IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, HEALTHY GULF, SIERRA CLUB, and CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

DEBRA A. HAALAND, in her official capacity as SECRETARY OF THE INTERIOR, LAURA DANIEL-DAVIS, in her official capacity as ASSISTANT SECRETARY OF THE INTERIOR FOR LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, and BUREAU OF OCEAN ENERGY MANAGEMENT,

Defendants,

and

STATE OF LOUISIANA,

Intervenor-Defendant,

CHEVRON U.S.A. INC.,

Proposed Intervenor/Defendant.

Civil Action No. 21-cv-02317

[PROPOSED] INTERVENOR-DEFENDANT CHEVRON U.S.A. INC.'S [PROPOSED] MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

On November 17, 2021, the Bureau of Ocean Energy Management ("BOEM") conducted an auction for Lease Sale 257 ("Lease Sale") and announced that Chevron U.S.A. Inc. ("Chevron") was the apparent highest bidder on 34 tracts. Declaration of Kyle L. Gallman ¶¶ 5-6 ("Gallman Decl."). This lease sale took place after the District Court for the Western District of Louisiana ordered the federal government to halt its ongoing pause on lease sales—including Lease Sale 257, specifically. Following that court order, BOEM reaffirmed its Environmental Impact Statement ("EIS"), reissued the Record of Decision for Lease Sale 257, and solicited bids and held the auction for the lease sale. As confirmed by the court's order, BOEM's decision to move forward with the lease sale was required by the Outer Continental Shelf Lands Act ("OCSLA") and dictates of reasoned agency decisionmaking as set forth under the Administrative Procedure Act. *See Louisiana v. Biden*, No. 2:21-cv-778, 2021 U.S. Dist. LEXIS 112316, at *63–65 (W.D. La. June 15, 2021).

Plaintiffs now seek to challenge the Department of Interior's decision to hold the Lease Sale pursuant to the court's order, arguing that it is at odds with the National Environmental Policy Act ("NEPA") and APA. Plaintiffs' claims are, of course, fundamentally at odds with the decision of the Western District of Louisiana Court. Indeed, Plaintiffs are requesting that this Court vacate Lease Sale 257 even though the district court in Louisiana found that BOEM had a legal obligation to conduct the sale and had no reasoned basis to continue delaying it any further.

Not only do Plaintiffs' claims conflict with that legally binding court order, they are also meritless. In an effort to streamline the briefing and avoid duplication, Chevron incorporates by reference those points made by the Federal Defendants (*see* Fed. Def. Mem., ECF No. 45), American Petroleum Institute ("API") (*see* API Mem., ECF 43-1), and the State of Louisiana (*see* La. Mem., ECF No. 42-1).

As those briefs demonstrate, Plaintiffs' claims are premature and entirely speculative given that the federal actions at issue here are the NEPA reviews conducted by BOEM in connection with the lease sale stage, which is only a preliminary stage of the multi-stage OCSLA regulatory review process.

Rather than expound on points made by the Federal Defendants and the Intervenor-Defendant, Chevron instead focuses on its individualized interests in ensuring that its investments in bidding upon and obtaining the leases from Sale 257, which dollar bid amounts have now been revealed to the public, are not jeopardized by Plaintiffs' unfounded claims. Plaintiffs seek extraordinary remedies that would essentially void Chevron's property interests in the 34 leases Chevon expects to be awarded, despite the millions of dollars Chevron has invested in procuring these leases.

Chevron has already paid the United States over $9 million in initial bonus bid payments on the 34 tracts and will pay nearly $38 million more if the Department of Interior approves Chevron's bids. Gallman Decl. ¶ 7. In prior lease sales in the Gulf of Mexico, the Department of Interior has awarded Chevron leases on the vast majority of parcels for which it was the highest bidder. *Id.* ¶ 6. Therefore, it is reasonable to expect that Chevron will be awarded with leases for many, if not all, of the tracts for which it was the highest bidder. And if Plaintiffs are successful in having the lease sale enjoined or vacated, Chevron will be deprived of millions of dollars in potential production opportunities. *Id.* ¶ 9.

