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

STATE OF WYOMING,

Petitioner,

v.

THE UNITED STATES DEPARTMENT OF  
INTERIOR; DEBRA ANNE HAALAND, in her  
official capacity as Secretary of Interior; THE  
BUREAU OF LAND MANAGEMENT; NADA  
CULVER, in her official capacity as acting  
Director of the Bureau of Land Management;  
and KIM LIEBHAUSER, in her official capacity  
as the acting Wyoming State Bureau of Land  
Management Director,

Respondents,

CENTER FOR BIOLOGICAL DIVERSITY, et  
al.,

Intervenor-Respondents,

ALTERRA MOUNTAIN COMPANY, et al.,

Intervenor-Respondents.

Civil No.: 21-cv-56-J

**MOTION TO CONSOLIDATE CIVIL  
CASES 0:21-CV-56-J AND 0:21-CV-13-  
SWS**

Petitioner, State of Wyoming, pursuant to Fed. R. Civ. P. 42(a) and Local Rule 42.1, respectfully moves this Court to consolidate the above-captioned case with *W. Energy All. v. Joseph R. Biden Jr., et al.*, 0:21-CV-13-SWS. The State of Wyoming conferred with the parties regarding its motion. Federal Respondents will file a response after reviewing the filing. Conservation Groups Intervenor-Respondents and Business Coalition Intervenor-Respondents take no position on the motion but reserve the right to respond after reviewing the filing. Petitioners, Western Energy Alliance and the Petroleum Association of Wyoming in Case No. 21-CV-13-SWS do not oppose the motion. In support of the motion, Wyoming states as follows:

### **BACKGROUND**

The Secretary of Interior suspended all federal oil and gas lease sales in response to President Biden's Executive Order 14008 issued on January 27, 2021. *See* 86 Fed. Reg. 7619 (Feb. 1, 2021). On the same day Executive Order 14008 was issued, Western Energy Alliance petitioned this Court for review of the decision to suspend federal oil and gas leases sales. *See W. Energy All. v. Joseph R. Biden Jr., et al.*, Case No. 0:21-CV-13-SWS (Jan. 27, 2021) (ECF No. 1). Following the postponement of quarterly lease sales scheduled for March 2021, Western Energy Alliance and the Petroleum Association of Wyoming (Industry Petitioners) filed a *Second Amended Petition for Review of Government Action* on March 17, 2021. (*See W. Energy All.*, at ECF No. 8). Industry Petitioners allege the suspension of the federal leasing program is inconsistent with the Secretary of Interior's statutory obligations, arbitrary and capricious, and contrary to law. (*Id.*).

Wyoming petitioned this Court for review of the Secretary of Interior's suspension of federal oil and gas lease sales on March 24, 2021. (ECF No. 1). Wyoming alleges the Secretary's action suspending federal oil and gas lease sales violates the Federal Land Policy and Management Act, the Mineral Leasing Act, the Administrative Procedure Act, and National Environmental

Policy Act. Wyoming contends the Secretary's action is contrary to law and arbitrary and capricious. (ECF No. 1 at 9). Wyoming identified in its civil cover sheet that the Industry Petitioner's case is a related case. (ECF No. 1-8).

Conservation Groups moved this Court to intervene as an Intervenor-Respondent in the above-captioned case on April 19, 2021. (ECF No. 20). This Court granted the Conservation Groups' motion on May 12, 2021. (ECF No. 49). Similarly, the Business Coalition moved to intervene on April 30, 2021. (ECF No. 40). This Court granted the Business Coalition's motion on May 3, 2021. (ECF No. 41). Both the Conservation Groups and the Business Coalition have also moved to intervene in the Industry Petitioner's case. (*See W. Energy All.*, at ECF Nos. 22 & 23). The Court granted the Conservation Groups and Business Coalition's motion to intervene in the Industry Petitioner's case on May 12, 2021. (*W. Energy All.*, at ECF No. 43).

Wyoming filed a Motion for Preliminary Injunction on May 3, 2021. (ECF No. 44). Wyoming requests the Court to enter an order enjoining Federal Respondents from canceling quarterly federal oil and gas lease sales in Wyoming during the pendency of the litigation. (*Id.* at 2.). Wyoming also requests the Court to order the Federal Respondents to hold the previously canceled March 2021 and June 2021 Wyoming Federal Lease Sales. (*Id.*).

