

**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.

CIVIL ACTION NO. 2:21-cv-778-TAD-KK

MOTION FOR PRELIMINARY INJUNCTION

The States of Louisiana, Alabama, Alaska, Arkansas, Georgia, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Texas, Utah, and West Virginia (collectively “Plaintiff States”) respectfully move this Court for an order under Rule 65 of the Federal Rules of Civil Procedure granting a preliminary injunction, with expedited consideration, in their favor against the named Defendants in their official capacities. As explained in the Complaint and attached Memorandum, Defendants have violated the Outer Continental Shelf Lands Act, Mineral Leasing Act, and Administrative Procedure Act by issuing and implementing Moratoriums on oil and gas leases on public lands and the Outer Continental Shelf.

This Motion is made on the grounds specified in this Motion, the Complaint, the accompanying Memorandum of Law, the exhibits attached to the Complaint and to this Motion, all matters of which this Court may take judicial notice, and on such other and further oral or documentary evidence as may be presented to the Court at or before the hearing on this Motion. Plaintiff States are substantially likely to prevail on the merits of their claims and preliminary injunctive relief is necessary to avoid substantial injuries to their sovereign, quasi-sovereign, and proprietary

interests. And the public interest and balance of harms favor an order compelling Defendants to follow the law.

For these reasons and those explained in the attached Motion, Plaintiff States respectfully request a preliminary injunction ordering Defendants to disregard the OCSLA Leasing Moratorium and the MLA Leasing Moratorium and to execute the statutory duties of their offices regarding oil and gas leasing as if the Moratoriums did not exist. Plaintiff States also ask the Court to preliminarily enjoin Defendants from implementing the Recission of Lease Sale 257, postponement of Lease Sale 258, postponements of MLA quarterly lease sales, and any other action taken in reliance upon the Leasing Moratoriums.

Respectfully submitted,

Dated: March 31, 2021

/s/

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**Admission application forthcoming*

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MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

With the stroke of a pen just a week after he took his oath of office, President Biden put his campaign promises above federal law and by executive fiat banned all new domestic oil and gas production. Never mind that the Outer Continental Shelf Lands Act (OCSLA) and Mineral Leasing Act (MLA) require the Federal Government to facilitate the expeditious and safe development of American energy resources and set procedures for doing so. And that States rely on statutory revenue-sharing provisions from lease sales for billions of dollars in annual funding—including for education and environmental-restoration projects. And that energy production supports thousands of jobs and significant investment and tax revenue—facts critical always but especially during a global pandemic. And that the Administrative Procedure Act requires the Federal Government to provide reasoned explanations when it changes regulatory course. No—each interest fell silent victim to the President’s insistence that he knows better.

He does not. If “ours” really “is a government of laws, not of men,” and “we submit ourselves to rulers only if under rules,” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 646 (1952) (Jackson, J., concurring in the judgment), the development ban and related acts must be enjoined. The ban does not cite the statutory frameworks requiring oil and gas leasing, explain how the moratorium comports with those statutes and accompanying regulations, or give any reason for the moratorium. Nor does it explain why the Federal Government so drastically changed course without allowing interested parties to express their views. Each of those failings is fatal to the ban. The Court should grant Plaintiffs’ motion and enjoin it.

BACKGROUND

I. **BY STATUTE, THE FEDERAL GOVERNMENT MUST REGULARLY OPEN THE OUTER CONTINENTAL SHELF FOR ENERGY DEVELOPMENT.**

A. **The Outer Continental Shelf Lands Act Establishes a Mandatory, Four-Step Process for Scheduling Lease Sales in the Outer Continental Shelf.**

Congress passed the Outer Continental Shelf Lands Act (OCSLA) more than 70 years ago. OCSLA declares “the outer Continental Shelf” to be “a vital national resource reserve held by the Federal Government for the public.” 43 U.S.C. §1332(3). To make the most of that resource, OCSLA directs the Secretary of the Interior to make the Shelf “available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.” *Id.*; see also *Ensco Offshore Co. v. Salazar*, 781 F. Supp. 2d 332, 339 (E.D. La. 2011) (noting “OCSLA’s overriding policy of expeditious development”).

OCSLA facilitates the Shelf’s expeditious development by directing the Secretary to administer a leasing program to sell exploration interests in portions of the Shelf to the highest bidder. 43 U.S.C. §§1334(a), 1337(a)(1). To this end, OCSLA sets out a four-step process in which the Secretary must (1) create a Five-Year Leasing Program, (2) hold lease sales, (3) grant or deny exploration permits and plans, and (4) grant or deny final development and production plans. See *Hornbeck Offshore Servs., L.L.C. v. Salazar*, 696 F. Supp. 2d 627, 632 (E.D. La. 2010) (citing *Sec’y of the Interior v. California*, 464 U.S. 312, 337 (1984)). Each step must follow stringent administrative requirements designed to maximize the chances for the public—including affected States and industry—to provide input on those lease sales.

B. **President Obama’s Heavily Vetted Five-Year Program Governs Lease Sales Occurring Now Through the End Of 2022.**

Current lease sales in the Outer Continental Shelf are governed by the 2017-2022 Five Year Oil and Gas Leasing Program (“the Current Five-Year Program” or “Five-Year Program”). The process of creating the Current Five-Year Program began in 2014 during the Obama Administration. President Obama’s Bureau of Ocean Energy Management (BOEM) published a request for

information in the Federal Register and sent a letter to all Governors, Tribes, and interested federal agencies requesting input on the Program. *See* 79 Fed. Reg. 34349 (June 16, 2014). BOEM received over 500,000 comments in response to the RFI, allowing it to discharge its obligation under OCSLA to take into account economic, social, and environmental values in making its leasing decisions. *See* 43 U.S.C. §1344(a); Five-Year Program 3-1. In 2015, President Obama’s BOEM published the Draft Proposed Program. That published draft incorporated responses to the RFI comments and set out a draft schedule of potential lease sales. And started a 60-day comment period in which BOEM received over one million comments. 80 Fed. Reg. 4941 (Jan. 29, 2015). After considering those comments, BOEM next published the Proposed Program, thereby starting a new 90-day comment period. 81 Fed. Reg. 14881 (Mar. 18, 2016). Again, BOEM received over one million comments, held public meetings, and created environmental impact statements in compliance with the National Environmental Policy Act (NEPA). Final Program S-2-3.

