

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS, and)
PHYSICIANS FOR SOCIAL RESPONSIBILITY)
)
Plaintiffs,)
)
v.)
)
DEBRA HAALAND, *et al.*,)
)
Federal Defendants,)
)
and)
)
AMERICAN PETROLEUM INSTITUTE, *et al.*,)
)
Defendant-Intervenors.)
)

Case No. 1:16-cv-1724-RC
The Honorable Rudolph Contreras

**PLAINTIFFS’ REPLY TO INTERVENOR-DEFENDANTS’ OPPOSITION TO
MOTION FOR VOLUNTARY DISMISSAL**

On March 4, 2022, Plaintiffs WildEarth Guardians and Physicians for Social Responsibility moved this Court for an order voluntarily dismissing this action with prejudice, pursuant to Fed. R. Civ. P. 41(a)(2). ECF No. 227. Plaintiffs and Federal Defendants have reached a Stipulated Settlement Agreement, whereby Federal Defendants have committed to conducting “additional NEPA analysis for the two leasing decisions challenged in Plaintiffs’ Supplemental Complaint, consistent with the Court’s prior decisions in *WildEarth Guardians v. Haaland*, 16-cv-1724 (D.D.C.),” and to posting notice online regarding complete Applications for Permits to Drill (“APDs”) on the leases at issue in this case. *See* Stipulated Settlement Agreement, ECF No. 227-1 ¶¶ 1,3. In accordance with the terms of the Stipulated Settlement Agreement, Plaintiffs have sought dismissal of this litigation with prejudice.

Relying on several unsupported assumptions, Intervenor American Petroleum Institute (API) and State of Wyoming oppose voluntary dismissal of the case, instead asking the Court to first resolve API's motion to dismiss on statute of limitations grounds. In other words, Intervenor take exception of the vehicle for dismissal, not that dismissal of this case is appropriate. This position is incongruous for several reasons. First, Intervenor's objections are based on an erroneous assumption that the Mineral Leasing Act's 90-day statute of limitations necessarily applies to the NEPA claims at issue in this case, an assertion that no court has ever upheld. *See* ECF No. 213 at 13 (and cases cited). Second, Intervenor wrongly assume that this Court's pre-approval is needed before BLM can undertake additional NEPA analysis—a decision the agency made based on intervening events, including two separate merits decisions from this Court, since these challenged leases were originally issued. Finally, because BLM has independent authority to conduct additional NEPA analysis irrespective of its commitments in the Stipulated Settlement Agreement, Intervenor are not prejudiced by the settlement terms or the requested voluntary dismissal. Because Plaintiffs' Motion for Voluntary Dismissal was sought in good faith and no party would suffer legal prejudice from dismissal, the Court should grant Plaintiffs' motion.

ARGUMENT

I. Plaintiffs' Motion for Dismissal is not a Motion for Voluntary Remand

Federal Rule of Civil Procedure 41(a)(2) states that, except in circumstances not present here, "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." "To determine whether dismissal is appropriate, a court looks to (1) whether the motion 'was sought in good faith' and (2) whether the defendant 'would suffer legal prejudice from a dismissal at this stage in the litigation.'" *N.S. by & through S.S. v. D.C.*, 272 F.

Intervenors, however, would not be prejudiced by voluntary dismissal, or by BLM undertaking additional environmental review in accordance with this Court's prior decisions.

II. Plaintiffs' Motion for Dismissal is Sought in Good Faith

Public policy favors settlement of disputes. *U.S. v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999). This policy encouraging settlement has "particular force where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement." *United States v. Cannons Engineering Corp.*, 899 F.2d 79, 84 (1st Cir. 1990). In light of the negotiated settlement agreement underlying Plaintiffs' Motion for Voluntary Dismissal, Plaintiffs have acted in good faith in seeking voluntary dismissal, and Intervenors have not argued otherwise.

III. No Party Would be Prejudiced by Voluntary Dismissal

Voluntary dismissal is further appropriate because the Stipulated Settlement Agreement imposes no legal obligations on Intervenors, and dismissal with prejudice will not cause any legal prejudice to Intervenors. Intervenors, in fact, do not argue that voluntary *dismissal* would cause prejudice, but only object to *remand* to the agency for additional NEPA. Intervenor Br. at 7. But neither voluntary dismissal nor remand for additional NEPA would prejudice Intervenors, whose lease rights are expressly delimited by BLM's compliance with its own legal obligations, including those under NEPA. *See* 43 C.F.R. §§ 3101.1-2, 3101.1-3, 3108.3(d).

Intervenors' arguments against voluntary dismissal rest on the fundamental assumption that the Mineral Leasing Act's 90-day statute of limitations applies to the NEPA claims at issue in this case. But as fully briefed to this Court, no federal court has previously held NEPA claims subject to the Mineral Leasing Act's 90-day statute of limitations. *See* ECF No. 213 at 13 (and

cases cited). Accordingly, Intervenor's claims of prejudice are wholly rooted in an unsupported legal theory.

Moreover, even if API were correct that the Mineral Leasing Act's statute of limitations should apply in this NEPA case, voluntary dismissal would still not cause Intervenor's prejudice. Assuming *arguendo* that the Court were to instead grant API's motion to dismiss on statute of limitations grounds, such a decision would still not affect BLM's obligation to comply with its separate obligations under NEPA. Notably, Section 226-2 bars untimely "actions" contesting certain Secretarial decisions related to oil and gas leasing, 30 U.S.C. § 226-2, but does not preclude BLM from conducting supplemental environmental analyses under NEPA. Instead, under 40 C.F.R. § 1502.9(d)(2), BLM is permitted to undertake supplemental NEPA review at any time "when the agency determines that the purposes of [NEPA] will be furthered by doing so." Federal Defendants have, in fact, sought voluntary remand in this case to conduct such additional NEPA review, explaining that "Federal Defendants have determined that a remand is appropriate so they may further analyze the impacts of the challenged leasing decisions" in light of the Court's *Bernhardt* decision. ECF No. 200, at 4-5 (citing *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237 (D.D.C. 2020)).

