEM's reliance on unsubstantiated and incorrect assumptions regarding safety measures makes its disclosures in the three EISs regarding the risks of blowouts, catastrophic oil spills, and losses of well control arbitrary and misleading, in violation of NEPA and its implementing regulations, and is arbitrary and capricious, in violation of the APA. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.1(b), 1502.24.

166. By relying on tiered EISs that fail to meet the requirements of NEPA, its implementing regulations, and governing precedent to support its decisions to hold Lease Sales 252, 253, and 254, Interior's Records of Decision are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and without observance of procedures required by law, in violation of NEPA, 42 U.S.C. § 4332, its implementing regulations, and the APA, 5 U.S.C. §§ 701–706.

167. These actions have harmed Plaintiffs, and Plaintiffs have no adequate remedy at law.

Second Cause of Action

Violation of NEPA and APA: Failure to Consider a True No Action Alternative

168. The allegations made in paragraphs 1–167 are realleged and incorporated by this reference.

169. NEPA requires federal agencies, in discussing alternatives in the EIS to the proposed action, to consider the alternative of no action. 40 C.F.R. § 1502.14(d); *see* 42 U.S.C. § 4332(2)(C)(iii). The agency must compare the impacts of the proposed action with those of the no action alternative. *See* 46 Fed. Reg. at 18,027.

170. BOEM assumed that holding Lease Sales 252, 253, and 254 would cause a substantial amount of oil and gas exploration, development, and production in the Gulf of Mexico. BOEM assumed the no action alternative would prevent those new exploration, development, and production activities.

171. BOEM irrationally concluded, however, that the same environmental effects would occur under the no action alternative as under the decisions to hold Lease Sales 252, 253, and 254. BOEM's conclusion that the no action alternative and proposed lease sales will have the same environmental effects is irreconcilably inconsistent with its projection that the proposed lease sales will result in significantly more oil and gas activity than the no action alternative.

172. BOEM's assumption that the same effects and projected oil production would occur with or without the lease sales violates the requirements in NEPA and its implementing regulations to consider a true no action alternative. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14(d).

173. BOEM's comparison of the proposed action with a no action alternative that assumes the same environmental effects caused BOEM to irrationally and arbitrarily underestimate and otherwise inaccurately present the environmental effects from Lease Sales

252, 253, and 254, in violation of NEPA and its implementing regulations, and the APA. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14(d).

174. BOEM's inconsistent conclusions regarding effects of the action and no action alternatives violate its duties to use "[a]ccurate scientific analysis" and "high quality" information and to take a hard look at the environmental effects of its actions, in violation of NEPA and its implementing regulations, and is arbitrary and capricious, in violation of the APA. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.1(b), 1502.24.

175. By relying on EISs that fail to meet the standards laid out in NEPA, its implementing regulations, and governing precedent to support its decisions to hold Lease Sales 252, 253, and 254, Interior's Records of Decision are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and without observance of procedures required by law, in violation of NEPA, 42 U.S.C. § 4332, its implementing regulations, and the APA, 5 U.S.C. §§ 701–706.

176. These actions have harmed Plaintiffs, and Plaintiffs have no adequate remedy at law.

Third Cause of Action

Violation of NEPA and APA: Failure to Supplement EIS

177. The allegations made in paragraphs 1–176 are realleged and incorporated by this reference.

178. NEPA and its implementing regulations impose a continuing duty on agencies to prepare a supplemental EIS whenever "(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed

action or its impacts." 40 C.F.R. § 1502.9(c)(1)(i), (ii).

179. BOEM announced the availability of the final Lease Sale EIS on December 15, 2017.

180. In the development of the Lease Sale EIS, BOEM based its decisions on the incorrect and unsubstantiated assumption that the Well Control Rule and Production Safety Rule would remain in place and apply to operations under leases executed pursuant to Lease Sales 252, 253, and 254. This assumption caused BOEM to underestimate the potential impacts the lease sales would have on the environment and wildlife of the Gulf of Mexico and the communities of the Gulf States.

181. In September 2018, BSEE finalized changes to the 2016 Production Safety Rule. The changes increase the risk of drilling system failures by removing requirements that ensure oil and gas operation systems will function effectively. Interior signed the Records of Decision for Lease Sales 252, 253, and 254 after BSEE finalized revisions to the Production Safety Rule.

182. On December 13, 2019, BSEE submitted the final rule to the Office of Management and Budget rescinding and revising the 2016 Well Control Rule. BSEE published the final rule on May 15, 2019. The changes removed safety measures that are critically important for preventing oil spills, reducing the impacts of spills that may occur, and protecting worker safety.

183. On January 30, 2019, Interior signed the Record of Decision to hold Lease Sale 252, relying on the flawed EIS described above. Interior signed this Record of Decision after BSEE submitted the final rule rescinding and revising the 2016 Well Control Rule to the Office of Management and Budget. On July 1, 2019, Interior signed the Record of Decision for Lease Sale 253, and on January 30, 2020, Interior signed the Record of Decision for Lease Sale 254.

Interior signed both Records of Decision after BSEE finalized revisions to the Well Control Rule.

184. The changes to the Production Safety Rule and Well Control Rule constituted "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" because they significantly weakened or eliminated protections adopted to prevent large oil spills. Therefore, under NEPA's implementing regulations, Interior was required to develop a supplemental EIS prior to signing of the Records of Decision for Lease Sales 252, 253, and 254.

185. The APA authorizes reviewing courts to compel agency action unlawfully withheld and to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. §§ 701–706.

186. By failing to supplement its outdated EISs and continuing to rely on EISs that fail to meet the standards laid out in NEPA, its implementing regulations, and governing precedent to support its decisions to hold Lease Sales 252, 253, and 254, Interior has unlawfully withheld agency action and Interior's Records of Decision are arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedures required by law in violation of NEPA, 42 U.S.C. § 4332, and the APA, 5 U.S.C. §§ 701–706.

187. These actions have harmed Plaintiffs and Plaintiffs have no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that the EISs issued by BOEM in connection with holding Lease Sales 252, 253, and 254 are unlawful, in violation of NEPA and its implementing regulations and the APA;

2. Declare that Interior violated NEPA by failing to prepare a supplemental environmental impact statement that addresses the environmental impacts of its Records of Decision to hold Lease Sales 252, 253, and 254.

3. Declare that Interior's Records of Decision to hold Lease Sales 252, 253, and 254 violate NEPA and its implementing regulations, and are arbitrary and capricious and not in accordance with law in violation of the APA;

4. Vacate the Records of Decision to hold Lease Sales 252, 253, and 254;

5. Vacate or enjoin leases executed pursuant to Lease Sales 252, 253, and 254;

6. Enter any other appropriate injunctive relief to ensure that Defendants comply with NEPA and the APA, and to prevent irreparable harm to Plaintiffs and to the environment until such compliance occurs;

7. Award Plaintiffs their costs, reasonable attorneys' fees, and other expenses pursuant to 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 15th day of July, 2020.

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