After all that, President Obama’s BOEM published the Proposed Final Program in November 2016. In it, the Secretary determined which areas to include in the lease sales. In recognition that “[t]he Gulf of Mexico is known to contain significant oil and gas resources and already has world-class, well-developed infrastructure, including established spill response capability,” the “PFP schedules 10 region-wide lease sales in the areas of the Gulf of Mexico that are not under Congressional moratorium or otherwise unavailable for leasing.” Final Program S-2. The Proposed Final Program also observed that “[i]n the Gulf of Mexico, infrastructure is mature, industry interest and support from affected states and communities is strong, and there are significant oil and gas resources available.” Final Program S-2. Thus, “[t]o take advantage of these incentives to OCS activity, the region-wide sale approach makes the entire leasable Gulf of Mexico OCS area available in each lease sale.” *Id.*

On January 17, 2017—60 days after the Final Program was transmitted to President Obama and Congress—the Secretary approved the Final Program, “which schedules 11 potential oil and gas

lease sales, one sale in the Cook Inlet (Alaska) Program Area and 10 sales in the GOM Program Areas,” with “one sale in 2017, two each in 2018-2021, and one in 2022.” Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program 3 (Jan. 17, 2017). The Secretary’s approval further specifically affirms the Final Program’s specification that “[t]he GOM sales would be region-wide and include unleased acreage not subject to moratorium or otherwise unavailable ... to provide greater flexibility to industry, including more frequent opportunities to bid on rejected, relinquished, or expired OCS lease blocks.” *Id.*¹

C. President Obama’s Five-Year Program Approves Lease Sale 257 in the Gulf of Mexico and Lease Sale 258 in Cook Inlet, Alaska.

The Final Program approved and scheduled two lease sales relevant here. The first is GOM OCS Oil and Gas Lease Sale 257. Lease Sale 257 would have comprised the Western and Central Planning Areas of the Gulf of Mexico and a portion of the Eastern Planning Area not subject to congressional moratorium. Final Program S-5; *see also* 86 FR 10132, <https://bit.ly/3vDjT47>. The second is Lease Sale 258 in Cook Inlet, Alaska, “where there is existing infrastructure currently supporting State leasing activities.” Final Program S-2.

In accordance with the Five-Year Program, BOEM published a Proposed Notice of Sale for Lease 257 in the Gulf of Mexico in November 2020. See 85 Fed. Reg. 73508 (Nov. 18, 2020). As OCSLA requires, BOEM sent the Proposed Notice to Governors of the affected States. Proposed Notice 18. It was also opened for public comment. 85 Fed. Reg. 73508 (Nov. 18, 2020).

The Secretary approved the Notice of Sale in a Record of Decision. *See* 86 Fed. Reg. 6365 (Jan. 21, 2021). In the ROD, the Secretary noted reliance on the “Gulf of Mexico Outer Continental Shelf Lease Sale: Final Supplemental Impact Statement” in considering how to proceed with Lease Sale 257. Approval 3. The Secretary analyzed five separate alternatives, including a no-action option, and

¹ Until the Biden Ban, all lease sales in the Five-Year Program occurred on schedule.

determined that Alternative A—a regionwide lease sale with minor exclusions—would be “in the best interest of the Nation and meets the purposes of the OCS Lands Act.” Approval 5. The Secretary also determined that Lease Sale 257 “promotes domestic energy production, which can reduce the need for oil imports,” and promotes other national interests including “continued employment, labor income, [and] tax revenues.” Approval 8. Additionally, the Secretary found that “[c]ontinued oil and gas leasing on the OCS may also reduce the risk of spills from the transportation of imported energy resources,” and that “revenue sharing with applicable coastal states and political subdivisions ... can help mitigate the risks and costs assumed by the States and communities in the area of the lease sale.” Approval 5, 8.

In the ROD, the Secretary rejected the no-action alternative because “the needed domestic energy sources and the subsequent positive economic impacts from exploration and production, including employment, would not be realized. Furthermore, revenue would not be collected by the Federal Government nor subsequently disbursed to the States.” Approval 10. Additionally, the Secretary found that other sources of energy “may have different but comparable levels of negative environmental impacts, such as the risk of spills from the transportation of alternative oil supplies over long distances.” Approval 10. That meant the no-action alternative “would not avoid the incremental contribution of the energy substitutes’ impacts to those same cumulative effects.” *Id.* Finally, the Secretary’s approval noted that the Lease Sale 257 stipulations included “all practicable means to avoid or minimize environmental harm from the selected alternative.” Approval 11. Lease Sale 257 was formally scheduled for March 17, 2021. Approval 1.

As to Lease Sale 258—which would offer lands in the Cook Inlet, Alaska—BOEM in September 2020 began the process of preparing it in accordance with the Current Five-Year Program. BOEM released a Call for Information and Nominations in the Federal Register to allow industry parties to indicate interest in parcels of the sale area. 85 Fed. Reg. 55859 (Sept. 10, 2020). BOEM also

released a Notice of Intent to Prepare an EIS, which provided the public with an opportunity to comment on the scope of the lease sale. 85 Fed. Reg. 55861 (Sept. 10, 2020). In January 2021, after accounting for comments, BOEM published a Notice of Availability indicating the area proposed for sale in the Cook Inlet and a draft environmental impact statement. 86 Fed. Reg. 4116 (Jan. 15, 2021); 86 Fed. Reg. 4117 (Jan. 15, 2021).

