

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA,  
By and through its Attorney General, JEFF  
LANDRY, et al.,

PLAINTIFFS,

v.

JOSEPH R. BIDEN, JR., in his official capacity  
as President of the United States; et al.,

DEFENDANTS.

Civ. No. 2:21-cv-00778-TAD

**PLAINTIFF STATES' RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS**

Under Local Rule 56.1, Plaintiff States submit this response to Defendants' Statement of Undisputed Material Facts (Doc. 209-2). The numbering below begins at paragraph 23 because Defendants' Statement first responds to the 22 numbered paragraphs in Plaintiff States' Statement of Undisputed Material Facts (Doc. 199-11) before beginning their own assertions at paragraph 23:

23. Onshore oil and gas lease sales under the Mineral Leasing Act (MLA) have not historically occurred on a regular quarterly basis in each State. For example, competitive lease sales under the MLA were held in the thirteen Plaintiff States in only 27% of the quarters from 2017 to 2020. Declaration of Peter Cowan (Cowan Decl.) ¶ 3.

**Response:** Statement disputed as lacking in context and as vague as to the term "historically." Without knowing what time period Defendants intend to refer to by the term "historically," it is impossible to discern whether there were lease sales scheduled in these states for these quarters; whether competitive lease sales were scheduled but canceled for lack of expressions of interest (EOIs), bids, or other responses from potential lessors; or whether competitive lease sales were scheduled but court orders or other legally valid justifications existed for not holding them. Plaintiffs do not dispute the specific example referred to in paragraph 23.

24. Additionally, most Plaintiff States—Alabama, Alaska, Arkansas, Georgia, Missouri, Mississippi, Nebraska, and West Virginia—experienced a longer absence of competitive MLA lease sales (at least seven consecutive quarters) from 2017 to 2020, than has occurred in 2021 to 2022. Cowan Decl. ¶¶ 3–8. Those consecutive quarters without sales were not due to an absence of expressions of interest (EOIs), as EOIs were pending in many of those States during the periods without competitive MLA lease sales from 2017 to 2020. *Id.*

**Response:** Statement not disputed.

25. BLM manages widely varying quantities of mineral estate across the 50 States, from 0 acres in New Jersey, to 23 acres in Connecticut, to 800,000 acres in Kansas, to 1.9 million acres in

Hawaii, to 33.7 million acres in Arizona, to 51.1 million acres in California, to 219 million acres in Alaska. Cowan Decl. ¶ 9.

**Response:** Statement not disputed.

26. As of February 24, 2021, neither BLM nor the Department of the Interior had adopted a “blanket policy” against onshore leasing. BLM\_I002421 (“there’s not a blanket policy even with direction in the [Executive Order]”).

**Response:** Disputed. An ambiguous internal e-mail from a Department official does not establish that there is no across-the-board policy. That is especially true in light of the onslaught of public statements and actions showing that there was an across-the-board policy. For example, the day before that internal e-mail, the Department took the position that, “in response to Executive Order 14008” alone, it would “cancel the comment period and public hearings for the Lease Sale 258.” 86 Fed. Reg. 10,994. It explained that the “pause” applied to all “new oil and gas leasing on public lands and offshore waters.” *Id.* A few days before that, the Department “rescind[ed] the record of decision for GOM Lease Sale 257 to comply with Executive Order 14008.” 86 Fed. Reg. 10,132. Shortly before that, it published a universal notice that it was “hitting pause on new oil and gas leasing.” *FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future* (Jan. 27, 2021), on.doi.gov/3Rj3Xil.

27. As of March 1, 2021, neither BLM nor Interior had “yet rendered” decisions “on how the Department will implement the Executive Order . . . with respect to onshore sales.” BLM\_I001180.

**Response:** Disputed. Again, a single e-mail, the meaning of which is not clear, does not replace the Department’s actual decisions and actions. For the same reasons discussed in response to Statement 26, the overwhelming evidence confirms that BLM and Interior had rendered decisions on how to implement the Executive Order with respect to all leases: by indefinitely postponing or

cancelling them. *See, e.g., FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future* (Jan. 27, 2021), [on.doi.gov/3Rj3Xil](https://on.doi.gov/3Rj3Xil) (“hitting pause on new oil and gas leasing”).

