

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

State of North Dakota,

Plaintiff,

vs.

The United States Department of the Interior;  
Debra 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 John Mehlhoff, in his  
official capacity as the acting Director of the  
Montana-Dakotas Bureau of Land  
Management.,

Defendants.

Case No. 1:21-cv-00148

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**ORDER DENYING MOTION FOR IMMEDIATE MANDAMUS RELIEF**

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**INTRODUCTION**

[¶1] THIS MATTER comes before the Court on a Motion for Immediate Mandamus Relief filed by the State of North Dakota (“North Dakota”) on August 23, 2021. Doc. No. 5. The Defendants, the United States Department of the Interior, Secretary Debra Haaland, Director of the Bureau of Land Management Nada Culver, and acting Director of the Montana-Dakotas Bureau of Land management office John Mehlhoff (collectively “Defendants”) filed a Response on September 20, 2021. Doc. No. 22. North Dakota filed a Reply on October 11, 2021. Doc. No. 27. Because North Dakota raised a new argument for the first time in its Reply, the Court granted the Defendants the opportunity to file a Surreply, which they did on November 9, 2021. Doc. No. 30. North Dakota was given the opportunity to file a Response to the Defendants’ Surreply, which

it did on November 23, 2021. Doc. No. 36. The Court heard oral argument from the Parties at a hearing on the Motion on January 12, 2022. For the reasons set forth below, North Dakota's Motion for Immediate Mandamus Relief is **DENIED without prejudice**.

### **BACKGROUND**

[¶2] Shortly after he was inaugurated as President of the United States, President Joseph R. Biden ("President Biden"), signed Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," on January 27, 2021. This was published in the Federal Register on February 1, 2021. 86 Fed. Reg. 7,619. In this Executive Order, President Biden directed the Department of the Interior to, among other things, "pause" new oil and natural gas leasing on federal lands "pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior's broad stewardship responsibilities over public lands." *Id.* at 7625. Specifically, Section 208 of the Executive Order provides:

Sec. 208. Oil and Natural Gas Development on Public Lands and in Offshore Waters. To the extent consistent with applicable law, **the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of federal oil and gas permitting and leasing in light of the Secretary of Interior's broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters.** The Secretary of the Interior shall complete that review in consultation with the Secretary Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy. In conducting this analysis and to the extent consistent with applicable law, the Secretary of the Interior shall consider whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, or take other appropriate action, to account for corresponding climate costs.

(emphasis added). Subsequent actions by the Department of the Interior and Bureau of Land Management resulted in significant cancellations or postponements of federal oil and natural gas lease sales in 2021, including in North Dakota.

[¶3] In a separate action in the Western District of Louisiana, District Judge Terry Doughty granted the plaintiffs’ Motion for Preliminary Injunction, enjoining the federal defendants<sup>1</sup> from enforcing President Biden’s “pause” on new oil and natural gas leasing on federal lands. Doc. No. 6-1, State of Louisiana et al. v. Joseph R. Biden, Jr., et al., 2:21-cv-00778, Doc. No. 140 (W.D. La. June 15, 2021). The Preliminary Injunction in that case is nationwide in scope and specifically states the Defendants

are hereby **ENJOINED** and **RESTRAINED** from implementing the Pause of new oil and natural gas leases on public lands . . . as set forth in Section 208, Executive Order 14008, 86 Fed. Reg. 7624-25 (Jan. 27, 2021) and as set forth in all documents implementing the terms of said Executive Order by said defendants, as to all eligible lands.

Id.

[¶4] In two other separate consolidated cases in the District of Wyoming,<sup>2</sup> District Judge Scott Skavdahl issued an order Dismissing the plaintiffs’ Motions for Preliminary Injunctions without prejudice on June 3, 2021. Doc. No. 6-3. There, the District Court found the nationwide Preliminary Injunction issued by in the Louisiana case “renders the current motions for preliminary injunction here materially moot.” Id. at p. 1. The Wyoming court concluded considering the requests for a preliminary injunction “would be a duplication and uneconomical use of judicial resources that risks inconsistent non-final rulings by different federal district courts.” Id. The court acknowledged the nationwide preliminary injunction does not provide every ground for relief sought in the motions for preliminary injunction (such as an order compelling the defendants there

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<sup>1</sup> Defendants Debra Haaland and John Mehlhoff are named as defendants in that case.