II. THE MINERAL LEASING ACT REQUIRES THE FEDERAL GOVERNMENT TO HOLD LEASE SALES AT LEAST QUARTERLY FOR ENERGY DEVELOPMENT ON FEDERAL LANDS.

Besides its offshore interests, the Federal Government also holds energy-producing lands onshore. Congress has likewise made those lands available for development: Under the Mineral Leasing Act, the Secretary of the Interior is required to hold lease sales “for each State where eligible lands are available at least quarterly.” 30 U.S.C. §226(b)(1)(A). The MLA provides that for oil and natural gas leases on federal lands, in States other than Alaska, 50 percent of bonuses, production royalties, and other revenues are granted to the State in which the lease is located, and 40 percent is granted to the Reclamation Fund,² which maintains irrigation systems in several Western States. 30 U.S.C. §191(a). For leases in Alaska, 90 percent of revenues are granted to the State. *Id.*

BLM has the authority to lease public lands with oil and gas reserves to private industry for development under the MLA, the Federal Land Policy and Management Act, 43 U.S.C. §§1701-1787, and the BLM’s own regulations and plans, *see* 43 C.F.R. Part 1600 (Planning, Programming, and Budgeting); 43 C.F.R. §§3120 (Competitive Leases) and 3160 (Onshore Oil and Gas Operations).

² Congress amended the Reclamation Act of 1902 to expand the sources of revenue to address shortfalls in the fund from its original sources. The bulk of its revenue is from royalties derived from federal lands. *See* Cong. Research Serv., *The Reclamation Fund*, <https://bit.ly/31y4pjT> (updated May 21, 2019). Ironically, the Bureau of Reclamation announced an award of \$42.4 million in grants to 55 projects throughout 13 states stating that “[t]hese grants support President Biden’s new Executive Order on Tackling the Climate Crisis at Home and Abroad,” *i.e.*, the very order that *drains* the Fund of its most significant recurring source of funding. Bureau of Reclamation, Press Release, <https://on.doi.gov/3wfKPac> (Mar. 17, 2021).

BLM's regulations also provide for quarterly lease sales. 43 C.F.R. §3120.1-2(a) ("Each proper BLM S[t]ate office shall hold sales at least quarterly if lands are available for competitive leasing."). To comply with the MLA, several BLM regional offices planned to hold quarterly sales in March and April 2021 to lease available lands.³

III. PRESIDENT BIDEN ISSUES EXECUTIVE ORDER 14008, IMPOSING A MORATORIUM ON OFFSHORE AND ONSHORE DOMESTIC ENERGY PRODUCTION.

On January 27, 2021, President Biden issued Executive Order 14008 ("the Biden Ban"). Exec. Ord. 14008, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619, 7624-25 (Jan. 27, 2021). Notwithstanding all the preceding notice, comment, and final decision-making, the Biden Ban arbitrarily institutes a moratorium on energy production leases in offshore waters and on public lands: Section 208 of the Order commands the Secretary of the Interior to "pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior's broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters." 86 Fed. Reg. at 7624-25.

But nothing in the Order provides any rationale for this radical departure from the OCSLA's or MLA's requirements, or from the Obama Administration's leasing plan. Nor has Congress departed from its prior policies or provided any such directive. Indeed, much of the Biden Ban's effect is to

³ See BLM, Nevada State Office, Notice of Competitive Oil & Gas Internet Lease Sale (Jan. 8, 2021), <https://on.doi.gov/38AFVdT>; BLM Nat'l NEPA Register, 2021 March Oil and Gas Lease Sale, <https://bit.ly/3ewwGyZ> (Montana-Dakotas); BLM, Nat'l NEPA Register, 2021 Utah March Competitive Oil and Gas Lease Sale, <https://bit.ly/3rHxnJE> (Utah); BLM, Nat'l NEPA Register, March 2021 Oil & Gas Lease Sale, <https://bit.ly/3rFK2g4> (Colorado); BLM, Nat'l NEPA Register, April 2021 Competitive Oil and Gas Lease Sale, <https://bit.ly/2PYs1f6> (Oklahoma); BLM, Nat'l NEPA Register, April 2021 Competitive Oil and Gas Lease Sale - Pecos District Office, <https://bit.ly/3cjUjrW> (New Mexico).

unilaterally suspend the already limited leasing schedules implemented under the Obama Administration's Five-Year Program. So the Biden Ban's only discernable rationale is to follow through on campaign promises to kill domestic energy production. *See* Tarini Parti, *Biden Aims for Tricky Balance on Fracking*, Wall St. J. (Mar. 16, 2020), <https://on.wsj.com/3eqA6U2>.

A. Relying Solely on the Biden Ban, BOEM Cancels Lease Sales 257 and 258.

On February 18, 2021, Michael Celata, Regional Director of BOEM's Gulf of Mexico Office, issued a Notice to Rescind the Prior Lease 257 Record of Decision. 86 Fed. Reg. 10132 (Feb. 18, 2021). The Notice declared that the Record of Decision "is rescinded immediately." 86 Fed. Reg. at 10132. The half-page-long Federal Register Notice purports to rescind the prior Record of Decision, but it provides no analysis, no comment period, no reference to the statutory factors, no reference to the Current Five-Year Program, and no consultation with the States or Tribes. 86 Fed. Reg. at 10132. BOEM's *only* stated rationale is that it must rescind the Record of Decision "to comply with Executive order 14008." 86 Fed. Reg. at 10132. BOEM now has *no* plans to hold Lease Sale 257. Instead, the Recission Notice states only that "BOEM may reevaluate GOM Lease Sale 257 and publish an appropriate ROD in the Federal Register." 86 Fed. Reg. at 10132.

Lease Sale 258 fared no better. In early February BOEM published a *press release* on its website cancelling both the public comment period on the Draft EIS and public meetings about Lease Sale 258. *See* BOEM, BOEM Cancels Comment Period, Virtual Meetings for Proposed Lease Sale Offshore Alaska (Feb. 4, 2021), <https://bit.ly/3bF7Xqs>. The press release relies solely upon Executive Order 14008 to close the comment period. BOEM later memorialized its press release in a Federal Register notice that relies solely on the Biden Ban. 86 Fed. Reg. 10994 (Feb. 23, 2021).