Intervenor continues to press the argument that a confession of error is required for voluntary remand, *see* Intervenor Br. at 5 n.1, contrary to D.C. Circuit law.¹ Nor, of course, is this a request for voluntary remand. More importantly, however, the *American Waterways* cases provide no support for Intervenor's opposition because—unlike here—there were no intervening

¹ The D.C. Circuit has clearly established law that an "agency may request a remand (without confessing error) in order to reconsider its previous position." *Util. Solid Waste Activities Grp. v. Env't Prot. Agency*, 901 F.3d 414, 436 (D.C. Cir. 2018) (per curiam) (quoting *SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001)), *judgement entered*, No. 15-1219, 2018 WL 4158384 (D.C. Cir. Aug. 21, 2018) (per curiam).

developments that preceded the agency's remand request and Stipulated Settlement Agreement. *Am. Waterways Operators v. Wheeler (American Waterways I)*, 427 F. Supp. 3d 95, 98 (D.D.C. 2019) (“Nor does EPA identify any intervening legal or factual developments that support remand.”). When there are intervening events, voluntary remands “comport[] with the general principle that an agency should be afforded the first word on how an intervening change in law affects an agency decision pending review.” *Nat'l Fuel Gas Supply Corp. v. F.E.R.C.*, 899 F.2d 1244, 1249–50 (D.C. Cir. 1990) (per curiam). Indeed, as Federal Defendants pointed out in briefing their Motion for Voluntary Remand, “*American Waterways I* firmly supports Federal Defendants’ remand request, observing that: ‘Courts commonly grant such requests when the motion is made in response to intervening events outside of the agency’s control, for example, a new legal decision or the passage of new legislation....In those cases, [a] remand is generally required if the intervening event may affect the validity of the agency action.’” ECF No. 210, at 2 (quoting 427 F. Supp. 3d at 97).

Further, even absent a grant of voluntary remand or dismissal by this Court, Federal Defendants have the discretion to conduct supplemental NEPA analysis given their expressed concerns that “[t]he analyses supporting the challenged Colorado and Utah leasing decisions are similar in some respects to those the Court considered in *Bernhardt*.” ECF No. 200, at 6. *See also* 40 C.F.R. § 1501.5 (“An agency may prepare an environmental assessment on any action in order to assist agency planning and decision making.”) Because BLM has the discretion to conduct additional NEPA on the challenged leases, irrespective of any settlement agreement or dismissal of the litigation, Intervenor have suffered no prejudice from BLM’s commitment to do so through the Stipulated Settlement Agreement or by voluntary dismissal of this case.

Intervenor’s claims of possible prejudice are rooted in their desire for “certainty and comfort” regarding the validity of their lease rights. Intervenor Br. at 9. But Intervenor offer no support for their novel theory that the Mineral Leasing Act’s statute of limitations not only bars

untimely legal challenges to leasing decisions, but also forecloses BLM from reassessing its own environmental analyses. Intervenor Br. at 8. Such an interpretation is plainly inconsistent with BLM's rights and obligations under NEPA, as well as the express limitations of lease rights under the Mineral Leasing Act.

While Intervenor may prefer to have the Court dismiss this case on statute of limitations grounds, a pending motion to dismiss does not limit the Court's discretion to grant voluntary dismissal. As noted in Plaintiffs' Motion, the D.C. Circuit has explained, "los[ing] an opportunity for a favorable final disposition of the case ... is not important as long as [defendant] suffers no legal prejudice from dismissal." *Kellmer v. Raines*, 674 F.3d 848, 851 (D.C. Cir. 2012) (quoting *Conafay v. Wyeth Labs*, 841 F.2d 417, 420 (D.C. Cir. 1988)). But in their attempt to reframe Plaintiffs' Motion for Voluntary Dismissal as a backdoor motion for voluntary remand, Intervenor completely fail to engage with this fact or controlling case law. Because Plaintiffs are seeking dismissal with prejudice – the exact same remedy requested in API's motion to dismiss – Intervenor cannot show legal prejudice from voluntary dismissal.

If upon completion of additional NEPA analyses, BLM were to ultimately determine that the challenged leases needed to be vacated or modified with additional stipulations, the affected Intervenor would have an opportunity, at that time, to challenge such a decision. But Intervenor cannot rely on such a speculative possibility to preempt BLM from taking a hard look at the environmental consequences of the agency's prior leasing decisions, particularly in light of the Court's earlier decisions in this case, which plainly call into question the validity of the environmental review underlying the challenged leasing decisions. If, upon conclusion of additional NEPA analysis, BLM were to take action affecting Intervenor's lease rights,

Intervenors would have every opportunity to challenge such a decision. But such premature speculation is not legal prejudice or the Stipulated Settlement Agreement.

Because BLM has the independent authority to conduct supplemental NEPA and reassess its prior leasing decisions, even absent voluntary dismissal or remand, Intervenors are not prejudiced by Plaintiffs' Motion for Voluntary Dismissal or the settlement terms.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Voluntary Dismissal, ECF No. 227, and enter an order retaining jurisdiction solely for the purposes of resolving any motion for attorneys' fees and costs filed that have been or may be timely filed by Plaintiffs in accordance with the Equal Access to Justice Act.

Respectfully submitted on this 25th day of March 2022.

/s/ Daniel L. Timmons

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record in this case.

/s/ Daniel L. Timmons

Daniel L. Timmons