<sup>2</sup> Western Energy Alliance, et al. v. Joseph R. Biden et al., 0:21-cv-00013, District of Wyoming, and State of Wyoming v. United States Department of the Interior, et al., 0:21-cv-00056, District of Wyoming.

to hold quarterly lease sales) but concluded the full briefing on the merits of the claims was necessary to decide those issues.

[¶5] In the present matter, North Dakota filed a Complaint for Review of Final Agency Action asserting six claims on July 7, 2021. Doc. No. 1. Count I asserts a violation of a statutory duty under the Mineral Leasing Act (“MLA”). Count II claims the Defendants exceeded statutory jurisdiction under the MLA. Count III claims the Bureau of Land Management (“BLM”) violated the Federal Land Policy and Management Act. Count IV also asserts a violation of the Federal Land Policy and Management Act. Count V claims the Defendants violated the National Environmental Policy Act. Finally, Count VI claims the Defendants violated the Administrative Procedure Act. These claims essentially mirror those asserted in Louisiana.

[¶6] On August 23, 2021, North Dakota filed a Motion for Immediate Mandamus Relief. Doc. No. 5. North Dakota seeks an order from this Court “compelling the Federal Defendants to comply with the preliminary injunction issued in the Louisiana Action and their statutory duties” and to require the Defendants “to hold the previously cancelled March, June, and September quarterly oil and gas lease sales, and hold all future lease sales until the Federal Defendants comply with the procedural process under [the requisite statutes].” Doc. No. 6, pp. 31-32.

## **DISUCSSION**

### **I. Enforcement of the Louisiana Preliminary Injunction.**

[¶7] North Dakota first requests the Court enforce the Louisiana Preliminary Injunction in this case against the Defendants. Essentially, they argue the Defendants have not complied with the Preliminary Injunction because they failed to hold lease sales in 2021. The United States contends this Court should not, and ultimately cannot, enforce the Louisiana Preliminary Injunction. The Court agrees.

[¶8] Because this Court did not issue the nationwide preliminary injunction, as a matter of comity to the Western District of Louisiana, the Court concludes enforcement of that injunction should occur in the court that issued it. See Klett v. Pim, 965 F.2d 587, 591 (8th Cir. 1992) (a claim for contempt for violation of another court’s nationwide injunction “could only be brought in the court that issued the original injunction.”); see also, Sisney v. Kaemingk, 15 F.4<sup>th</sup> 1181, 1200-01 (8th Cir. 2021) (“Of course, Sisney remains free to ask the district court to impose coercive sanctions on the defendants if he believes that they are refusing to comply with those parts of the district court’s injunction that we have affirmed. **Because we are not the court that issued the injunction, however, we would be unable to grant any such request.**” (emphasis added) (quotation marks and citation omitted)). Although North Dakota seeks enforcement of another court’s nationwide injunction here, the Court agrees with the Wyoming Court’s conclusion that such relief “would be a duplication and uneconomical use of judicial resources that risks inconsistent non-final rulings by different federal district courts.” Doc. No. 6-3, Western Energy Alliance, 0:21-cv-00013, Docket No. 64 (D. Wy. June 30, 2021) (quoting Colorado River Water Conserv. Dist. v. United States, 424 U.S. 800, 817 (1976) (“As between federal district courts, however, though no precise rule has evolved, the general principle is to avoid duplicative litigation.”)). The Court will, therefore, not issue an order enforcing the Louisiana Preliminary Injunction. If that Injunction gets modified to remove the national character or overturned on appeal, North Dakota may bring an independent motion for preliminary injunction in this case for the Court’s review. Therefore, the State of North Dakota’s request is **DENIED without prejudice.**

## II. Immediate Mandamus Relief

[¶9] Turning now to North Dakota’s request for immediate mandamus relief, the Court finds consideration of these arguments should occur only after full briefing on the merits with the full

administrative record. North Dakota asserts the Defendants have failed to comply with District Judge Doughty’s nationwide preliminary injunction which has prohibited the Defendants from cancelling future quarterly oil and gas leases. North Dakota claims the “cancellation” of all oil and gas lease sales in 2021 occurred because the President issued the Executive Order that arbitrarily canceled all oil and gas lease sales. This, North Dakota contends, violates the Secretary of the Department of the Interior’s statutory duties to hold oil and gas lease sales when eligible lands are available.