Industry Petitioners filed a similar Motion for Preliminary Injunction on May 10, 2021. (*W. Energy All.*, at ECF No. 41). Industry Petitioners are seeking a preliminary injunction requiring the Federal Respondents to immediately reinstate the canceled federal oil and gas lease sales and to order the Federal Respondents to adopt revised lease sale schedules that comply with the terms of the Mineral Leasing Act and other applicable law. (*Id.* at 1).

### APPLICABLE STANDARD

A district court may consolidate separate actions or discrete proceedings under Fed. R. Civ.

P. 42(a) as follows:

If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

The decision whether to consolidate actions involving common questions of law or fact is committed to the sound discretion of the district court. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978). “The party moving for consolidation bears the burden of demonstrating that consolidation is desirable.” *Servants of Paraclete v. Great American Ins. Co.*, 866 F. Supp. 1560, 1572 (D.N.M. 1994). In the District of Wyoming, the decision to grant or deny the motion shall be made by the judge to whom the oldest case involved in the requested consolidation is assigned. U.S.D.C.L.R. 42.1.

“[C]onsolidation does not merge separate suits into one cause of action.” *Harris v. Ill.-Cal. Express*, 687 F.2d 1361, 1368 (10th Cir. 1982). “[C]onsolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.” *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933).

### CONSOLIDATION IS WARRANTED

Both cases share common questions of law and a common nucleus of facts. The actions arise from the Secretary of Interior’s suspension of federal oil and gas leasing in response to President Biden’s Executive Order 14008. Both cases challenge the suspension of quarterly lease sales that were scheduled to occur in 2021. The administrative record in both cases involves the same alleged agency actions and both cases involve substantially similar Federal Respondents.

Both cases also seek substantially similar forms of equitable relief in asking the Court to set aside the Secretary's action suspending federal oil and gas leases.

To the extent the Court recognizes distinctions in the two cases, Fed. R. Civ. P. 42(a) "makes clear that one of the multiple cases consolidated under the Rule retains its independent character ... regardless of any ongoing proceedings in the other cases." *Hall v. Hall*, 138 S. Ct. 1118, 1121 (2018); *see also Liming Wu v. Bernhardt*, 820 F. App'x 669, 672 (June 26, 2020). Consolidation is merely an administrative device used for convenience to "accomplish[] those considerations of judicial economy and fairness." *Harris*, 687 F.2d at 1368 (internal quotation marks omitted).

Consolidation furthers the interests of judicial economy and will simplify the disposition of these cases because the parties will share an administrative record, briefing will be coordinated, and consolidation will avoid duplication of effort by this Court and the parties. In addition, consolidation of the cases will avoid the possibility of inconsistent judgments in the District of Wyoming. Consolidation will also allow the Court to consider similar motions for preliminary injunction at the same time because both motions are on similar briefing schedules.

Consolidation will not result in delay or cause undue prejudice to any party. Local Rule 83.6(b) provides Federal Respondents with ninety days to lodge an administrative record. Industry Petitioners amended their petition on March 17, 2021 and Wyoming filed its petition on March 24, 2021. Both cases are in the preliminary stages because Federal Respondents still have thirty days to lodge administrative records in the related cases. Briefing on the merits in both cases will not begin until after the administrative record is lodged in the cases pursuant to Local Rule 83.6(c).

Both cases, if consolidated, will share identical groups of Intervenor-Respondents. Consolidation is not expected to unduly burden the Conservation Group Intervenor-Respondents

or the Business Coalition Intervenor-Respondents and consolidation will provide both Intervenor-Respondent Groups with an opportunity to participate in the litigation.

### CONCLUSION

WHEREFORE, the State of Wyoming respectfully requests that this Court grant Wyoming's motion to consolidate *State of Wyoming v. U.S. Dep't of Interior, et al.*, Case No. 21-cv-56-J (D. Wyo.) with the earlier filed *W. Energy All., et al. v. Joseph R. Biden Jr., et al.*, Case No. 0:21-CV-13-SWS (D. Wyo.).

Submitted this 14th day of May, 2021.

/s/ Travis Jordan

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**CERTIFICATE OF SERVICE**

I certify that on this 14th day of May 2021, I electronically filed the foregoing with the Clerk of the U.S. District Court for the District of Wyoming and served all parties using the CM/ECF system.

/s/ Travis Jordan

Travis Jordan