28. Plaintiffs have no evidence that either BLM or Interior adopted a blanket policy against onshore leasing between February 24, 2021 and March 24, 2021. Had Interior adopted such a policy during that timeframe, BLM’s April 21, 2021 decision regarding second-quarter 2021 lease sales would have been superfluous.

**Response:** Disputed. A blanket policy can be implemented through follow-on actions, so the Defendants’ proposed inference about “superflu[ity]” is false.

29. Of the seven onshore postponements that occurred before March 24, 2021, six postponements—in BLM’s Eastern States, Utah, Montana-Dakotas, Wyoming, Colorado and Nevada State Offices—were based on concerns about National Environmental Policy Act (NEPA) compliance:

- Utah: On February 11, 2021, the BLM-Utah Director recommended postponing Utah’s proposed March 2021 lease sale to account for a December 10, 2020 court decision, *Rocky Mountain Wild v. Bernhardt*, 506 F. Supp. 3d 1169 (D. Utah 2020), *appeal filed*, No. 21-4020 (10th Cir. Feb. 16, 2021). BLM\_I001163–64. That recommendation stated that the draft EA for the March 2021 sale “took a similar approach [of] analyz[ing] only two alternatives: lease all or lease nothing,” where that approach was found deficient in *Rocky Mountain Wild*. BLM\_I001164. The BLM Deputy Director, Operations, Michael Nedd approved that recommendation on February 12, postponing the sale. *Id.* On a parallel track that began on February 4, BLM-Utah sent a memorandum to Laura Daniel-Davis, who was exercising the delegated authority of the Assistant Secretary, Land and Minerals Management, requesting authorization by February 12 to post a competitive sale notice for a March 2021 Utah sale.

BLM\_I001148–49. That memo explained that while BLM-Utah had posted a draft EA for public comment, it had not yet prepared an “updated EA, responding to [the eight] comments received.” BLM\_I001149. On February 12, Acting Deputy Solicitor Travis Annatoyn recommended postponing the Utah sale given “serious questions as to NEPA compliance,” and Daniel-Davis approved that recommendation on February 12. BLM\_I001169–70.

- Eastern States: On February 12, the BLM-Eastern States Director recommended postponing its March 2021 lease sale because the underlying NEPA documentation “need[ed] additional air quality analysis, including [GHG] analysis” following *WildEarth Guardians v. Bernhardt* (*WEG II*), 502 F. Supp. 3d 237, 245 (D.D.C. 2020), *dismissed*, No. 21-5006, 2021 WL 3176109 (D.C. Cir. Apr. 28, 2021). BLM\_I001165–66.
- Colorado & Montana-Dakotas: On February 4, both BLM-Colorado and BLM- Montana-Dakotas sought approval by February 12 to post competitive sale notices for March 2021 sales. BLM\_I001150–55.<sup>1</sup> Their respective submissions indicated that their EAs were ready for review as the agency had responded to public comments. BLM\_I001153 (“BLM responded to [public] comments [on a draft EA]”); BLM\_I001152 (referencing “response to comment section of the EA”). On February 12, Annatoyn recommended postponing the Colorado and Montana-Dakotas sales, because their EAs “may be problematic in their evaluation of greenhouse gasses” in light of recent court decisions such as *WEG II* and *Columbia Riverkeeper v. U.S. Army Corps of Engrs.*, No. 19-6071, 2020 WL 6874871, at \*4 (W.D. Wash. Nov. 23, 2020). BLM\_I001170. Annatoyn explained that “[g]iven the rapidly-evolving state of the law,

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<sup>1</sup> Although the BLM-Montana-Dakotas sale was previously planned for March 23—necessitating a February 5 posting—its request acknowledged that “the lease sale date [might] need to be changed from March 23 to March 30,” making February 12 the relevant approval date. BLM\_I001154.

the complex and novel challenges posed by greenhouse gas analysis, and the truncated period of your review, we advise you that there is a significant likelihood that analysis of the Colorado and Montana/Dakotas leases does not satisfy NEPA and is therefore vulnerable to litigation.”

