

ORAL ARGUMENT SCHEDULED FOR MAY 12, 2023

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN PETROLEUM)	
INSTITUTE, et al.,)	
)	
<i>Petitioners,</i>)	
)	
v.)	Case No. 22-1222
)	
UNITED STATES DEPARTMENT OF)	
THE INTERIOR, et al.,)	
)	
<i>Respondents.</i>)	
)	

JOINT MOTION FOR ABEYANCE

Petitioners (API) and Respondents (Interior) (together, the Parties) respectfully request that the Court place this petition for review into an abeyance until no later than December 31, 2023. In support of this request, the Parties state the following:

1. In August 2022, API filed a Petition for Review, claiming that Interior failed to adopt a new five-year program for oil and gas leasing on the Outer Continental Shelf (the Five-Year Program), as required by the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344(a), and seeking an order from the Court compelling Interior to promptly adopt a Five-Year Program.

2. In January 2023, API filed its opening brief, asking the Court to order Interior to approve the next Five-Year Program by September 30, 2023, the last date to hold the final lease sale required by the Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818, § 50264(e) (Aug. 16, 2022). In March 2023, Interior filed its responsive brief. In that brief and an attached declaration from an Interior official, Interior represented that it expects to complete and publish the Proposed Final Program in September 2023, and that it expects that the Secretary of the Interior will approve the next Five-Year Program in December 2023. *See* Interior Brief 15-16; *id.*, Declaration of Walter Cruickshank ¶¶ 22-23.

3. Because only a 2- to 3-month gap separates API's requested remedy from Interior's expected approval of the next Five-Year Program, the Parties have concluded that an abeyance of this case, including all litigation deadlines, is warranted until at least September 30, 2023. Although the Court recently amended the briefing schedule and scheduled oral argument for May 12, 2023, an abeyance will conserve judicial and party resources because briefing has not yet concluded.

4. The Parties agree that if Interior issues the Proposed Final Program in September 2023, then the abeyance should continue through December 31, 2023, to allow Interior sufficient time to approve the Five-Year Program. If Interior approves the next Five-Year Program in December 2023, as Interior expects, that action will resolve API's sole claim in this matter. If Interior does not take the

expected actions by the September 2023 or December 2023 dates, then the Parties agree that the abeyance should end. In that event, the Parties will file a joint motion to govern further proceedings.

5. Interior agrees to file status reports on the Proposed Final Program at 60-day intervals from entry of an abeyance order by the Court.

6. If Interior approves the next Five-Year Program or on or before December 31, 2023, the Parties agree to file a joint stipulation of dismissal with prejudice of this action under Fed. R. App. P. 42(b), with each party to bear its costs and attorneys' fees.

CONCLUSION

The Parties respectfully request that the Court enter an order granting an abeyance through September 30, 2023, and, if Interior issues the Proposed Final Program in September 2023, through December 31, 2023.

Dated: March 27, 2023

Respectfully submitted,

/s/ Justin D. Heminger

TODD KIM

Assistant Attorney General

KEVIN McARDLE

JUSTIN D. HEMINGER

Attorneys

Environment and Natural Resources

Division

U.S. Department of Justice

Post Office Box 7415

Washington, D.C. 20044
(202) 514-5442
justin.heminger@usdoj.gov

Counsel for Respondents

/s/ James M. Auslander

James M. Auslander
Peter J. Schaumberg
BEVERIDGE & DIAMOND, P.C.
1900 N Street, N.W., Suite 100
Washington, DC 20036
(202) 789-6009
jauslander@bdlaw.com
pschaumberg@bdlaw.com

Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 488 words. I further certify, pursuant to Fed. R. App. P. 27(d)(1)(E), that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Times New Roman 14-point font using Microsoft Word.

/s/ Justin D. Heminger
JUSTIN D. HEMINGER

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I filed the foregoing using the Court's CM/ECF system, which will send and serve notifications of the foregoing to all counsel of record.

/s/ Justin D. Heminger
JUSTIN D. HEMINGER