



Jeff Landry  
Attorney General

**State of Louisiana**  
DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

May 19, 2022

Lyle W. Cayce  
Clerk of Court  
United States Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130-3408

*Re: State of Louisiana, et al. v. Biden et al.*, No. 21-30505

Dear Mr. Cayce:

Appellees submit this Rule 28(j) letter to inform the Court about significant new post-argument events relevant to the Panel's oral-argument questions concerning (1) the Five-Year Plan's status and (2) whether cancelling individual lease sales constitutes a significant revision under the Outer Continental Shelf Lands Act. *See* [43 U.S.C. §1344\(e\),\(f\)](#). On May 11, 2022—the day after argument—the Biden Administration announced it was cancelling all three remaining lease sales in the current Five-Year Plan. *See, e.g.,* Rebecca Falconer, *Biden administration cancels 3 major offshore lease sales*, Axios (May 11, 2022), <https://bit.ly/3MoTdMp>. A statement later posted to the Bureau of Ocean Energy Management's website confirms that Lease Sale 258 will not occur. *See* BOEM, *Sale 258 Status Update*, <https://bit.ly/3wCcdjU> (Attachment A). Because the fact of this cancellation appears on BOEM's website, it is subject to judicial notice under Federal Rule of Evidence 201. *Cf. Kitty Hawk Aircargo, Inc. v. Chao*, [418 F.3d 453, 457](#) (5th Cir. 2005).

In short, during the last week, the Biden Administration has cancelled not one but *all three remaining Five-Year Plan lease sales*. By

any measure, scrapping all of the remaining Five-Year Plan constitutes a significant revision to it. This is clear evidence that Executive Order 14008’s mandatory Pause has led to a systematic cancellation of lease sales for offshore and onshore oil-and-gas leasing—*despite* the district court’s injunction. This confirms both that the Pause works a significant revision without following statutorily required procedures *and* that Plaintiffs need an injunction at least as broad as the district court’s.

Worse yet, the cancellations suggest a type of “gamesmanship” that this Court has criticized. The Administration cannot issue an across-the-board Pause of oil-and-gas lease sales and then shift its explanation to “lack of industry interest.” *Cf.* Jeremy Beaman, *Industry disputes Interior Department’s rationale for canceling Alaska offshore lease sale*, Wash. Examiner (May 15, 2022), <https://washex.am/39vYC5x>. The announcement’s timing—the day after oral argument—is also suspect. *Cf. Texas v. Biden*, 20 F.4th 928, 959, 962-63 (5th Cir. 2021) (rejecting administrative “gamesmanship” by DHS in attempt to moot case).

Respectfully submitted,

/s/ Joseph Scott St. John

Joseph Scott St. John  
Deputy Solicitor General

Word count: 340

# EXHIBIT A



## HOME | LEASING

The Department of the Interior will not move forward with Lease Sale 258 in the Alaska Region's Cook Inlet due to lack of industry interest in leasing in the area. This sale was included in the 2017-2022 National Outer Continental Shelf Oil and Gas Leasing Program.

Background on lease sales in the OCS off the coast of Alaska can be found at [Sale 258 Status Update](#).



## Lease Sale Chronology

### 2021

- |        |   |
|--------|---|
| May 11 | The Department of the Interior will not move forward with Lease Sale 258 in the Alaska Region's Cook Inlet due to lack of interest in leasing in the area. This sale was included in the 2017-2022 National Outer Continental Shelf Oil and Gas Leasing Program.  |
| Dec 13 | Comment period closes. Comments received during the comment period will be used to inform preparation of the final EIS.   |
| Oct 29 | A Notice of Availability for the draft Environmental Impact Statement referenced below (see entry for Oct. 22) is published in the Federal Register. This publication initiates a 45-day comment period ending at 11:59pm ET on Monday, Dec. 13. During that time, comments may be submitted in two ways: |

1. At any time until the close of the comment period, **written comments** may be submitted. Simply go to [Regulations.gov](https://www.regulations.gov), the Government's official commenting portal, and click on the button on the upper left titled "Comment."
2. **Oral comments** may be submitted via any of three virtual public hearings, scheduled for the following dates (all times Alaska Standard Time):
  - **Tue, Nov. 16** – 6:30pm to 8:30pm
  - **Wed, Nov. 17** – 2pm to 4pm
  - **Thu, Nov. 18** – 6:30pm to 8:30pm

Comments received, whether via [regulations.gov](https://www.regulations.gov) or through a virtual public hearing, will be used to inform preparation of the final EIS.

- |        |   |
|--------|---|
| Oct 22 | BOEM publishes a draft Environmental Impact Statement (EIS) analyzing the potential environmental impacts of proposed Oil & Gas Lease Sale 258. |
|--------|---|

A Notice of Availability for the draft EIS will be published in the Federal Register on **Friday, Oct. 29**. The Oct. 29 public comment period open through 11:59 p.m. Eastern Time on **Monday, Dec. 13**. During the comment period, any interested party may submit comment on the draft EIS through [regulations.gov](https://www.regulations.gov), the federal government's official commenting portal. A link to the [regulations.gov](https://www.regulations.gov) commenting docket will appear on this page when the comment period opens.