Equally, if not more, damaging is that the bids Chevron submitted for the leases are in the public domain, meaning that BOEM cannot simply restart the bidding process down the road without causing irreparable harm to Chevron. The marketplace, including Chevron's competitors, are now fully aware of which tracts Chevron has targeted for potential development

as well as the valuation that Chevron has placed on leasing those parcels in its previously sealed bids. The relief sought by Plaintiffs—that BOEM withdraw the Lease Sale—would cause immense harm to Chevron after having its bidding strategy revealed to the public. Chevron could lose its interests in the 34 tracts as competitors adjust their bidding strategies in any future auction. Simply put, the remedies sought by Plaintiffs would undermine the very purpose of the auction and confidential bidding process established under OCSLA.

Plaintiffs do not grapple with the natural and unavoidable consequences of the extreme remedies they seek. Supreme Court and D.C. Circuit case law require a careful analysis of the appropriateness of any remedy, particularly in cases such as this one where Chevron and other bidders can never be made whole if the November 17th auction were simply expunged from the record. Plaintiffs have not demonstrated an error in BOEM's analysis, nor have they demonstrated that they are entitled to the extraordinary remedies they seek. Chevron therefore requests that the Court grant summary judgment to the Federal Defendants and Defendant-Intervenor on all claims and deny the Plaintiffs' Motion for Summary Judgment.

ARGUMENT

I. VACATUR OR ENJOINDER OF THE LEASES WOULD CAUSE IRREPARABLE HARM TO CHEVRON.

Plaintiffs request various equitable remedies, which would deprive Chevron of the leases it will likely obtain as the high bidder in the Lease Sale. As explained in the briefs of the Federal Defendants and the State of Louisiana, as well as API's proposed brief, no remedy is appropriate because Plaintiffs have not demonstrated a flaw in BOEM's NEPA review. Even if BOEM had erred, however, there is simply no basis to impose the extraordinary remedy requested by Plaintiffs to excise the lease sale after Chevon and other stakeholders have already made public their bidding strategies and valuations. As a party with a direct pecuniary interest in 34 specific

leases, Chevron has unique insights into the substantial and irreparable harms that will result if Plaintiffs are successful in obtaining this relief.

The D.C. Circuit has rejected the claim that it has "no discretion" in whether to vacate an agency decision found to have violated the APA. *Sugar Cane Growers Coop. of Fla. v. Veneman*, 289 F.3d 89, 98 (D.C. Cir. 2002). Instead, the court must consider whether to vacate based upon (1) the seriousness of the flaws, and (2) the "disruptive consequences" of remand. *Id.* (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.3d 146, 150–51 (D.C. Cir. 1993); *see Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 244 (D.C. Cir. 2013) (deciding not to vacate the decision on remand based upon an evaluation of the gravity of the flaws in the agency's decision, the likelihood that the identifies "deficiencies" can be addressed on remand, and the "disruptive consequences" of vacatur); *see also Stand Up for Cal.! v. U.S. Dep't of Interior*, 879 F.3d 1177, 1190 (D.C. Cir. 2018) (holding that the "district court acted well within its discretion in finding vacatur unnecessary to address any harm the defect had caused").

Here, the factors decisively against vacatur or enjoinder of the leases. In particular, the disruptive consequences of vacating the Lease Sale would be significant. OCSLA mandates that lease sales be conducted with sealed bids. 43 U.S.C. § 1337(a)(1). But here, the Lease Sale auction has already taken place, and all bids have been made public. If, as Plaintiffs request, the leasing bids are vacated and BOEM were required to auction the leases at a later date, Chevron's competitors would have the unfair advantage of knowing Chevron's previously confidential bid amounts for each lease. Gallman Decl. at ¶ 9. They would also know the geographic areas of interest to Chevron based upon Chevron's bidding activity. If BOEM were to reaffirm the decisions to hold the Lease Sale, there is simply no way that it could honor OCSLA's statutory requirement for sealed bid leasing now that the previous bids are publicly available. As the D.C.

Circuit noted in another context, "[t]he egg has been scrambled and there is no apparent way to restore the status quo ante." *Sugar Cane Growers*, 289 F.3d at 97.

