

James Kaste (Wyo. Bar No. 6-3244)
Deputy Attorney General
Travis Jordan (Wyo. Bar No. 7-5721)
Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
(307) 777-7895 (phone)
(307) 777-3542 (fax)
james.kaste@wyo.gov
travis.jordan@wyo.gov

Attorneys for Petitioner State of Wyoming

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

WESTERN ENERGY ALLIANCE and
PETROLEUM ASSOCIATION OF WYOMING,

Petitioners,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEB HAALAND,
in her official capacity as Secretary of the Interior;
and THE UNITED STATES BUREAU OF
LAND MANAGEMENT,

Respondents, and

CENTER FOR BIOLOGICAL DIVERSITY, *et al.* ("Conservation Groups"), and ALTERRA
MOUNTAIN COMPANY, *et al.* ("Business
Coalition"),

Intervenor-Respondents.

No. 21-cv-13-SWS (Lead Case)

**WYOMING'S BRIEF IN RESPONSE
TO ORDER FOR LIMITED
BRIEFING ON STAY OF
PROCEEDINGS**

STATE OF WYOMING,

Petitioner,

v.

No. 21-cv-56-SWS
(Joined Case)

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, and

CENTER FOR BIOLOGICAL DIVERSITY, *et al.* (“Conservation Groups”), and ALTERRA MOUNTAIN COMPANY, *et al.* (“Business Coalition”),

Intervenor-Respondents.

The Western District of Louisiana’s entry of a nationwide preliminary injunction does not warrant a stay of these proceedings. That preliminary determination should not affect the orderly progress of this litigation to a final determination on the merits. That case involves different parties, questions of law, and forms of relief, and that preliminary order does not fully and finally redress the injuries Wyoming alleges in this case. Any stay that disrupts this Court’s progress to a final determination on the merits prejudices Wyoming and thwarts, rather than serves, the interests of judicial economy. Moreover, there is simply nothing wrong with two federal courts considering similar issues at the same time. That was the way things used to work before nationwide injunctions became commonplace and courts started deferring to the fastest court.

Wyoming opposes any stay in these proceedings that delays a final determination on the merits. At most, the Court could defer ruling on the pending motions for preliminary injunction, but even that more measured response is unwarranted and prejudicial to Wyoming.

LEGAL STANDARD

“[T]he right to proceed in court should not be denied except under the most extreme circumstances.” *See Commodity Futures Trading Comm’n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983) (citing *Klein v. Adams & Peck*, 436 F.2d 337, 339 (2d Cir. 1971)). Nevertheless, “the power to stay proceedings is incidental to the power inherent in every court to control disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

When considering whether to grant a stay in response to a nationwide injunction, courts apply the following standard:

In determining whether to grant a motion to stay, “the competing interests which will be affected by the granting or refusal to grant a stay must be weighed.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citing *CMAX*, 300 F.2d at 268). Those interests include: (A) “the possible damage

which may result from the granting of a stay,” (B) “the hardship or inequity which a party may suffer in being required to go forward,” and (C) “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *Id.* Moreover, “[t]he proponent of a stay bears the burden of establishing its need.” *Clinton*, 520 U.S. at 708 (citing *Landis*, 299 U.S. at 255).

Hawai’i v. Trump, 233 F. Supp. 3d 850, 853 (D. Haw. 2017) (citation omitted).

ARGUMENT

Here there are no competing interests to balance and no extreme circumstances warranting a stay. Staying these proceedings simply harms Wyoming without providing a commensurate benefit to the other parties or to the Court. Accordingly, this case should continue to proceed on the orderly course set by the Local Rules.¹

I. A stay is not warranted because Wyoming’s case involves different parties, claims, and forms of relief.

Staying these proceedings would only be fair and appropriate if the two cases are essentially indistinguishable, otherwise a stay prevents Wyoming from obtaining complete and timely relief on its unique claims. *See Solid Q Holdings, LLC v. Arenal Energy Corp.*, No. 2:15-cv-419, 2015 WL 6681016, at *2 (D. Utah Oct. 30, 2015) (denying motion for stay where the two cases were similar but involved different legal issues, forms of relief, and parties); *cf. Wakaya Perfection, LLC v. Youngevity Int’l Inc.*, 910 F.3d 1118, 1124 (10th Cir. 2018) (abstention not warranted where two federal suits involve different parties and claims). Although the Louisiana and Wyoming cases arise from the same pattern of facts, the two cases unquestionably involve different petitioners and different claims. *See, e.g., Rajala v. McGuire Woods, LLP*, No. 08-cv-

¹ Federal Respondents’ acknowledge that their deadline to lodge the administrative record in the Wyoming case is June 27, 2021. (ECF No. 52 at 52). Thus, “discovery” in this case is nearing completion and this Court generally does not stay discovery except in extraordinary circumstances. *See, e.g., Goodwyn v. Wallop*, No. 09-cv-070, 2009 WL 10665103, at *2 (D. Wyo. Mar. 2, 2009).

2638, 2009 WL 2168923, at *4 (D. Kan. July, 21, 2009) (denying motion for stay where parties and claims were not identical). Wyoming challenges the Secretary’s de facto moratorium under the Administrative Procedure Act (APA), Mineral Leasing Act (MLA), Federal Land Policy and Management Act, and National Environmental Policy Act. (*See* ECF No. 1 at 2 (Wyo. Pet., No. 21-cv-56 (Mar. 24, 2021))). Whereas, the Louisiana court only considered the Secretary’s violation of the MLA and the Outer Continental Shelf Lands Act under the APA. *See, e.g., Louisiana v. Biden*, No. 2:21-CV-00778, 2021 WL 2446010, at *13 (W.D. La. June 15, 2021). In fact, the Louisiana court previously and expressly determined that “there is not ‘substantial overlap’” between these two cases. Mem. Order, *Louisiana v. Biden*, No. 2:21-cv-778, at 8-9 (W.D. La. May 10, 2021) (ECF No. 110).