B. Relying Solely on the Biden Ban, BLM Cancels All Quarterly Lease Sales.

The Biden Ban caused BLM offices to halt all pending quarterly lease sales in express contravention of the Mineral Leasing Act. Although BLM has published no formal notice in the

Federal Register halting the previously planned, heavily vetted, approved, and statutorily *required* quarterly land sales, it did publish a “fact sheet” in which it noted that the President ordered the Secretary of the Interior to halt the leasing of public lands. *See* BLM, 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), <https://on.doi.gov/3vlnHqj>. And then BLM offices began systematically posting postponement or cancellation notices for their March and April 2021 lease sales.⁴

ARGUMENT

I. PLAINTIFF STATES HAVE STANDING TO CHALLENGE THE BIDEN BAN AND THE RESULTING OFFSHORE AND ONSHORE LEASE-SALE MORATORIUMS.

Plaintiff States have standing to challenge the Biden Ban’s OCSLA and MLA leasing moratoriums because those actions—and the agency actions taken or foregone in reliance on them—harm Plaintiff States’ sovereign, proprietary, and *parens patriae* interests. *See Massachusetts v. EPA*, 549 U.S. 497, 518-520 (2007); *see also Texas v. United States*, 809 F.3d 134, 151-55 (5th Cir. 2015); *Texas v. United States*, 2021 WL 723856, at *10-21 (S.D. Tex. Feb. 23, 2021). Though Plaintiff States have standing under the traditional analysis, they also receive “special solicitude” on this issue. *Massachusetts v. EPA*, 549 U.S. at 518-520.

The Biden Ban’s moratoriums inflict on Plaintiff States substantial and irreparable harms that injunctive relief would redress. To take just one example, Plaintiff States are entitled to a substantial share of the proceeds from leasing sales under OCSLA, the Gulf of Mexico Energy Security Act, and

⁴ *See* BLM, Nevada State Office, Errata #1 (Jan. 27, 2021); BLM Nat’l NEPA Register, 2021 March Oil and Gas Lease Sale, <https://bit.ly/30IFt8N> (Montana-Dakotas); BLM Nat’l NEPA Register, 2021 March Oil and Gas Lease Sale, <https://bit.ly/3ltYPIG> (Wyoming); BLM, Nat’l NEPA Register, 2021 March Competitive Oil and Gas Lease Sale, <https://bit.ly/3l8zXG9> (Utah); BLM, Nat’l NEPA Register, March 2021 Oil & Gas Lease Sale, <https://bit.ly/38uyXHa> (Colorado); BLM, Nat’l NEPA Register, April 2021 Competitive Oil and Gas Lease Sale, <https://bit.ly/3vHzOou> (Oklahoma); BLM, Nat’l NEPA Register, April 2021 Competitive Oil and Gas Lease Sale, <https://bit.ly/3cpXRZJ> (New Mexico); BLM, Eastern States Oil and Gas Leases, <https://on.doi.gov/3bElRcd>.

the MLA. *See* 43 U.S.C. §1337(g)(5)(A); 43 U.S.C. §1356a; 43 U.S.C. §1331 note; 30 U.S.C. §191(a). Because the Biden Ban systematically cancels lease sales, the resulting moratoriums deprive the States of this vital revenue—all in the midst of a once-in-a-century pandemic. *See* Zeringue Decl. ¶¶19-20. Indeed, the cancellations of Lease Sales 257, 259, and 261 will reduce Louisiana’s GOMESA funding by up to \$57 million. *See* Dismukes Decl. ¶22. Beyond that, the moratoriums cause substantial economic harm to Plaintiff States’ citizens by causing billions of dollars of lost investments and thousands of lost jobs. *See* Considine Decl. ¶¶17, 25; Dismukes Decl. ¶44. And the moratoriums directly threaten the integrity of at least one State’s coastline. Those harms more than suffice to establish standing. *See Massachusetts v. EPA*, 549 U.S. at 518-526 (once a concrete harm established, magnitude of harm irrelevant); *Texas v. United States*, 809 F.3d at 151-55; *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982) (*parens patriae* standing appropriate when based on State’s “interest in the health and well-being—both physical and economic—of its residents in general”). And the moratoriums will harm Plaintiff States’ ability to purchase affordable energy to carry out their sovereign functions. *Orangeburg, S.C. v. FERC*, 862 F.3d 1071, 1074 (D.C. Cir. 2017) (“[T]he city has demonstrated an imminent loss of the opportunity to purchase a desired product (reliable and low-cost wholesale power).”).

Plaintiff States have a cause of action under the APA to challenge the Biden Ban’s leasing moratoriums and actions taken in reliance on them. Those are final agency actions because they “mark[] the consummation of the agency’s decisionmaking process” and “legal consequences” flow from them. *U.S. Army Corps of Eng’rs v. Hawkes Co.*, 136 S. Ct. 1807, 1813 (2016); *Ensco Offshore*, 781 F. Supp. 2d at 336 (“And so, agency delay in issuing or denying a permit [under OCSLA], or the failure to act at all, is a final agency action made reviewable by the APA.”); *Texas v. United States*, 2021 WL

723856, at *32 (holding 100-day moratorium on removals constituted final agency action).⁵ The unlawful delays of Lease Sales 257 and 258, and the MLA leasing sales, constitute final agency action under the APA. *Ensco Offshore*, 781 F. Supp. 2d at 336; *Hornbeck Offshore Servs.*, 696 F. Supp. 2d at 636. Discovery in this case will also uncover other final agency actions issued at the Secretarial level that have not been made public.⁶ *See Pub. Citizen, Inc. v. Trump*, 435 F. Supp. 3d 144, 146 (D.D.C. 2019) (“[The court] then granted Plaintiffs leave to take limited discovery concerning whether the Executive Order had caused any relevant delay or withdrawal of a rule.”).

