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Anschutz Exploration Corp.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS et al.,

Plaintiffs,

vs.

DEB HAALAND et al.,

Defendants.

Case No. 1:21-cv-00175-RC

ANSCHUTZ EXPLORATION CORPORATION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO FEDERAL DEFENDANTS' MOTION TO REMAND

Between December 2016 and December 2020, the Bureau of Land Management conducted 28 oil-and-gas lease sales in Colorado, New Mexico, Utah, and Wyoming. Am. Compl. ¶ 1, tbl. A, ECF No. 13. Anschutz Exploration Corporation acquired leases during five of those lease sales. WildEarth Guardians and Physicians for Social Responsibility have now sued the Secretary of the Interior and BLM (together "Federal Defendants"). They argue that in conducting these lease sales, Federal Defendants violated the National Environmental Policy Act and the Administrative Procedure Act by failing to fully analyze the direct, indirect, and cumulative impacts that those lease sales would have on climate change. *Id.* ¶ 1.

In response, Defendant–Intervenor American Petroleum Institute has filed a partial motion to dismiss or a partial motion for summary judgment. *See generally* Mot., ECF No. 28-1. API's motion could reduce the number of lease sales at issue from 28 to 5. API makes three arguments.

First, API contends that the 90-day limitations period under the Mineral Leasing Act bars Plaintiffs' challenges to 23 of the 28 lease sales. *Id.* at 12–25. If the Court agrees with this contention, that ruling would eliminate all of Plaintiffs' challenges to the five lease sales that AEC participated in: December 2017 Utah, March 2019 Utah, September 2019 Wyoming, December 2019 Wyoming, and March 2020 Wyoming. *See id.* at 17.

Second, API contends that the claim-preclusion doctrine bars Plaintiffs' challenges to the December 2017 and June 2018 Utah lease sales. *Id.* at 25–31. AEC participated in the December 2017 Utah lease sale.

Third, API contends that laches bars Plaintiffs' challenges to lease sales that occurred before WildEarth Guardians filed its complaint in *WildEarth Guardians v. Haaland*, No. 1:20-cv-00056-RC (D.D.C. filed Jan. 9, 2020) [hereinafter *WildEarth II*]. *Id.* at 31–40. If the Court accepts this contention, that ruling would dispose of 17 of the 28 challenged lease sales, including four lease sales that AEC participated in: December 2017 Utah, March 2019 Utah, September 2019 Wyoming, and December 2019 Wyoming.

Despite the possibility that API's motion will substantially reduce the scope of this litigation, Federal Defendants have now moved to voluntarily remand all 28 lease sales so that BLM can conduct further NEPA analysis. Mot. at 1, ECF No. 43. AEC takes no position on whether the Court should grant Federal Defendants' motion as to the five lease sales that are not subject to API's motion. But as to the 23 lease sales that are subject to API's motion—including all five lease sales from which AEC acquired leases—AEC opposes Federal Defendants' motion.

AEC's opposition rests on efficiency and avoiding prejudice to AEC and other lessees. The Court should rule on API's motion before taking up Federal Defendants' motion for voluntary remand. Suppose the Court were to rule in API's favor on some or all of API arguments. That

ruling would reduce the number of lease sales at issue, obviate the need for BLM to conduct further NEPA analysis on the eliminated lease sales, and avoid future litigation over those lease sales.

The alternative runs the risk of being much less efficient and prejudicing AEC and the other lessees. If the Court were to grant Federal Defendants' motion before ruling on API's motion, this case will be in a holding pattern during the months—perhaps years—it will take BLM to conduct its further NEPA analysis of 28 lease sales. During this protracted, unknown amount of time, AEC and other lessees will suffer prejudice because their leases will remain under a cloud of uncertainty, rendering those leases, for all intents and purposes, useless.

Yet once the litigation resumes after BLM finishes its analysis, the Court will still have to confront API's arguments. If the Court agrees with any of those arguments, the lease sales encompassed within those arguments will drop out of the case. If that happens, BLM will have needlessly conducted further NEPA analysis of lease sales that could have been eliminated from the case much earlier. And lessees such as AEC will have been needlessly, prejudicially stuck in legal limbo when they could have been afforded certainty and finality much earlier.

For these reasons, as to the 23 lease sales subject to API's motion to dismiss, the Court should rule on API's motion before ruling on Federal Defendants' motion to remand those lease sales for further NEPA analysis.

If, however, the Court were to grant Federal Defendants' motion before ruling on API's motion, the Court should do as it did in *WildEarth II*. The Court should remand the leasing decisions without vacating the leases "because [the Court] has not reviewed the EAs, FONSIs, and DNAs underlying the leasing decisions—therefore, it has no basis to vacate the agency action." Order at 2, *WildEarth Guardians v. Bernhardt*, No. 1:20-cv-00056-RC (D.D.C. Oct. 23,

2020), ECF No. 46. And just as in *WildEarth II*, the Court should remand without imposing conditions on the leases, such as barring surface-disturbing activities, prohibiting BLM from approving applications for permits to drill, or otherwise preventing development of the leases. *See id.* at 2–3 (declining to impose conditions).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 13, 2021, I filed this document using the Court's electronic case-filing system, which will serve the document on all counsel of record.

/s/ Andrew C. Lillie
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