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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

WESTERN ENERGY ALLIANCE *et al.*, Petitioners, vs. JOSEPH R. BIDEN, JR., *et al.*, Federal Respondents, CENTER FOR BIOLOGICAL DIVERSITY, et al. ("Conservation Groups"), and ALTERRA MOUNTAIN COMPANY, et al. ("Business Coalition"), Intervenor-Respondents.	Case No. 21-CV-00013-SWS (Lead Case)
STATE OF WYOMING, Petitioners, vs. U.S. DEPART OF THE INTERIOR, *et al.*, Federal Respondents, CENTER FOR BIOLOGICAL DIVERSITY, et al. ("Conservation Groups"), ALTERRA MOUNTAIN COMPANY, et al. ("Business Coalition"), Intervenor-Respondents.	Case No. 21-CV-00056-SWS (Joined Case)

INTERVENOR-RESPONDENT (BUSINESS COALITION)'S RESPONSE TO COURT'S ORDER FOR LIMITED BRIEFING ON STAY OF PROCEEDINGS

INTRODUCTION

The Court should not stay this action in light of the Western District of Louisiana court's preliminary injunction, which enjoins, nationwide, implementing a pause on new oil and gas leasing by various federal agencies and officials.[1] Initially, the Intervenor Business Coalition submits that the necessary scrutiny to justify an "extraordinary" preliminary injunction, let alone one applicable nationwide, is seriously lacking in the Louisiana decision; namely, the court did not apply the elevated standard that accompanies a request for a "disfavored injunction," the state-plaintiffs never established standing to obtain nationwide relief, neither the state-plaintiffs nor the court identified a specific "final agency action" that provided the court with jurisdiction under the Administrative Procedure Act, and the state-plaintiffs failed to prove irreparable harm would befall each of them during the case. More important to the issue of whether to stay this case, the Louisiana court's universal injunction adversely impacts Intervenor Business Coalition's economic interests. Because the Business Coalition was not a party to that case (and would have been denied intervenor status), if this case is stayed, the Business Coalition would be without recourse, despite having a strong economic interest is maintaining the pause on oil and gas leasing called for by President Biden's Executive Order.[2]

ARGUMENT

I. A Stay Is Only Appropriate In Rare and Extreme Circumstances, Which Are Not Present.

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[1] The Court's June 16, 2021 Order does not specify the duration of a proposed stay or whether the stay would impact all aspects of these joined cases, or solely the preliminary injunction motions. This response brief assumes a stay would impact all aspects of the present case until there is an unappealable final judgment in the Louisiana litigation.

[2] Conversely, there is no hardship to Petitioners if their motions for preliminary injunctions and this case proceeds. Briefing the motions has concluded and the deadline for the government to produce the administrative record is imminent. Notably, both Petitioners proceeded with their motions knowing similar motions had been filed in the Louisiana case.

A district court may stay proceedings on its docket, *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936), upon weighing the economies of the court and the litigants against possible prejudices to a party, *id*. at 254. In *Landis*, the Supreme Court emphasized that "[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Id*. at 255; *see also Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt.*, 713 F.2d 1477, 1484 (10th Cir. 1983) ("The right to proceed in court should not be denied except under the most extreme circumstances."). The Supreme Court further noted that only if the other proceeding could dispositively resolve certain issues of fact may a stay be appropriate. *Landis*, 299 U.S. at 256; *see also CMAX v. Hall*, 300 F.2d 265, 269 (9th Cir. 1962) (upholding stay where agency proceeding "provide[d] a means of developing comprehensive evidence bearing upon the highly technical tariff questions which [were] likely to arise in the district court case"). Moreover, courts have opined that judicial economy alone "should rarely if ever lead to [the] broad curtailment of the access to the courts." *Commodity Futures Trading Comm'n.*, 713 F.2d at 1485.

The typical reasons for a stay are not present here. The Louisiana decision was preliminary. It merely provided an initial point of view on the merits and the relative harms in context of a preliminary injunction motion. The decision carries no precedential value, as it was issued by a court of equal jurisdiction in another circuit. The Louisiana ruling does not narrow the factual or legal issues before this Court. Indeed, the court did not address all the legal theories presented by Petitioners in the Joined Cases, nor did that court assess arguments advanced in opposition to Petitioners' Motions, including, whether the state-plaintiffs had Article III standing to obtain a nationwide injunction, whether Petitioners have challenged a specific final agency action under 5 U.S.C. § 551(13), whether the harms asserted by the state-plaintiffs

would be realized before the court would decide the merits, and whether those harms outweigh the Business Coalition's competing economic interests. For all of these reasons, the Court's judicial resources will not be saved by a stay because, absent complete dismissal of the present action, this Court would still have to rule on the Joined Cases.