Finally, Plaintiff States are within the zone of interests that OCSLA and the MLA protect. *See Collins v. Mnuchin*, 938 F.3d 553, 574 (5th Cir. 2019). “The Court has said, in the APA context, that the test is not especially demanding.” *Id.* (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014)) (cleaned up). Instead, the “benefit of any doubt goes to the plaintiff.” *Id.* Therefore, the zone-of-interests test “forecloses suit only when a plaintiff’s interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue.” *Id.* (quoting *Lexmark Int’l*, 572 U.S. at 130). Plaintiff States’ interests easily clear this low threshold. OCSLA gives States a robust role in the leasing process by requiring the Secretary to take their input and justify, in writing, departures from their recommendations. *See, e.g.*, 43 U.S.C. §1345. The leasing moratoriums destroy this vital statutory right. *See infra* Section II.A.2. And both OCSLA and the MLA entitle States to substantial portions of the proceeds from lease sales and subsequent development. *See* 43 U.S.C. §1337(g)(5)(A); 43 U.S.C.

⁵ Alternatively, Plaintiff States have a cause of action to challenge Defendants’ ultra vires actions as they are beyond statutory authority and in conflict with OCSLA and the MLA, *see, e.g., Associated Builders & Contractors of Se. Texas v. Rung*, 2016 WL 8188655, at *5 (E.D. Tex. Oct. 24, 2016), and a cause of action under OCSLA’s citizen-suit provision, *see* 43 U.S.C. §1349.

⁶ It is simply not plausible that the regional offices of BOEM and BLA unilaterally, simultaneously, and systematically moved to rescind and delay lease sales without direction from the Secretarial level. Such a directive would constitute final agency action. *Hawkes Co.*, 136 S. Ct. at 1813.

§1356a; 43 U.S.C. §1331 note; 30 U.S.C. §191(a). It is thus “beyond doubt that Congress had the financial interests of States” like the Plaintiff States in mind when it enacted OCSLA and the MLA. *Texas v. United States*, 2021 WL 723856, at *29.

II. PLAINTIFF STATES ARE ENTITLED TO A PRELIMINARY INJUNCTION.

To obtain a preliminary injunction, Plaintiff States “must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 288 (5th Cir. 2012). Each factor weighs in the Plaintiff States’ favor.

A. Plaintiffs Are Likely to Succeed on Their Claims that the Biden Ban on OCSLA Leasing, and the Recission of Lease Sale 257, Violate the APA.

1. *The Biden Ban’s OCSLA leasing moratorium did not go through required notice-and-comment procedures.*

With limited exceptions not relevant here, agency rules must go through the APA’s notice-and-comment procedures. 5 U.S.C. §553; *see also Texas v. United States*, 2021 WL 723856, at *43. That includes rules that alter “rights and obligations” or do not leave agency decisionmakers free to exercise discretion. *See Pros. & Patients for Customized Care v. Shalala*, 56 F.3d 592, 595 (5th Cir. 1995) (the focus is “primarily on whether the rule has binding effect on agency discretion or severely restricts it”); *Texas v. United States*, 809 F.3d at 171 (“If a statement denies the decisionmaker discretion in the area of its coverage ... then the statement is binding, and creates rights or obligations.”). In deciding whether rules fall under those headings, courts must be “mindful but suspicious of the agency’s own characterization” of the rule. *Id.*

On its face, the Biden Ban imposes a drilling moratorium that both alters rights and obligations and leaves agency decisionmakers without discretion. The Order uses mandatory language to command the Secretary to impose a blanket halt on lease sales. *See* 86 Fed. Reg. at 7624-25 (“[T]he

Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters.”). Because this so-called “pause” *alters* potential lessees’ right to participate in sales—and Plaintiff States’ entitlement to proceeds from lease sales under OCSLA and the Five-Year Program—it is a substantive rule that cannot be imposed by fiat, but must be promulgated following the APA’s notice-and-comment procedures. *See Dep’t of Labor v. Kast Metals Corp.*, 744 F.2d 1145, 1153 (5th Cir. 1984) (“An agency rule that modifies substantive rights and interests can only be nominally procedural, and the exemption for such rules of agency procedure cannot apply.”).

BOEM’s Recission of Lease Sale 257 falls under the same heading. Relying solely on the Biden Ban, the Recission purports to immediately cancel the Secretary’s prior Record of Decision approving the sale. 86 Fed. Reg. 10132 (Feb. 18, 2021). This Recission is itself a final rule that altered substantive rights and deprived the States of their entitlement to the substantial proceeds promised by Lease Sale 257. *See Texas*, 809 F.3d at 176-77 (rule is substantive if it “change[s] the substantive standards by which the [agency] evaluates’ applications which seek a benefit that the agency has the power to provide”). So it too must have been adopted through notice-and-comment rulemaking. But it was not.

Fifth Circuit precedent eliminates any remaining doubt about whether the Recission must have been the product of notice-and-comment rulemaking. Because the Recission made an about-face on Lease Sale 257, the Secretary “must [have] provide[d] a reasoned explanation for its revisions *and follow[ed] the same process to revise a rule as it used to promulgate it.*” *Clean Water Action v. EPA*, 936 F.3d 308, 312 (5th Cir. 2019) (emphasis added) (citing *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1206 (2015)). The Secretary approved Lease Sale 257’s Record of Decision only after holding a notice-and-comment period and building an extensive administrative record. *See* 85 Fed. Reg. 73508 (Nov. 18, 2020); 86 Fed. Reg. 6365 (Jan. 21, 2021). The Recission, however, follows none of these processes. It simply revokes the Record of Decision in a one-page Federal Register notice.

In short, no aspect of the Biden Ban's OCSLA leasing moratorium has been subject to the APA's required notice-and-comment procedure. The agency thus violated §553 of the APA in rescinding Lease Sale 257.⁷ *See Kast Metals Corp.*, 744 F.2d at 1153 n.17 (“Section 553 was enacted to give the public an opportunity to participate in the rule-making process.”).