In addition, BOEM will host three virtual public hearings during the comment period.

## SCHEDULE OF PUBLIC HEARINGS

Nov. 16 (6:30 p.m. to 8:30 p.m.)

Nov. 17 (2 p.m. to 4 p.m.)

Nov. 18 (6:30 p.m. to 8:30 p.m.)

During the public hearings, any interested party may submit testimony and have it become part of the public record. A recording of the public hearings will be posted to this page beginning Oct. 29.

Comments received, whether via regulations.gov or through a virtual public hearing, will be used to inform preparation of

- Executive Summary
- Public Hearing Presentation
- Draft Environmental Impact Statement
- Exploration and Development Scenario
- Oil Spill Risk Analysis
- Press Release: BOEM Publishes Draft EIS for Proposed Cook Inlet Lease Sale

Aug 24	Department of the Interior outlines next steps in leasing program.
Aug 16	Department of the Interior confirms that it has appealed the preliminary injunction entered by the district court in Louisiana. During the appeal, bureaus are directed to “proceed with leasing consistent with the district court’s injunction.”
Jun 15	U.S. District Court for the Western District of Louisiana issues a nationwide preliminary injunction barring the Biden administration from implementing a pause on new oil and natural gas leases on public lands or in offshore waters.
Mar 24	Thirteen states file suit (Louisiana v. Biden) in federal court challenging actions taken pursuant to President Biden’s Executive Order 14008.
Feb 23	A notice formally withdrawing the public review period for Lease Sale 258 appears in the Federal Register.
Feb 04	Pursuant to Executive Order 14008, BOEM cancels the public comment period on the Lease Sale 258 draft EIS. A notice for announcing the withdrawal will be published in the Federal Register in the next few weeks.
Jan 27	President Biden issues Executive Order 14008 (“Tackling the Climate Crisis at Home and Abroad”), directing federal agencies to review oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconciliation of Federal oil and gas permitting and leasing practices.”
Jan 15	Notices of Availability for the Area Identification Decision and the draft Environmental Impact Statement, respectively, are published in the Federal Register, as referenced below. The comment period is scheduled to close Monday, March 1.
Jan 13	BOEM publishes an Area Identification Decision and announces the availability of a draft Environmental Impact Statement. BOEM will publish separate Notices of Availability for both documents in the Federal Register’s Reading Room tomorrow (Thursday, Jan. 14); the Federal Register itself Friday, Jan. 15.
	The Jan. 15 publications will initiate a 45-day public comment period on the draft EIS, which will close Monday, March 1. During this period, BOEM will provide more information, supporting documents and instructions for commenting via the Virtual Meeting Room.
	Virtual meetings, accessible via the same URL, will be held on the following dates (all times Alaska Time):
	Feb. 9 from 2 p.m. to 4 p.m. Feb. 10 from 6:30 p.m. to 8:30 p.m. Feb. 11 from 2 p.m. to 4 p.m.
	<ul style="list-style-type: none"> <li>• Press Release</li> <li>• Virtual Meeting Room</li> <li>• Area Identification Map</li> <li>• Notice of Availability: Area Identification Decision</li> <li>• Notice of Availability: Draft EIS</li> </ul>

2020

- Nov 11 Following the Sept. 10 – Oct. 13 scoping period, BOEM publishes the Final Scoping Report for proposed Cook Inlet OCS Oil Sale 258.
- Oct 13 Comment period ends.
- Sep 10 The Notice of Intent to Prepare an EIS and the Call for Information and Nominations referenced below are published in the Register.
- Sep 09 BOEM announces it is seeking public comment on two documents — A Call for Information and Nominations (Call) and a Notice of Intent to Prepare an Environmental Impact Statement (EIS) — relating to a proposed 2021 oil and gas lease sale in the federal sublease area under Cook Inlet, off Alaska’s southcentral coast.
- Both documents will be published in the Federal Register Thursday, Sept. 10. BOEM will receive public comment on both documents through 11:59 p.m. ET Oct. 13.
- During the public comment period, members of the public may visit the Proposed LS 258 Virtual Meeting Room to find out more about the proposed lease sale. The Virtual Meeting Room provides an opportunity for submitting questions about the Call and EIS and for submitting comments for the public record.
- BOEM will also host two live, virtual public meetings during the comment period. These sessions will be held at 6:30 p.m. Alaska Time on Tuesday, Sept. 29; and at 6:30 p.m. Alaska Time on Thursday, Oct. 1.
- Press Release
  - Call for Information and Nominations
  - Notice of Intent to Prepare an EIS