

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

WILDEARTH GUARDIANS; and  
PHYSICIANS FOR SOCIAL  
RESPONSIBILITY,

Plaintiffs,

v.

DAVID BERNHARDT; WILLIAM PERRY  
PENDLEY; and U.S. BUREAU OF LAND  
MANAGEMENT,

Defendants,

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

Intervenor-Defendants.

No. 1:16-cv-01724-RC

**AMERICAN PETROLEUM INSTITUTE’S RESPONSE TO PLAINTIFFS’ NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Intervenor-Defendant American Petroleum Institute (“API”) hereby responds to Plaintiffs WildEarth Guardians’ and Physicians for Social Responsibility’s (collectively, “Plaintiffs”) Notice of Supplemental Authority (Dkt. No. 163). Plaintiffs’ notice of the Northern District of California’s recent decision in *State of California, et al. v. Bernhardt, et al.*, No. 4:18-cv-05712-YGR (N.D. Cal. July 15, 2020), lends no support to Plaintiffs’ argument that Federal

Defendants' Supplemental Environmental Assessment ("SEA") inadequately considered the potential cumulative impacts of the challenged oil and gas lease sales.<sup>1</sup>

*State of California* largely relies on this Court's prior explication of the National Environment Policy Act's ("NEPA") requirement to consider cumulative impacts. *See* Pls.' Notice, Exh. 1 at 48–49; *see also WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 75–77 (D.D.C. 2019). The SEA, however, complied fully with this Court's decision by quantifying the potential direct and indirect greenhouse gas ("GHG") emissions arising from future development of issued leases, and then detailing cumulative impacts by placing the challenged leases' potential future GHG emissions in their state, regional, and national context, including "as a percentage of state-wide and nation-wide emissions," which this Court found "a permissible and adequate approach." API Reply In Support of Cross-Mot. for Summ. J. (Dkt. No. 160), at 15 (quoting *WildEarth*, 368 F. Supp. 3d at 79). *See also id.* at 14–18; API Mem. in Opposition to Pls.' Mot. for Summ. J. (Dkt. No. 151), at 15–17, 28–30.

Moreover, the *State of California* decision involved a rulemaking with nationwide effect, *see* Pls.' Notice, Exh. 1 at 2–9, thus implicating a broader geographic scope of potential cumulative impacts than the Wyoming lease sales at issue in this case. This distinction is consistent with the D.C. Circuit's admonition that "[a] NEPA cumulative-impact analysis need only consider the effect of the current project[s] along with any other past, present or likely future actions *in the same geographic area* as the project[s] under review." *Sierra Club v. FERC*, 672 F. App'x 38, 39 (D.C. Cir. 2016) (emphasis original). *See also* Reply at 16–17.

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<sup>1</sup> Plaintiffs' effort to rely on *State of California v. Bernhardt* (*see* Pls.' Notice at 2) for the alleged proposition that the effects of the challenged lease sales were uncertain has already been refuted by the showings made by the Federal Defendants and other intervenors on that subject, which API has incorporated by reference.

Having a narrower geographic scope, the SEA's cumulative impact analysis is necessarily distinct from the analysis required by the *State of California* decision.

Respectfully submitted,

/s/ Steven J. Rosenbaum

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of July, 2020, 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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