

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

**WILDEARTH GUARDIANS, *et al.*,**

**Plaintiffs,**

**v.**

**DEBRA HAALAND, *et al.*,**

**Defendants,**

**and**

**AMERICAN PETROLEUM INSTITUTE,  
*et al.*,**

**Intervenor-  
Defendants.**

**No. 1:20-cv-00056-RC**

**OPPOSITION OF INTERVENOR-DEFENDANTS AMERICAN PETROLEUM  
INSTITUTE AND WESTERN ENERGY ALLIANCE TO PLAINTIFFS' MOTIONS TO  
STAY**

Pending before the Court are three lawsuits brought by plaintiffs WildEarth Guardians *et al.*, which collectively challenge as purportedly violating the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 551, decisions by the U.S. Secretary of the Interior and the Bureau of Land Management to conduct more than three dozen oil and gas lease sales pursuant to the Mineral Leasing Act (“MLA”), 30 U.S.C. § 181.<sup>1</sup> Intervening defendant American Petroleum Institute (“API”) has

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<sup>1</sup> *WildEarth Guardians v. Haaland*, No. 1:16-cv-01724 (the “2016 *WildEarth Guardians* lawsuit”); *WildEarth Guardians v. Haaland*, No. 1:20-cv-056 (the “2020 *WildEarth Guardians* lawsuit”).

filed motions in all three lawsuits seeking the dismissal of the vast majority of these lease sale challenges.<sup>2</sup> In all three lawsuits, API asserts that these claims are barred by the MLA statute of limitations, which provides that “[n]o action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter.” 30 U.S.C. § 226-2.

Congress in the 1960 MLA amendments adopting this statutory provision sought to create a “statute of limitations providing that any action under the Administrative Procedure Act to review a decision of the Secretary involving an oil and gas lease must be initiated within 90 days after the final decision of the Secretary.” S. Rep. No. 86-1549 (1960), *as reprinted in* 1960 U.S.C.C.A.N. 3313. The purpose was to reverse “a potentially dangerous slackening in exploration for development of domestic reserves of oil and gas” by “remov[ing] certain legislative obstacles to exploration for development of the mineral resources of the public lands and spur greater activity for increasing our domestic reserves.” *Id.* at 3314–15. Congress concluded that “[s]uch a provision will remove a potential cloud on acreage subject to leasing.” *Id.* at 3317.

These congressional purposes dictate that the Court proceed to resolve API’s motions to dismiss. Only in this manner can the relatively brief limitations period be given practical effect, including the prompt “remov[al of any] potential cloud on acreage subject to leasing.” 1960 U.S.C.C.A.N. at 3317. Only in this way can Congress’ central purpose—to provide lessees

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lawsuit”); *WildEarth Guardians v. Haaland*, No. 1:21-cv-00175 (the “2021 *WildEarth Guardians* lawsuit”).

<sup>2</sup> Intervenor-Defendant American Petroleum Institute’s Motion To Dismiss in *WildEarth Guardians v. Haaland*, No. 1:16-cv-01724, Docket No. 201 (Aug. 2, 2021); Intervenor-Defendant American Petroleum Institute’s Motion To Dismiss in Part in *WildEarth Guardians v. Haaland*, No. 1:20-cv-056, Docket No. 55 (Aug. 2, 2021); Intervenor-Defendant American Petroleum Institute’s Motion To Dismiss In Part, Or, In The Alternative, For Partial Summary Judgment in *WildEarth Guardians v. Haaland*, No. 1:21-cv-00175, Docket No. 28 (June 9, 2021).

sufficient certainty and comfort so as to proceed promptly with development activities—be fully served.

The Government has filed motions voluntarily to remand (without vacatur) in all three lawsuits.<sup>3</sup> For the reasons detailed in the responses to those motions filed earlier today by API, Western Energy Alliance and the State of Utah,<sup>4</sup> the Court should first resolve API's motions to dismiss, and then entertain remand of only those lease sale challenges the Court determines should not be dismissed. Only in that fashion can the purpose for which Congress adopted the relatively short 90-day limitations period be vindicated. And that result should adhere regardless of whether the Government unilaterally seeks to remand, or enters into an agreement with Plaintiffs for such a remand. *Cf. Am. Waterways Operators v. Wheeler*, 427 F. Supp. 3d 95 (D.D.C. 2019); *Am. Waterways Operators v. Wheeler*, 507 F. Supp. 3d 47, 53, 56 (D.D.C. 2020) (denying remand agreed to by plaintiffs and the Government, given the objections to remand voiced by the intervenors).

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<sup>3</sup> See Federal Defendants' Second Motion For Voluntary Remand Without Vacatur and Memorandum In Support in the 2016 *WildEarth Guardians* lawsuit, Docket No. 200; Federal Defendants' Second Motion For Voluntary Remand Without Vacatur and Memorandum In Support in the 2020 *WildEarth Guardians* lawsuit, Docket No. 54; Federal Defendants' Motion For Voluntary Remand Without Vacatur and Memorandum In Support in the 2021 *WildEarth Guardians* lawsuit, Docket No. 43.

<sup>4</sup> See Response of Intervenor-Defendants American Petroleum Institute, Western Energy Alliance And State Of Utah To Defendants' Motion For Voluntary Remand in the 2016 *WildEarth Guardians* lawsuit, Docket No. 205 (Aug. 13, 2021); Response of Intervenor-Defendants American Petroleum Institute And Western Energy Alliance To Defendants' Motion For Voluntary Remand in the 2020 *WildEarth Guardians* lawsuit, Docket No. 58 (Aug. 13, 2021); and Intervenor-Defendant American Petroleum Institute's Response To Defendants' Motion For Voluntary Remand in the 2021 *WildEarth Guardians* lawsuit, Docket No. 52 (Aug. 13, 2021).

Accordingly, the lawsuits should not be stayed, but rather briefing should be completed on API's motions to dismiss,<sup>5</sup> and the Court should then resolve them.

Respectfully submitted,

August 13, 2021

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<sup>5</sup> Briefing on the statute of limitations issue has been completed in the 2021 *WEG* lawsuit, and the statute of limitations arguments advanced in the 2016 and 2020 *WEG* lawsuits are substantively identical.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2021, I caused a true and correct copy of the foregoing to be filed with the Court electronically and served by the Court's CM/ECF System upon all counsel of record.

/s/ Steven J. Rosenbaum

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