[¶10] The Defendants, however, contend the pause on Federal oil and gas lease sales in North Dakota is a result of a nationwide overhaul of the Department of the Interior’s NEPA analysis when determining which lands are eligible and available. This overhaul was necessary, according to the Defendants, because of various Federal litigations that have resulted in the Department of the Interior needing to redo its NEPA analyses. The Defendants rely on WildEarth Guardians v. Zinke (WEG I), 368 F.Supp.3d 41 (D.D.C. 2019) and WildEarth Guardians v. Bernhardt (WEG II), 502 F.Supp.3d 237, 259 (D.D.C. 2020). As a result of those two cases, the Defendants argue nationwide reconsideration of the Department of the Interior’s NEPA analysis was required.<sup>3</sup>

[¶11] In light of these disagreements, the Court finds a fully developed factual record is necessary to resolve the instant dispute. The Court agrees with the Defendants that by asking for both the past sales to be held as well as all future lease sales is a premature request and can be dealt with in

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<sup>3</sup> The United States argues for the first time in its sur-reply, and made this argument at the hearing, the MLA’s ninety-day statute of limitations bars North Dakota’s claims. Doc. No. 30, p. 8 (quoting 30 U.S.C. § 226-2 (“No 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.”)). The Court will not consider this argument as it was raised for the first time in a Surreply. See United States v. Martinson, 419 F.3d 749, 753 (8th Cir. 2005) (Courts “generally ‘do not consider arguments raised for the first time in a reply brief.’” (quoting United States v. Griggs, 71 F.3d 276, 281 (8th Cir. 1995))). This issue is more appropriately considered after full briefing on the merits.

due course on proper summary judgment motions. The Court notes the Petitioners in the Wyoming cases also asked for essentially this same relief in their motions for preliminary injunctions. See Western Petroleum Alliance, 0:21-cv-00013, Petitioners' Motion for Preliminary Injunction, Docket No. 41, p. 41 (D. Wy May 10, 2021) (“[T]he Court should grant Petitioners’ motion, reinstate the first and second quarter oil and gas lease sales, and direct BLM to adopt promptly revised lease sale schedules that comply with the terms of the Mineral Leasing Act and other applicable law.”); Wyoming, 0:21-cv-00056, Petitioners’ Motion for Preliminary Injunction, Docket No. 44, p. 1 (D. Wy May 3, 2021) (“The State of Wyoming . . . moves this Court for an order enjoining the Respondents from canceling federal quarterly oil and gas lease sales in Wyoming during the pendency of this litigation. Wyoming also moves this Court to order the Respondents to hold the March 2021 Wyoming Federal Lease Sale and June 2021 Wyoming Federal Lease Sale as soon as reasonably possible.”).

[¶12] “Separate analyses determining whether the Court has jurisdiction under the Mandamus Act and/or the APA have been considered by other courts to be unnecessary because the two are coextensive.” Sharadanant v. U.S. Citizenship & Immigration Services, 543 F. Supp.2d 1071, 1075 (D.N.D. 2008). In its review of an agency’s action or inaction, the Court has authority to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). “The issuance of a writ of mandamus is an extraordinary remedy reserved for extraordinary situations.” In re MidAmerican Energy Co., 286 F.3d 483, 486 (8th Cir. 2002). In addition to reserving writs of mandamus for extraordinary circumstances, the Court may only grant such a writ if “(1) the petitioner can establish a clear and indisputable right to the relief sought, (2) the defendant has a nondiscretionary duty to honor that right, and (3) the petitioner has no other adequate remedy.”

Castillo v. Ridge, 445 F.3d 1057, 1060-61 (8th Cir. 2006).<sup>4</sup> Whether the Court should issue a writ of mandamus “is largely a matter within the district court’s discretion.” Id. at 1061.