Moreover, while the nationwide preliminary injunction entered by the Louisiana court does benefit Wyoming, that injunction did not provide all the relief Wyoming requested in its motion for preliminary injunction, nor did it provide any of the permanent relief Wyoming seeks. In addition to enjoining the Secretary from implementing her “pause” on federal oil and gas leasing, Wyoming seeks an order from this Court compelling the Secretary to hold the canceled 2021 quarterly lease sales in Wyoming. (*See* ECF No. 1 at 9 (Wyo. Pet., No. 21-cv-56 (Mar. 24, 2021))); (*see also* ECF No. 45 at 64 (Wyo. Br., No. 21-cv-00056 (May 3, 2021))). The Louisiana order does not address these canceled lease sales at all. *See Louisiana*, 2021 WL 2446010, at *22. Nor does that order purport to permanently remedy the harms alleged by Wyoming in this case. *See, e.g., Hawai’i*, 233 F. Supp. 3d at 853 (granting stay in part because the nationwide injunction of the Executive travel ban provided the state with the “comprehensive relief” it sought in its lawsuit); *and Ali v. Trump*, 241 F. Supp. 3d 1147, 1152 (W.D. Wash. 2017) (granting stay on similar grounds). Mere overlap between the remedies granted in Louisiana and some of the remedies

sought in Wyoming is not enough to restrict Wyoming's access to the Court. *See Childress v. DeSilva Auto. Serv.'s LLC*, No. 20-cv-136, 2020 WL 3572909, at *15 (D.N.M. July 1, 2020) ("there is strong public interest in not hindering litigants' access to the courts for redress"). Wyoming's fundamental right to proceed with its case should not be so easily dismissed.

II. Proceeding with the case will not harm the Federal Respondents.

By contrast, the Federal Respondents will not be harmed if this case proceeds. The Federal Respondents did not move for a stay and so have not affirmatively asserted any harm. Nor can they. First, even if considerations of judicial economy outweighed Wyoming's right to access the courts, which they do not, delaying these proceedings would be the less economical course because the Court will need to make a decision on the merits at some point. *Span-Eng Assoc.'s v. Weidner*, 771 F.2d 464, 469 (10th Cir. 1985) ("considerations [of judicial economy] should rarely if ever lead to such broad curtailment of the access to the courts.") (citing *Chilcott*, 713 F.2d at 1485). Second, the Federal Respondents cannot reasonably assert that defending both suits at the same time constitutes hardship or inequity. *See, e.g., Hawai'i*, 233 F. Supp. 3d at 854. Nor does the mere possibility that other cases might resolve similar issues generally warrant a stay. *See Childress*, 2020 WL 3572909, at *15 (finding that a pending ruling in the Supreme Court on related matter does not warrant a stay of the case).

III. The orderly course of justice does not warrant a stay.

In addition, a stay will not improve the orderly course of justice. Staying proceedings while a nationwide injunction is reviewed **on appeal** can be warranted if the cases are within the same circuit. *See, e.g., Hawai'i*, 223 F. Supp. 3d at 855-56 (emphasis added) (explaining that decision on appeal would not only prove dispositive of the state's case but may inform any remaining issues after the appeal). However, these two cases are in district courts in different circuits and nothing

the Fifth Circuit might ultimately determine will bind this Court. Accordingly, no effort will be spared if the Court denies Wyoming's right to proceed while it watches the progress of another case where Wyoming has no right to be heard.

In fact, proceeding with the merits of the Wyoming case promotes the orderly course of justice. Recent history indicates that nationwide injunctions are "fluid" and can result in "many trips up and down and around the judicial map." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 599 (2020) (memorandum opinion) (Gorsuch, J., concurring). Federal Respondents have not yet appealed the Western District of Louisiana's nationwide injunction, but most likely will. Any such appeal to the Fifth Circuit could quickly result in a stay of the nationwide injunction or a restriction of its geographic scope forcing this Court to pick up right where it left off. Rather than relying on infirm nationwide injunctions, courts should proceed expeditiously to trial on the merits. *See, e.g., California v. Azar*, 911 F.3d 558, 583-84 (9th Cir. 2018) (citations omitted).

Moreover, the Supreme Court has suggested in the context of nationwide injunctions, courts benefit from developing case law in different factual contexts in multiple decisions by various courts of appeals. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (noting that nationwide injunctions "have a detrimental effect by foreclosing adjudication by a number of different courts and judges"). Proceeding with the Wyoming case allows this Court to add to the body of law which informs decisionmaking by appellate courts. *See Dep't of Homeland Sec.*, 140 S. Ct. at 600 ("[The traditional system] encourages multiple judges and multiple circuits to weigh in only after careful deliberation, a process that permits the airing of competing views that aids this Court's own decisionmaking process.") (Gorsuch, J., concurring).

CONCLUSION

For the foregoing reasons, Wyoming opposes a stay of these proceedings.

Submitted this 23th day of June, 2021.

FOR THE STATE OF WYOMING

/s/ Travis Jordan

James Kaste (Wyo. Bar No. 6-3244)
Deputy Attorney General
Travis Jordan (Wyo. Bar No. 7-5721)
Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
(307) 777-7895 (phone)
(307) 777-3542 (fax)
james.kaste@wyo.gov
travis.jordan@wyo.gov

Attorneys for Petitioner State of Wyoming

CERTIFICATE OF SERVICE

I certify that on this 23th day of June 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