*Id.* Daniel-Davis approved that recommendation on February 12. *Id.*

- Wyoming: On February 4, BLM-Wyoming requested next-day approval to hold a March 2021 lease sale. BLM\_I001156–57. Unlike the Colorado and Montana requests, BLM-Wyoming’s request did not indicate that its EA was ready for review. BLM\_I001157. Instead, BLM-Wyoming sought authorization to proceed with offering parcels for leases based merely on the assurance that “[c]oncerns raised in ongoing litigation, including [*WEG II*, climate change and GHG emissions], *Western Watersheds Project vs. Zinke*, 1:18-cv-00187-REB [D. Idaho, BLM leasing policy IM 2018-034], and *Montana Wildlife Federation vs. Bernhardt*, 4:18-cv-00069-BMM [D. Mont., Greater Sage-Grouse leasing prioritization], will be satisfactorily addressed in the Environmental Assessment and Protest Decision before any lease is issued.” BLM\_I001157. On February 12, the Wyoming sale was postponed due to “serious questions as to NEPA compliance.” BLM\_I001169–70.
- Nevada: Well before Executive Order 14,008, BLM-Nevada postponed a December 2020 Nevada sale by publishing an errata without further explanation to its ePlanning website. Doc. 120-7, at PR100. On January 25, 2021, BLM- Nevada made a similar decision to postpone its lease sale and announced this decision on its website. BLM\_I001131, BLM\_I001184. That decision was confirmed by a formal errata published on January 27, 2021. BLM\_I001132. The Nevada January 2021 postponement was made for the same reason as the prior Nevada

December 2020 postponement: the need to prepare updated analysis of GHG emissions following *WEG II*. Cowan Decl. ¶¶ 10–11.<sup>2</sup>

**Response:** Disputed insofar as it suggests that these decisions were not affected by the Pause or were not pretextual.

30. The last of the seven postponements that occurred before March 24, 2021—regarding a sale in BLM’s New Mexico State Office—was only a temporary postponement about how to proceed in the “meantime” “pending decisions on how the Department will implement the Executive Order . . . with respect to onshore sales.” BLM\_I001180. When making that decision, Interior was aware that it had “the flexibility to hold the sale [no later than] the end of the Quarter (end of June).” BLM\_I002424.

**Response:** Disputed. These e-mails do not stand in the place of the Department’s actual actions and decisions for the reasons discussed in response to Statements 26 and 27.

31. After BLM issued its April 21, 2021 decision not to hold second quarter sales, Plaintiffs never supplemented their Complaint under Federal Rule of Civil Procedure 15(d) to challenge the April 21, 2021 decision. Plaintiffs disclaimed “challeng[ing] these post-filing actions as independent final agency actions.” Doc. 179 at 2.

**Response:** Statement not disputed.

32. Shortly after *WEG II* issued in November 2020, BLM analyzed the impact of that decision. BLM\_I002701–04. In a memorandum dated November 18, 2020, BLM concluded that the *WEG II* decision placed several quarters of lease sales from 2019 to 2020 “at risk” because the NEPA

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<sup>2</sup> Defendants do not offer this declaration as a post hoc rationalization for the Nevada postponement. Instead, in situations such as this, “[i]f . . . there was [a] failure to explain administrative action as to frustrate effective judicial review, the remedy was . . . to obtain from the agency, either through affidavits or testimony, such additional explanation of the reasons for the agency decision as may prove necessary.” *Camp*, 411 U.S. at 142–43.

approach rejected by the *WEG II* court had “been carried forward for each lease sale since its completion in early May 2019.” BLM\_I002702. BLM recounted five specific deficiencies the *WEG II* court identified with its NEPA approach, including the need “to address all BLM [oil and gas] leasing on a nationwide basis which will require substantial time in determining the appropriate methodology as well as compiling BLM state specific [reasonably foreseeable development] information and providing calculations of estimated direct emissions associated with development of the leases.” BLM\_I002701–02.