Plaintiffs ignore these interests altogether in asking the Court to vacate or enjoin the Lease Sale. The party seeking a permanent injunction has the responsibility to demonstrate that it "satisf[ies]" the traditional four-factor equitable test before an injunction may be issued. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010); *Sierra Club v. U.S. Dep't of Agric.*, 841 F. Supp. 2d 349, 356 (D.D.C. 2012).[1] "It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should *not* issue; rather, a court must determine that an injunction *should* issue under the traditional four-factor test …." *Monsanto*, 561 U.S. at 158 (emphasis original). Thus, the Plaintiffs must demonstrate (1) that they have suffered an irreparable injury as a result of the Lease Sale; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of the hardships among Plaintiffs, Chevron, other bidders, the State of Louisiana, and the Federal Defendants, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *Id*. at 156–57. Plaintiffs' naked claim for relief does not meet this standard.

First, a party seeking an injunction must demonstrate that it has suffered an irreparable injury. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Plaintiffs' claimed injuries are focused only on alleged impacts from oil and gas activities that do not occur at the lease sale stage, are not permitted until later stages of exploration and development, and cannot

[1] Notably, while the Supreme Court suggested in *Monsanto* that vacatur may be a "less drastic" remedy than injunction, 561 U.S. at 165; that is not the case here. Vacating the leases would be highly disruptive because the sealed bids have been opened and made public. Enjoining activity on the leases would cause delays and impose costs, but it would not raise competition concerns about "re-running" a lease sale after the bids have already been revealed.

occur without further agency review and approvals. They do not allege (nor could they credibly do so) that they have been harmed by the legal acts of the Department of the Interior holding the Lease Sale.

Simply put, because OCSLA mandates additional review prior to the next stages (both exploration and later development), the Lease Sale itself cannot cause irreparable harm. The harms alleged by plaintiffs are all derivative of the environmental impacts associated with potential future oil and gas production (the development stage), and there is no presumption of irreparable harm in the environmental context. *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 545 (1987) (rejecting the presumption of irreparable injury in environmental cases as contrary to traditional equitable principles).

Second, it is generally presumed that a remedy at law is not sufficient to compensate for environmental injuries. *See id.* However, Plaintiffs have made no showing of any environmental injury directly resulting from the Lease Sale such that equitable relief should follow.

Third, the balance of the hardships favors Chevron, industry, API, the State of Louisiana, and the Federal Defendants. Courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). If, as Plaintiffs envision, the leasing bids were vacated and BOEM were required to auction the leases at a later date, Chevron's competitors would have the unfair advantage of knowing Chevron's previously confidential bidding strategy and bid amounts for each lease. Gallman Decl. at ¶ 9. If Plaintiffs succeed in obtaining the relief requested, Chevron could lose millions of dollars in lost exploration and potential production opportunities. *Id.*; *Amoco Prod. Co.*, 480 U.S. at 545 (economic investment

that could not be recovered was appropriate consideration in balancing equities of claimed environmental harm). In contrast, the harms alleged by the Plaintiffs are speculative and could occur (if at all) only after subsequent government approvals for oil and gas activities, which will be subject to separate NEPA reviews.

Fourth, the public interest strongly favors not vacating or enjoining the Lease Sale. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (citation omitted). Congress has declared it a national policy that "the outer Continental Shelf is a vital national resource reserve . . . which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." 43 U.S.C. § 1332(3). Thus, not only is the "expeditious and orderly development" of the Outer Continental Shelf in the public interest, Congress explicitly identified "maintenance of competition" as a matter of national interest. Vacating the lease bids would undermine competitive interests as discussed above.

CONCLUSION

For the foregoing reasons, Chevron requests that the Court grant summary judgment to the Federal Defendants and Intervenors on all claims and deny the Plaintiffs' Motion for Summary Judgment.

Respectfully submitted this 29th day of November 2021.

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INDEX OF EXHIBITS

Exhibit	Description
A	Declaration of Kyle L. Gallman

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2021, I caused a true and correct copy of the foregoing [Proposed] Motion for Summary Judgment and Judgment and Memorandum of Points and Authorities in Support and Opposition to Plaintiffs' Motion for Summary Judgment and all attachments to be filed with the Court electronically and served by the Court's CM/ECF system upon listed counsel for the Plaintiffs, Federal Defendants, Intervenor-Defendant, and Proposed Intervenor American Petroleum Institute:

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