

Biden “Pause” on New O&G Leases Enjoined Nationwide

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Yesterday, a Louisiana federal district judge issued a nationwide injunction blocking President Biden’s January 27, 2021, Executive Order 14008 pausing new leases for oil and gas development on federal lands and in offshore waters (the “Pause”). Among other things, the Pause halted Lease Sale 257 scheduled on March 17, 2021, for lands in the Western and Central

Planning Areas of the Gulf of Mexico and Lease Sale 258 for lands in the Cook Inlet, Alaska. Both sales were included in the 2017-2022 Five Year Oil and Gas Leasing Program approved during the Obama administration.

Thirteen states, including Louisiana, Texas and Alaska, sued in the United States District Court for the Western District of Louisiana to enjoin the Pause, alleging violations of the United States Constitution, the Administrative Procedure Act (APA), the Outer Continental Shelf Lands Act (OCSLA) and the Mineral Leasing Act (MLA). They argued that the Pause deprives them of a substantial share of proceeds from leasing and threatens job losses, higher oil and gas prices in their states and other economic losses.

The federal government defendants contended that the states lacked standing to sue and that their claims were not redressable because the government could postpone the lease sales on other grounds. They further argued that the states will not be harmed because oil and gas activity on federal lands continues at the same levels as in the preceding four years and no existing leases have been canceled.

Judge Terry A. Doughty rejected the government defendants' arguments and found that a preliminary injunction was warranted and necessary to protect the states from a substantial threat of irreparable injury. He noted that "a preliminary injunction is an extraordinary remedy never awarded of right" which requires a showing "(1) [of] the substantial likelihood of success on the merits, (2) that [the parties seeking the injunction are] likely to suffer irreparable harm in the absence of a preliminary injunction, (3) that the balance of equities tips in [their] favor, and (4) that an injunction is in the public interest." He agreed with the states that the Pause likely violated the APA because it occurred without sufficient notice or explanation and because the government defendants lacked discretion to significantly revise the Five Year Oil and Gas Leasing Program "without going through the procedure mandated by Congress." He found that the states demonstrated a substantial threat of irreparable injury based on declarations of three witnesses who addressed the potential scope of economic losses and on the states' inability to recover money damages due to the government defendants' sovereign immunity. He also concluded that the balance of equities tips in the states' favor and an injunction is in the public interest because "[m]illions and possibly billions of dollars are at stake" and the government defendants will not be harmed by an injunction which would simply require them to do what they are statutorily required to do under OCSLA. The full text of Judge Doughty's 44-page Memorandum Ruling can be found [here](#).

Judge Doughty's preliminary injunction remains in effect "pending the final resolution of the case or until further orders from this Court, the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court." The government defendants have not yet commented on whether they will seek to appeal Judge Doughty's preliminary injunction to the United States Fifth Circuit Court of Appeals or to postpone the lease sales on other grounds.