**Response:** Statement not disputed.

33. Consistent with the recognized need “to address all BLM [oil and gas] leasing on a nationwide basis,” *id.*, BLM convened its air resources team with other BLM specialists beginning around January 6, 2021 under the prior administration to begin preparing “an inventory of [greenhouse gases (GHGs)] from fossil fuels produced on lands managed by BLM in fiscal year 2020 and from reasonably foreseeable fossil fuel production and leasing over the next 12 months.” Declaration of Susan Lee (Lee Decl.) ¶¶ 3–4, Doc. 186-5. Work on that process occurred from January 6 to October 12, 2021, culminating in the 2020 BLM Specialist Report on Annual Greenhouse Gas Emissions and Climate Trends from Coal, Oil, and Gas Exploration and Development on the Federal Mineral Estate (Specialist Report), *id.* ¶ 4, which is available at BLM- Q3002462–2574. That work built off of earlier work done in May 2020 in response to a 2019 court decision. Lee Decl. ¶ 3.

**Response:** Statement not disputed.

34. Starting on October 29, 2021, BLM began publishing draft NEPA analyses for its anticipated first-quarter 2022 lease sales with a revised approach to analyzing GHG impacts associated with leasing decisions. Lee Decl. ¶ 4; Doc. 191-2 ¶ 3. That revised approach to analyzing GHG impacts featured several changes, which BLM described in a Fact Sheet it published on October 29, 2021. BLM, Fact Sheet: Analyzing the effects of fossil fuel leasing and development on greenhouse gases



(Oct. 29, 2021), Doc. 191-1. One of those changes involved an analysis of the social cost of greenhouse gases based on interim estimates prepared by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) established by Executive Order 13,990. *Id.*

**Response:** Object that BLM’s legal obligations are questions of law. *See* Fed. R. Civ. P. 56(c)(1). Statement partially disputed because whether any part of the federal government can lawfully rely on the IWG’s interim Greenhouse Gas estimates to inform leasing decisions (or any other agency action) is a question of law subject to active litigation in federal court. *See* Statement 35.

35. Ten States—including six Plaintiffs in this litigation—sought to preliminarily enjoin numerous federal agencies from, *inter alia*, relying upon the interim estimates prepared by the IWG. *See Louisiana v. Biden*, --- F. Supp. 3d ---, No. 2:21-CV-01074, 2022 WL 438313, at \*15 (W.D. La. Feb. 11, 2022) (Cain, J.). Those States identified BLM’s October 29, 2021 Fact Sheet as one of the actions that they sought to enjoin. *Id.* at \*8. On February 11, 2022, Judge Cain granted their motion, preliminarily enjoining Interior from relying upon the interim estimates prepared by the IWG. *Id.* at \*5, 21.

**Response:** Statement not disputed.

36. To hold a first-quarter 2022 lease sale, BLM was required to publish competitive sale notices by February 14, 2022. *See* 30 U.S.C. § 226(f) (“At least 45 days before offering lands for lease . . . the Secretary shall provide notice of the proposed action.”). Because the February 11, 2022 order enjoined Interior from “relying upon the work product of the Interagency Working Group, including without limitation, any and all Social Cost of Greenhouse Gas estimates published by the Interagency Working Group,” *Louisiana*, 2022 WL 438313, at \*5, 21, Interior could not rely upon its existing NEPA analysis in order to publish competitive sale notices in time to hold first-quarter 2022 sales. Cowan Decl. ¶ 4; Declaration of Dominic J. Mancini ¶ 21, Doc. 191-3.

**Response:** Object that the Department's legal obligations are questions of law. *See* Fed. R. Civ. P. 56(c)(1). Statement otherwise partially disputed because the Department could rely in part on its existing NEPA analysis and the point of this lawsuit is to determine whether any Greenhouse Gas analysis is allowed, much less required.

37. Since that preliminary injunction issued on February 11, 2022, the defendant agencies promptly sought to stay that injunction. On February 19, 2022, the defendant agencies appealed the injunction and moved the district court to stay the injunction pending resolution of their appeal. Defs.' Mot. for a Stay Pending Appeal, Doc. 198-7. On March 1, 2022, the defendant agencies moved the United States Court of Appeals for the Fifth Circuit to stay the injunction; the Fifth Circuit granted that motion on March 16, 2022. *Louisiana by & through Landry v. Biden*, No. 22-30087, 2022 WL 866282, at \*3 (5th Cir. Mar. 16, 2022). The State of Louisiana filed a petition for rehearing en banc on March 30, 2022. Pet. for Rehearing En Banc, *Louisiana by & through Landry v. Biden*, Case No. 22-30087 (5th Cir. Mar. 30, 2022). The Fifth Circuit denied that rehearing petition on April 14, 2022. Order on Petition for Rehearing En Banc, Doc. 198-8.