2. *The Biden Ban's OCSLA leasing moratorium and the Recission of Lease Sale 257 are contrary to law.*

Agency action is unlawful if it is “not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. §706(2)(A) & (C). OCSLA sets out “four distinct statutory stages to developing an offshore oil well: (1) formulation of a five-year leasing plan by the Department of the Interior; (2) lease sales; (3) exploration by the lessees; (4) development and production.” *Sec'y of the Interior v. California*, 464 U.S. at 337. In this complex process, “[e]ach stage involves separate regulatory review” and “specific requirements for consultation with Congress, between federal agencies, or with the States.” *Id.*

The Biden Ban's OCSLA leasing moratorium and the Recission of Lease Sale 257 ignore those requirements. The moratorium effectively repeals the Five-Year Program—and does so without consulting with “the governors of affected states” or “respond[ing] in writing to all comments or requests received from the state governors,” as OCSLA commands. *Id.* (citing 43 U.S.C. §1344). The President has no authority to alter those procedures; they would be rendered hortatory nullities if the President could alter a duly promulgated Five Year Program by fiat, as the Biden Ban purports to do.⁸

⁷ Further harm is imminent because the agency has followed the same script for Lease Sale 258, which has been frozen by a cursory press release and a later Federal Register notice relying upon the Biden Ban. *See* BOEM, “BOEM Cancels Comment Period, Virtual Meetings for Proposed Lease Sale Offshore Alaska” (Feb. 4, 2021), <https://bit.ly/3bF7Xqs>; 86 Fed. Reg. 10994 (Feb. 23, 2021).

⁸ OCSLA gives the President power to reserve land, *see* 43 U.S.C. §1341, but the President did not employ this authority regarding the lands subject to the Five-Year Program. In any event, land that has already been identified for leasing, vetted through a multi-year process, and planned for sale all through notice and comment could not be suddenly and arbitrarily reserved without further compliance with the APA.

The Recission of Lease Sale 257's Record of Decision similarly avoids OCSLA's exacting statutory lease-sale procedures. Most notably, at the lease-sale stage, "[a]ny Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale," 43 U.S.C. §1345(a), and the Secretary "shall accept" such recommendations from a Governor if the Secretary "determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State," *id.* §1345(c). By rescinding the duly promulgated Lease Sale 257 Record of Decision, which was based on consultation with the States, BOEM has flagrantly disregarded OCSLA's consultation requirements.⁹

Making matters worse, BOEM itself lacks statutory or delegated authority to issue the Recission. Congress entrusted the Secretary of the Interior with the authority to approve Notices of Sale and to administer the leasing program. *See* 43 U.S.C. §§1337, 1344. The Departmental Handbook *specifically* withholds any delegation of authority to BOEM for the "[a]cceptance or rejection of state recommendations on the size, timing, or location of oil and gas lease sales, pursuant to 43 U.S.C. §1345"; "[a]pproval of the Proposed and Final Notices of Sale for an oil and gas lease sale, pursuant to 43 U.S.C. §1337(1), and approval and signing of the related Record of Decision for such oil and gas lease sale"; and "[a]pproval of the length of the primary oil and gas lease terms to be offered in a lease sale, pursuant to 43 U.S.C. §1337(b)." 218 DM 1, at 2-3. Director Celata thus had no lawful authority to rescind the Lease Sale 257 Record of Decision, nor to undo the decisions that are statutorily entrusted to, and retained by, the Secretary.¹⁰

⁹ Though throughout this brief Plaintiffs focus on consultation with States, it bears noting that local governments and tribes also play an important role in the consultation process.

¹⁰ Removing even a pretense of authority, Secretarial Order 3395 explicitly divested Director Celata of any authority even "[t]o publish, cause to be published, or aid in the publication of any notice in the Federal Register."

By arbitrarily amending the Current Five-Year Program and withdrawing the duly issued Record of Decision by fiat, the moratorium and Recission ignore OCSLA's provisions that require consulting with the States, submitting a plan to Congress and the President, holding comment periods, and preparing several exhaustive environmental impact statements. Those agency actions also ignore the purpose of OCSLA—*expeditiously facilitating the development of the Outer Continental Shelf*. See 43 U.S.C. §1332(3); *Hornbeck Offshore Servs.*, 696 F. Supp. 2d at 632; *Ensco Offshore*, 781 F. Supp. 2d at 336-37. By so doing, the Biden Ban's OCSLA leasing moratorium substitutes OCSLA's finely wrought and carefully calibrated cooperative federalism process with an entirely new process of "because we said so": Five-Year Programs cancelled by Executive Order and individual lease sales rescinded by press release and unreasoned, cursory Federal Register notices. Those actions are contrary to law.

3. *The Biden Ban's OCSLA leasing moratorium and the Recission of Lease Sale 257 are arbitrary and capricious.*

The APA commands courts to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion." 5 U.S.C. §706(2)(A). To meet this standard, "[f]ederal administrative agencies are required to engage in 'reasoned decisionmaking.'" *Texas v. United States*, 2021 WL 723856, at *39. "This necessarily means that '[n]ot only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.'" *Id.*

Neither the Biden Ban nor the Recission itself offers any explanation for the OCSLA leasing moratorium. Neither betrays any awareness or understanding that Outer Continental Shelf lease sales like Lease Sale 257 are both the result of *years* of analysis, consultation, environmental assessment, and public comment but also are integrated into *continuous, complex, and long-term* leasing and revenue production and *use*. Indeed, the Secretary's Record of Decision approving Lease Sale 257 was based on a robust administrative record and contained an extensive discussion of the OCSLA factors and

the national interest. The Recission never engages with those or any other specific factual findings in the ROD. *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (agency must “provide a more detailed justification than what would suffice for a new policy created on a blank slate ... when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy”). A command in an executive order does not exempt an agency from the APA’s reasoned-decisionmaking requirement. *Cf. California v. Bernhardt*, 472 F. Supp. 3d 573, 600-01 (N.D. Cal. 2020) (“While the Executive branch holds the power to issue executive orders, an agency cannot flip-flop regulations on the whims of each new administration. The APA requires reasoning, deliberation, and process. These requirements exist, in part, because markets and industries rely on stable regulations.”).

