



U.S. Department of Justice

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August 31, 2022

Margaret Botkins
Clerk of Court
U.S. District Court for the District of Wyoming
2120 Capitol Avenue
Cheyenne, WY 82001
VIA CM/ECF

Re: *W. Energy All. v. Biden*, No. 0:21-cv-00013-SWS, Fed. R. App. P. 28(j) Letter

Dear Ms. Botkins:

Under Rule 28(j), as incorporated by *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994), Respondents respectfully submit notice of three recent legal events. *First*, on August 16, 2022, President Biden signed into law the Inflation Reduction Act (IRA), Pub. L. No. 117-169, 136 Stat. 1818. The IRA requires Interior to maintain a certain level of onshore oil and gas leasing activity as a prerequisite to approving renewable energy rights-of-way on federal land. Specifically, the IRA restricts Interior's ability to "issue a right-of-way for wind or solar energy development on Federal land unless" it has held an onshore oil and gas lease sale within the previous 120 days. IRA § 50265(b)(1), 136 Stat. 2061. To issue such rights-of-way, Interior must have also offered minimum quantities of land (*e.g.*, 2,000,000 acres) for oil and gas leasing over the prior year. *Id.*

Second, on August 17, 2022, the Fifth Circuit vacated the nationwide preliminary injunction involving Section 208 of Executive Order 14,008 that was entered last year by the Western District of Louisiana. Ex. A. The court held that the preliminary injunction "fails to meet Rule 65(d) requirements" because it could not "ascertain from the record what conduct—an unwritten agency policy, a written policy outside of the Executive Order, or the Executive Order itself—is enjoined." *Id.* at *3.

Third, the next day, the Western District of Louisiana entered a permanent injunction limited to the thirteen plaintiff states. Ex. B, at *20. The court did not find unlawful Interior's postponements based on the National Environmental Policy Act (NEPA). *Id.* at *5 ("Land is 'available' to be leased if statutory requirements are met and if it is in the public interest to approve the lease."). Nor did the court find the Secretary's NEPA rationales pretextual. *See generally id.* The court instead found that "there was an unwritten policy to 'stop' the onshore and offshore leasing process by calling the stopping a 'pause.'" *Id.* at *7. The court held,

however, that it lacked “jurisdiction to review any pause/stop of lease sales which occurred after March 24, 2021.” *Id.* at *9.

Sincerely,

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Enclosures