[¶13] This Court agrees with the court in the Wyoming cases. While the Louisiana Preliminary Injunction does not necessarily provide North Dakota with the mandamus relief it seeks here, “it granted the bulk of [North Dakota’s] requested relief.” Doc. No. 6-3, p. 2. The Court finds the remaining issues relating to enforcement of the relevant statutory provisions should be considered only after the record is fully developed on proper motions for summary judgment. See id. Because there is currently a nationwide preliminary injunction in effect that protects North Dakota’s interests in this case, the Court does not need to consider the three Castillo factors because it concludes the circumstances of this case are not so extraordinary as to require the extraordinary relief afforded by a writ of mandamus at this time. See Organization for Competitive Markets v. U.S. Department of Agriculture, 912 F.3d 455, 462 (8th Cir. 2018).<sup>5</sup>

[¶14] North Dakota’s Motion essentially seeks both retrospective and prospective injunctive relief. Immediate injunctive relief, however, has already been granted by District Judge Doughty in the Western District of Louisiana. Enforcement or modification of that order must be brought

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<sup>4</sup> The Court notes, in the Calstillo case relied on by North Dakota, the District Court’s denial of mandamus occurred in review of a motion for summary judgment, not as a preliminary request for immediate relief on an incomplete record. 445 F.3d at 1060. This further supports the Court’s conclusion a fully developed factual record is necessary to resolve the instant dispute.

<sup>5</sup> The Court notes North Dakota’s request at this very early stage of the litigation appears to be a request to clarify or define the scope of the Louisiana Preliminary Injunction. That injunction prevents the Defendants from enforcing President Biden’s “pause” on oil and gas lease sales. In a roundabout way, North Dakota asks this Court to take this preliminary action one step further. See Doc. No. 6, p. 6 (“The preliminary injunction Order does not require Federal Defendants to hold the cancelled March and June quarterly oil and gas lease sales in North Dakota.”). North Dakota is unsatisfied with the nationwide Preliminary Injunction and asks the Court to compel the Defendants to hold the past lease sales and indefinitely require the Defendants to hold leasing sales into the future. In the preliminary stages of this litigation with an undeveloped record, this request is overly broad and premature.



in that Court, not in the District of North Dakota.<sup>6</sup> Mandamus relief is extraordinary. Immediate mandamus relief without a complete record is, to the Court’s knowledge, unprecedented.<sup>7</sup> However, the Defendants gave North Dakota and the Court assurances at the hearing the process to start Federal oil and gas leasing sales in North Dakota was imminent. Based on this assurance, mandamus relief is particularly unnecessary. See Org. for Competitive Markers v. U.S. Dep’t of Agric., 912 F.3d 455, 463, n.6 (8th Cir. 2018) (“USDA has given assurance that it intends to issue regulations on the deferred issues in the near future, a fact that counsels against determining that the delay warrants a writ of mandamus at this time.”). Therefore, the requested relief, at this early stage in the litigation is **DENIED without prejudice**. If the Defendants do not hold to their word and cancel any planned future sale, North Dakota may bring this action for review of the specifically cancelled sales once this Court has the benefit of a complete record.

### **CONCLUSION**

[¶15] The court in Louisiana issued a nationwide Preliminary Injunction which prohibits the Defendants in this case from enforcing President Biden’s “pause” on oil and natural gas lease sales in North Dakota. This preliminary injunction in the Louisiana case provides North Dakota with the protection it needs at this early stage in the instant litigation. Therefore, the circumstances of this case do not warrant the extraordinary relief afforded by mandamus relief at this very early stage of the litigation. If the Louisiana Preliminary Injunction’s scope becomes limited or is overturned on appeal, North Dakota may bring its own motion for a preliminary injunction in this

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<sup>6</sup> At the hearing on January 12, Counsel for North Dakota conceded the State could bring a motion to intervene in the Louisiana litigation and seek a modification of Judge Doughty’s Preliminary Injunction.

<sup>7</sup> The Court could find no case in which a Court issued immediate mandamus relief, nor has any party cited to any case in which a court has issued mandamus relief on an incomplete and preliminary record.

matter. The Court concludes ruling on North Dakota's request for relief beyond the scope of the Louisiana Preliminary Injunction requires a complete record, which is not before the Court. Accordingly, North Dakota's Motion for Immediate Mandamus Relief is **DENIED without prejudice.**

[¶16] **IT IS SO ORDERED.**

DATED January 14, 2022.

A handwritten signature in black ink, appearing to read 'D. Traynor', written over a horizontal line.

Daniel M. Traynor, District Judge  
United States District Court