**Response:** Statement not disputed.

38. On April 15, 2022, the Department of the Interior announced that it would publish competitive lease sale notices. Interior published those competitive sale notices the following business day, on April 18, 2022. Docs. 198-1 to 198-6.

**Response:** Statement not disputed.

39. Including the five-year program currently in force, there have been nine programs submitted to Congress. *See Congressional Research Service, Five- Year Program for Offshore Oil and Gas Leasing: History and Program for 2017–2022*, at 9–10 (Aug. 23, 2019), <https://fas.org/sgp/crs/misc/R44504.pdf>. All of them have scheduled more lease sales than have actually occurred, sometimes many more, as set forth in the below table:

**Table I. OCSLA Five-Year Programs Submitted to Congress Since 1980**

Years	Administration Submitting Plan	Congress	Number of Sales Listed in Submission	Number of Sales Held	Approximate Acres Leased (in millions) <sup>a</sup>
2017-2022	Obama	114 <sup>th</sup>	11	4 (through July 2019)	3.3 <sup>b</sup> (through July 2019)
2012-2017	Obama	112 <sup>th</sup>	15	13	7.4
2007-2012 <sup>c</sup>	Obama / G. W. Bush <sup>c</sup>	111 <sup>th</sup> / 110 <sup>th</sup>	16 / 21 <sup>c</sup>	11	21.7
2002-2007	G. W. Bush	107 <sup>th</sup>	20	15	20.5
1997-2002	Clinton	105 <sup>th</sup>	16	12	22.9
1992-1997	G. H. W. Bush	102 <sup>nd</sup>	18	12	22.6
1987-1992	Reagan	100 <sup>th</sup>	42	17	24.7
1982-1987	Reagan	97 <sup>th</sup>	41	23	21.0
1980-1982 <sup>d</sup>	Carter	96 <sup>th</sup>	36	12	4.1

**Source:** CRS.

- Acres leased is shown in BOEM, OCS Lease Sale Statistics, "All Lease Offerings," at <http://www.boem.gov/OCS-Lease-Sale-Statistics-All-Lease-Offerings/>.
- The acreage total reflects *acres leased* for three of the sales (lease sales 249, 250, and 251) but *acres bid on* for one sale (lease sale 252), because acres leased were not yet available. Not all acres bid on are necessarily leased.
- The George W. Bush Administration developed the original program for 2007-2012 and submitted it to the 110<sup>th</sup> Congress with a lease schedule containing 21 sales. Following a court order in 2009, DOI revised the program under the Obama Administration and resubmitted it to the 111<sup>th</sup> Congress with a revised lease schedule containing 16 sales.
- This program was originally referred to as the Comprehensive Program 1980-1985, but the covered years were changed to 1980-1982 due mainly to judicial activity. *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981).

*Id.* Out of the eight completed programs from 1980 to 2017, Interior held only 56% of the proposed sales as scheduled. *See id.* (showing that Interior held only 115 out of 2043 scheduled sales from 1980 to 2017). The remaining 44% of proposed sales—89 sales—were not held as scheduled. *See id.* Because Interior did not conclude that any of these 89 delays or cancellations amounted to a significant revision of the applicable program, none were accomplished through a formal revision to the program under 43 U.S.C. § 1344.

**Response:** Statement disputed as lacking in context because it does not provide the reasons for not holding sales as scheduled, except insofar as the table acknowledges that some changes were

due to a “court order” and others were due to “judicial activity,” rather than being due to the Secretary’s unilateral decision to reverse course.

40. Interior has held 73% (8 out of 11) sales under the 2017–2022 Proposed Final Program. That rate exceeds Interior’s historical average of holding only 56% of proposed sales as scheduled from 1980 to 2017.

**Response:** Statement disputed as lacking in context because it does not specify how many of the sales held under the 2017–2022 Proposed Final Program occurred before President Biden ordered the Pause, and thus it does not account for the Pause’s effect on the federal government’s compliance with its duties under the MLA and OCSLA.

Respectfully submitted,

/s/ Elizabeth B. Murrill

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