IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS; and PHYSICIANS FOR SOCIAL RESPONSIBILITY,

Plaintiffs,

v.

DAVID L. BERNHARDT, Secretary, U.S. Department of the Interior; CASEY HAMMOND, Acting Director, U.S. Bureau of Land Management; and U.S. BUREAU OF LAND MANAGEMENT,

Defendants,

and

WESTERN ENERGY ALLIANCE; PETROLEUM ASSOCIATION OF WYOMING; AMERICAN PETROLEUM INSTITUTE; STATE OF WYOMING; STATE OF COLORADO; and STATE OF UTAH,

Intervenor-Defendants.

No. 1:16-cv-01724-RC

INTERVENOR-DEFENDANT AMERICAN PETROLEUM INSTITUTE'S OPPOSITION TO MOTION TO ENFORCE

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Defendant-Intervenor American Petroleum Institute ("API") opposes the Plaintiffs' June 7, 2019 Motion to Enforce the Court's March 19, 2019 Memorandum Opinion and Order (Dkt. No. 109). As detailed in the Federal Defendants' June 20, 2019 Opposition to the Motion to Enforce (Dkt. No. 114), by the plain terms of the Court's March 19, 2019 Order (Dkt. No. 98), the injunction against the Bureau of Land Management's ("BLM") issuance of Applications for Permits to Drill ("APD") on the challenged Wyoming leases dissolved upon BLM's completion of its supplemental Environmental Assessment ("EA") of the challenged Wyoming lease sales under the National Environmental Policy Act ("NEPA"). *See* Fed. Defs.' Opp. at 2–3. API hereby incorporates the Federal Defendants' Opposition by reference, and offers further support for denying Plaintiffs' motion to enforce their stilted reading of the Court's injunction Order.

ARGUMENT

In granting Plaintiffs' motion for summary judgment in part, the Court issued an injunction providing: "Until BLM supplements" the EAs and Findings of No Significant Impact ("FONSI") considering the challenged Wyoming lease sales, "it is **ENJOINED** from issuing APDs or otherwise authorizing oil and gas drilling on the Wyoming Leases." March 19, 2019 Order at 2. Because the condition for dissolution of the injunction—supplementation of the NEPA documents—has occurred, the injunction has expired by its own terms. *See* Fed. Defs.' Opp. at 2–3.

Plaintiffs nevertheless contend that the injunction remains in effect "until Plaintiffs have an opportunity to address whether BLM fulfilled its NEPA obligations and the Court is satisfied those obligations have been met." Pls.' Mot. to Enforce at 10. Plaintiffs' expansive reading lacks any support in the plain terms of the Court's Order, and would result in an order that contravenes basic principles governing the issuance and scope of injunctions.

The scope of federal injunctive orders is governed by Federal Rule of Civil Procedure 65(d) ("Rule 65(d)"). Rule 65(d) provides that "[e]very order granting an injunction . . . must," *inter alia*, "state its terms specifically[,] and describe in reasonable detail . . . the act or acts restrained or required." Fed. R. Civ. P. 65(d). These "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." *Id*. Because an injunction "prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Id*. *See also*, *e.g.*, *Int'l Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967) ("Congress . . . require[s] that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.").

The Order's plain language includes no such notice that, as Plaintiffs contend, the injunction continues in effect until after the Plaintiffs address any supposed deficiencies in BLM's supplemental EA on the challenged Wyoming lease sales, and the Court determines that the supplementation satisfies NEPA. At best, Plaintiffs' Motion to Enforce presupposes ambiguity in the Order's phrasing. But the "exacting requirements of Rule 65(d) of the Federal Rules of Civil Procedure" are not satisfied even if, as the Plaintiffs' argument mistakenly supposes, "[t]he phrase is susceptible to more than one interpretation." *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 926–27 (D.C. Cir. 1982).

To be sure, "the context of the litigation" may further inform the stated scope of an injunction. *Id*. at 927. Here, however, the "circumstances surrounding (the injunction's) entry," *id*. (quotation omitted), do not support the expansive scope assigned by the Plaintiffs.

While the Court's summary judgment Opinion noted that "[a]fter BLM's work on remand, Plaintiffs may again address whether BLM fulfilled its NEPA obligations," March 19, 2019 Opinion (Dkt. No. 99), at 60; *see also* Pls.' Mot. to Enforce at 2, the Opinion does not specify how or when Plaintiffs could "address" BLM's supplemental NEPA documentation—*e.g.*, filing an amended complaint, or filing a related lawsuit—let alone the impact upon the injunction of Plaintiffs' discretionary ability generally to consider BLM's supplementation after the fact. At the time the Order issued, neither the Court, nor BLM, nor Plaintiffs could have known whether the Plaintiffs would challenge BLM's supplemental NEPA documentation. Indeed, the Court made clear "the serious possibility that BLM may be able to substantiate the conclusions drawn in its [Wyoming lease sale] EAs and FONSIs" on remand. *Id*. at 59. The "circumstances surrounding (the injunction's) entry," *Common Cause*, 674 F.2d at 927, thus further belie Plaintiffs' expansive reading of the injunctive Order by precluding the certainty that Rule 65(d) promises to BLM as the enjoined party.

Moreover, Plaintiffs' claims and summary judgment motion focused on the adequacy under NEPA of the original nine EAs and FONSIs associated with the challenged Wyoming lease sales. The adequacy of BLM's separate, supplemental EA is outside the arguments made to, and the conclusions by, the Court on summary judgment. While Plaintiffs may wish—through further pleadings—to attempt to extend the Court's reasoning beyond its original application to the record in existence on summary judgment, they cannot so extend the injunctive Order, because "[t]he law requires that courts closely tailor injunctions to the harm that they address." *ALPO Petfoods, Inc. v. Ralston Purina Co.*, 913 F.2d 958, 972 (D.C. Cir. 1990); *see also Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.*, 188 F. Supp.

3d 22, 118–20 (D.D.C. 2016) (tailoring injunction "to the specific markets" where the court found trademark infringement).

Viewed as a whole, the plain language and litigation context of the Court's March 19, 2019 Order imposed an injunction upon BLM until the agency completed its supplemental NEPA process on remand. Because that remand process has concluded, the injunction has dissolved. Plaintiffs' arguments to the contrary would both extend the Order beyond its terms, and contravene basic principles governing the scope of injunctive orders for the protection of the party enjoined.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Federal Defendants' Opposition, the Plaintiffs' Motion to Enforce should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2019, I caused a true and correct copy of the foregoing to be filed with the Court electronically via the CM/ECF system, which will serve the foregoing by electronic means on all counsel of record in this case.

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