UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS, *et al*. Plaintiffs, v. DAVID L. BERNHARDT, in his official capacity as Secretary of the Interior, *et al*. Federal Defendants, and WESTERN ENERGY ALLIANCE, *et al*. Intervenor Defendants.	Case No. 1:16-cv-1724-RC The Honorable Rudolph Contreras

FEDERAL DEFENDANTS' OPPOSITION TO MOTION TO ENFORCE MARCH 19, 2019 REMAND ORDER

The Court should deny Plaintiffs' motion, ECF No. 109, asking the Court to enforce the remedial order in its March 19, 2019 Memorandum Opinion, ECF No. 99 at 60 ("Order"), because Federal Defendants have already fully complied the Court's instructions in the Order. Specifically, the Order remanded the National Environmental Policy Act ("NEPA") compliance documentation – that is, nine Environmental Assessments and nine Findings of No Significant Impact – prepared by the Bureau of Land Management ("BLM") for the Wyoming oil and gas leasing decisions challenged in this case. In addition to remanding the NEPA documentation, the Order provided that "[u]ntil BLM supplements those documents, it is enjoined from issuing [Applications for Permits to Drill ("APDs)"] or otherwise authorizing new oil and gas drilling on the Wyoming Leases." *Id*. at 60.

BLM has now completed the NEPA supplemental process by issuing a supplemental NEPA analysis and a new decision record. *See* ECF No. 106 (May 7, 2019 notice of compliance). Despite this fact, Plaintiffs ask the Court to enforce the injunction and

> (1) order BLM to continue refraining from issuing new APDs until the Court determines whether BLM's remanded environmental analysis complies with NEPA; and (2) order the parties to again confer and file a joint status report containing a proposal or proposals for how the remand-stage of this case should proceed.

Although Plaintiffs' second request is actually unrelated to enforcement of the injunction, Federal Defendants do not object to conferring and endeavoring to reach agreement on a joint proposal as to how the case should proceed. But the Court should deny the first request because the remand order clearly limited the injunctive relief to the time period preceding completion of supplemental NEPA analysis.

ARGUMENT

On a motion to enforce a remedial order, a court reviews an agency's conduct in response to its order "for contrariness 'to either the letter or spirit of the mandate' in the original case." *Coal Employment Project v. Dole*, 900 F.2d 367, 368 (D.C. Cir. 1990) (citing *Mid-Tex Electric Corp. v. FERC*, 822 F.2d 1123, 1130 (D.C. Cir. 1987)). A court should look to the text of the order to determine its scope and effect. *See Cleveland v. Federal Power Comm'n*, 561 F.2d 344, 346-47 (D.C. Cir. 1977) ("Our mission thus becomes definition of the exploratory obligation which our mandate laid upon the [agency], and for guidance we refer to our previous opinion."). Consequently, the text of the Court's March 2019 injunction must guide the Court's consideration of Plaintiffs' motion and of BLM's conduct in complying with the order.

A review of the plain language of the injunction makes clear that a new order, enforcing the terms of the Court's prior order, is unnecessary because the injunction dissolved by its own terms when BLM completed its supplemental NEPA analysis. *See Doe v. Rumsfeld*, 172 F. App'x 327, 327–28 (D.C. Cir. 2006) (holding that the injunction in question, which prohibited sale of a certain drug "until FDA classifies [it] as safe and effective . . . for its intended use," dissolved when the agency so classified it). As in *Rumsfeld*, the terms of the injunction in this case are limited to an event certain, that is, BLM's completion of a supplemental NEPA analysis, which has already occurred. The Supreme Court has also recognized that injunctions may expire "by their own terms." *See Local No. 8-6, Oil, Chem. & Atomic Workers Int'l Union, AFL-CIO v. Missouri*, 361 U.S. 363, 366 (1960) (recognizing that the injunction at issue had dissolved when union members, who had been enjoined from continuing a strike, returned to work).

Plaintiffs in this case do not contend BLM violated the order by approving APDs prior to completion of supplemental NEPA analysis, nor do they contend BLM has approved any

APDs since completing this action. Rather, they essentially seek a modification of the order, extending the injunction for some unspecified period. The Court should deny the motion because the agency has completed its supplemental analysis and issued a new decision, reaffirming and supplanting its nine prior decisions based on the supplemental analysis (and other factors). That analysis, moreover, is entitled to a presumption of regularity, *see Indian River Cty., Fla. v. Dep't of Transportation*, 348 F. Supp. 3d 17, 55 (D.D.C. 2018) (citing *Sierra Club v. Costle*, 657 F.2d 298, 334 (D.C. Cir. 1984)); the new decision and analysis cannot be disturbed unless and until Plaintiffs successfully challenge them in a civil action. The motion should also be denied because Plaintiffs have not made the customary showing required for injunctive relief, including, for example, the required showing of likely irreparable injury to Plaintiffs' members. *See Winter v Nat. Res. Def. Council, Inc*., 555 U.S. 7, 22 (2008) (requiring movant to demonstrate that "irreparable injury is likely in the absence of an injunction").

For all these reasons, the Court should deny Plaintiffs' request for enforcement of its March 19 Order.

Respectfully submitted this 20th day of June, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, a copy of the foregoing notice was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ *John S. Most*
JOHN S. MOST