Notably, the court in Louisiana had the opportunity to transfer the case to Wyoming, where the first lawsuit against the pause was filed by Western Energy on January 27, 2021, and promote judicial economy. But the court denied a motion to transfer, Ex. 1, and did so in the face of Fifth Circuit precedent calling for transfer when the other case was filed first and the cases have overlapping theories and issues. *See Cadle v. Wahataburger of Alice*, 174 F.3d 599, 603 (5th Cir. 1999) (explaining "rule rests on principles of comity and sound judicial administration"); *see also West Gulf Maritime Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985) ("The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result."). To avoid that result, the court in Louisiana determined that these cases do not substantially overlap, Ex. 1 at 8-9, offering reasoning that, if had been applied by this Court, would have precluded consolidation of the State of Wyoming case with Western Energy's case, *see* ECF No. 49 at 2 (ordering consolidation to "encourage efficient administration of the issues while conserving resources").

A stay of the present case coupled with a nationwide preliminary injunction by a court unwilling to grant intervention prejudices the Business Coalition. The Business Coalition is not a party to the Louisiana case. The court in Louisiana restricted the parties to the federal government and the state plaintiffs, denying intervention as of right and permissive intervention to nine conservation organizations. Ex. 2. That ruling was rooted in the belief that the

government and proposed intervenors had the same objective—defend the oil and gas leasing pause—and thus the government provided "adequate representation." Ex. 2 at 5-7. The merit of the court's decision aside, attempts by the Business Coalition to intervene in the Louisiana case would be futile, as they too wish to defend the pause of new oil and gas leases.[3] The Louisiana court then chose to issue a nationwide injunction, which applies, for example, in Wyoming and Colorado, even though neither state is a party to the Louisiana case. The court also made no reference to competing economic harms, like those facing the Business Coalition, in its balance of the equities. *See Louisiana v. Biden*, 2021 WL 2446010, at *21-22 (W.D. LA. June 15, 2021).

Not only does the injunction's scope harm the Business Coalition, *see* Business Coalition's Br. in Opp. to Prelim. Inj, ECF No. 58, at 20-25, it was improperly issued. A plaintiff must demonstrate standing for each form of relief. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs*, 528 U.S. 167, 184 (2000). Limiting remedy to the injury that forms the basis for standing "insures the framing of relief no broader than required by the precise facts to which the court's ruling would be applied." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 221-22 (1974). The court made no findings that any of the states' injuries extended to the rest of the country. *See City and County of San Francisco v. U.S. Citizen & Immigration Servs.*, 981 F.3d 742, 763 (9th Cir. 2020); *California v. Azar*, 911 F.3d 558, 585 (9th Cir. 2018) (holding "an injunction that applies only to the plaintiff states would provide complete relief to them."). There was no showing that a nationwide injunction was needed in order to provide these plaintiffs adequate relief. *See Richmond Tenants Org. v. Kemp*, 956 F.2d 1300, 1309 (4th Cir. 1992)

[3] The Business Coalition reserves its rights to seek intervention in the Louisiana case should the federal government defendants in that case decide not to appeal. *See Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 101 F.3d 503, 508 (7th Cir. 1996) (Posner, J.) (inadequacy of representation can be shown when the Government declines to appeal an adverse ruling).

(finding nationwide relief appropriately tailored when members of plaintiffs lived in different parts of country); *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1282-83 (9th Cir. 2020) (organizations did "not operate in a fashion that permits neat geographic boundaries.").

For these and other reasons, multiple courts have warned against nationwide injunctions. "[T]hese [nationwide injunction] orders share the same basic flaw—they direct how the defendant must act toward persons who are not parties to the case." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (J. Gorsuch, concurrence) ("[W]hen a court … order[s] the government to take (or not take) some action with respect to those who are strangers to the suit, it is hard to see how the court could still be acting in the judicial role of resolving cases and controversies."); *CASA de Md. v. Trump*, 971 F.3d 220, 257 (4th Cir. 2020) (criticizing universal injunctions because "by issuing such an injunction, a single district court, whose decisions are non-precedential in its own circuit, does not simply resolve a given lawsuit, but rather decides a general question for the entire nation"); *New York v. DHS*, 969 F.3d 42, 88 (2nd Cir. 2020) (remarking that "[i]t is not clear to us that, where contrary views could be or have been taken by courts of parallel or superior authority entitled to determine the law within their own geographical jurisdictions, the court that imposes the most sweeping injunction should control the nationwide legal landscape"). The Fourth Circuit explained that nationwide injunctions provide a disservice to the judicial system, as they "limit valuable 'percolation' of legal issues in the lower courts.... And the value of percolation is at its apex where, as here, 'a regulatory challenge involves important or difficult questions of law.'" *CASA de Md.*, 971 F.3d at 260.

CONCLUSION

For the foregoing reasons, the Business Coalition respectfully requests that the Court not stay proceedings in this case.

Respectfully submitted on June 23, 2021,

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2021, I electronically transmitted the attached above-document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to all parties in this matter.

/s/ Neil Levine
Neil Levine