What’s more, the ROD was based on the 2017-2022 Five-Year Program—itsself the product of an extensive multiyear proceeding including millions of comments, multiple extensive environmental impact statements, consultation with State governments and relevant federal agencies, and submission to Congress and the President. The Rescission acts as if this extensive rulemaking record did not even exist. It does not engage with previous findings and does not even mention OCLSA’s statutory factors. Instead, it occupies half a page of the Federal Register and cites only one source of authority—Executive Order 14008—which itself contains no analysis of the statute or previous rulemaking proceeding. *Clean Water Action*, 936 F.3d at 313-14 (“[A]gencies may amend rules provided that they ‘use the same procedures when they amend ... a rule as they used to issue the rule in the first instance.’”).

Nor does the Recission grapple with BOEM’s specific factual finding in 2016 that directly contradicts the OCSLA leasing ban. Then, BOEM concluded that “[i]n each price case, and in each scenario for the 2017–2022 Program, U.S. GHG emissions would be slightly higher if BOEM were to have no lease sales, assuming no major market or policy changes. ... Emissions from substitutions are higher due to the exploration, development, production, and transportation of oil from

international sources being more carbon-intensive.” OSC Report BOEM 2016-065, at 36 (Nov. 2016). So much for stopping leases to stop climate change.

The Recission also ignores the overwhelming reliance interests that have grown up around the 2017-2022 Program generally and Lease Sale 257 specifically. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). Plaintiff States have structured significant environmental programs around the expected proceeds of OCSLA lease sales. *See Zeringue Decl.* ¶19 (“The currently approved Coastal Master Plan is based upon a projected \$389 million dollars in GOMESA expenditures over the next three fiscal years.”). Defendants’ failure to take into account prior agency positions, and the reliance interests that have grown up around them, are the very definition of arbitrary and capricious agency action. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1913 (2020) (“[W]hen an agency rescinds a prior policy its reasoned analysis must consider the ‘alternative[s]’ that are ‘within the ambit of the existing [policy].’”); *Fox Television Stations*, 556 U.S. at 515 (“[T]he requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position.”); *see also Texas v. United States*, 2021 WL 723856, at *42 (“the Court has basically no material from which it may evaluate if DHS considered any facts, let alone whether the facts the agency considered ‘run[] counter’ to DHS’s ultimate choice to implement the 100-day pause”).

The opaque and rushed nature of the Biden Ban’s OCSLA moratorium and the Recission also undermines the integrity of this decisionmaking process. The Five-Year Program and Record of Decision took more than six years to produce; the Recission unraveled them with the stroke of a pen shortly after Inauguration Day after an agency decisionmaking process that, *at best*, took less than six weeks (and indeed occurred before the current Secretary had even been confirmed). “That did not leave much time for reflection and analysis.” *Texas v. United States*, 2021 WL 723856, at *41. Given the extensive prior administrative records leading to the prior decisions, there is a “significant mismatch”

between the Biden Ban's OCSLA leasing moratorium and the administrative record. *See Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019).

4. *The Biden Ban's OCSLA leasing moratorium and the Recission of Lease Sale 257 unlawfully and unreasonably withhold agency action.*

Under the APA, a court "shall [] compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1). The Recission offers no reasoning for delaying the sale. Instead, it refers only to the Biden Ban as the sole reason for delay. But the Executive Order itself offers no reason or statutory basis for the Ban or the delay. This unexplained delay, like that of Lease Sale 258, is particularly egregious and unlawful given "OCSLA's overriding policy of expeditious development." *Ensco Offshore Co.*, 781 F. Supp. 2d at 339.

B. Plaintiffs Are Likely to Succeed on Their Claims that the Biden Ban on MLA Lease Sales Violates the APA.

1. *The Biden Ban's MLA leasing moratorium is contrary to law.*

The Biden Ban's moratorium on leasing onshore public lands contravenes the MLA's unambiguous commands to BLM. Like OCSLA, the MLA requires that "lease sales shall be held for each State where eligible lands are available at least quarterly." 30 U.S.C. §226(b)(1)(A). As the several scheduled lease sales attest, *see supra*, there were eligible lands available, but BLM unilaterally cancelled the quarterly sales anyway. The President has no power to abrogate this mandatory statutory command by fiat. Instead, BLM is required to hold the lease sales as previously scheduled. *See W. Energy All. v. Zinke*, 877 F.3d 1157, 1166 (10th Cir. 2017) ("If the BLM's current procedures, including those dictated by the Leasing Reform Policy, serve as a roadblock in achieving quarterly lease sales, the BLM will presumably have to abandon both its existing procedures and underlying policies."); *see also W. Energy All. v. Jewell*, 2017 WL 3600740, at *4 (D.N.M. Jan. 13, 2017) (noting that it would violate the MLA if "BLM offered grounds other than a lack of available eligible lands" for "cancell[ing] or postpon[ing]" lease sales).

2. *The Biden Ban’s MLA leasing moratorium is arbitrary and capricious.*

The Biden Ban’s MLA leasing moratorium is arbitrary and capricious because neither Executive Order 14008 nor the individual lease cancellations offer any explanation—reasoned or otherwise—for why BLM cancelled the quarterly sales. *Texas v. United States*, 2021 WL 723856, at *39. Indeed, the cancellations themselves were announced only in one-sentence postings on the sale-notice pages of BLM’s websites that declared the sales to be postponed without explanation. To the extent the “factsheet” on BLM’s website offers an explanation, it does so only by referring to Executive Order 14008, which itself offers no reasoning for the moratorium on leasing. *Cf. California v. Bernhardt*, 472 F. Supp. 3d at 605 (“A president’s Executive Order cannot ‘impair or otherwise affect’ statutory mandates imposed on BLM by Congress.” (citing *In re Aiken Cty.*, 725 F.3d 255, 260 (D.C. Cir. 2013) (Kavanaugh, J.)).

The Biden Ban’s MLA leasing moratorium does not engage with BLM’s prior decision to hold lease sales, *compare Fox Television Stations*, 556 U.S. at 515; build any kind of administrative record, *compare Texas v. United States*, 2021 WL 723856, at *39; or consider the serious reliance interests of the Plaintiff States in the revenues and economic benefit of these sales, *compare Encino Motorcars*, 136 S. Ct. at 2126. States with BLM-leasable tracts stand to lose billions of dollars in investments and tax revenue, and thousands of jobs. *See* Considine Decl. ¶¶18-40; Dismukes Decl. ¶17. Defendants’ actions ignore those serious reliance interests—a hallmark of arbitrary and capricious action.¹¹ *Cf. Texas v. United States*, 2021 WL 723856, at *11 (“[T]he financial harm to States ... are not nebulous but rather ‘serious

¹¹ Further demonstrating the arbitrariness of Leasing Moratorium, the Administration has treated Tribal lands separately and more favorably in the permitting process. *See* Memorandum to Darryl LaCounte, Director of the Bureau of Indian Affairs from Robert T. Anderson, Senior Counselor to the Secretary (Jan. 25, 2021), <https://bit.ly/3r0lzku> (exempting Tribal lands from Secretarial Order 3395, which revoked delegations of authority to BLM regional offices to approve permits).

and well recognized.”). Because the cancellations of the quarterly lease sales are not the product of reasoned decision making, they must be enjoined as arbitrary and capricious. *See* 5 U.S.C. §706(2)(A).

3. *The Biden Ban’s MLA leasing moratorium is a final substantive rule that required notice-and-comment rulemaking.*

The process through which the quarterly lease sales have been delayed is at best opaque. As discussed, *supra* Section II.A.1, the Biden Ban uses mandatory language to direct the cancellation of lease sales. That makes the MLA lease moratorium a substantive rule; no discretion is left to decisionmakers and the MLA lease moratorium alters rights and obligations. *Texas v. United States*, 809 F.3d at 171.

At least for the Recission of Lease Sale 257, the agency published a Federal Register notice indicating that it was being delayed; BLM has not even done that for the delayed MLA lease sales. Instead, BLM State office websites began to include *one-sentence* notices that the sales had been “postponed.” *See supra*.¹² That sort of identical, nationwide approach surely would not happen without a formal Secretarial-level directive to the State and regional offices to cancel their lease sales because of the Biden Ban—and such an order would constitute final agency action and a substantive rule that requires notice-and-comment procedures. *Texas v. United States*, 2021 WL 723856, at *43.

But even if each individual BLM office’s cancellation order were not the result of a Secretarial-level directive, those orders themselves were rules that must have gone through the APA’s notice-and-comment procedures because they are substantive rules that alter rights and obligations. *See* 5 U.S.C. §553; *Texas v. United States*, 809 F.3d at 171. They did not go through that process. That makes them unlawful.

¹² The one exception is the “*Errata*” issued by Nevada’s office, which at least takes the form of a letter. It, however, also offers no reason for the cancellation.

4. *The Biden Ban’s MLA leasing moratorium unlawfully and unreasonably withholds agency action.*

Finally, the Biden Ban’s MLA leasing moratorium also constitutes “unlawfully withheld or unreasonably delayed” agency action. *See* 5 U.S.C. §706(1). As discussed, *supra* Section II.B.1, the MLA unambiguously requires BLM to hold quarterly land sales, but BLM has refused to do so despite the presence of available land. BLM’s inaction ignores this statutory requirement—and BLM fails to offer any reason whatsoever for withholding these actions. The cancellations are thus both unlawfully withheld and unreasonably delayed agency action. *See Ensco Offshore*, 781 F. Supp. 2d at 336.

C. Plaintiff States Will Suffer Irreparable Harm Without An Injunction.

“To show irreparable injury if threatened action is not enjoined, it is not necessary to demonstrate that harm is inevitable and irreparable.” *Humana, Inc. v. Avram A. Jacobson, M.D., P.A.*, 804 F.2d 1390, 1394 (5th Cir. 1986). Instead, Plaintiff States “need only show it ‘cannot be undone through monetary remedies’” and that they are “‘likely to suffer irreparable harm in the absence of preliminary relief.’” *Texas v. United States*, 2021 WL 723856, at *48. Plaintiff States easily clear this threshold. The Biden Ban’s OCSLA and MLA leasing moratoriums will cause irreparable harm to Plaintiff States’ sovereign, proprietary, and parens patriae interests.

First, the leasing moratoriums will deprive Plaintiff States of substantial revenue to which they are statutorily entitled under four programs. First, under OCSLA’s revenue-sharing program, the States with offshore federal leases located within the first three miles from the State’s seaward boundary receive 27 percent of the revenue generated from those leases. 43 U.S.C. §1337(g)(5)(A). Second, the Coastal Impact Assistance Program provides assistance from leases to Plaintiffs Alabama, Louisiana, Mississippi, and Texas. 43 U.S.C. §1356a. Third, the Gulf of Mexico Energy Security Act provides for the sharing of 37.5 percent of qualified Outer Continental Shelf revenues among Plaintiffs Alabama, Louisiana, Mississippi, and Texas to aid in coastal-restoration efforts. P.L. 109-432, 120 Stat. 3000, 43 U.S.C. §1331 note. Fourth, the MLA provides that States other than Alaska receive 50 percent of

bonuses, production royalties, and other revenues for leases located in their States, with 40 percent of the remaining funds granted to the Reclamation Fund, which maintains irrigation systems in several Western States. 30 U.S.C. §191(a).¹³

By rescinding Lease Sale 257 and indefinitely postponing all future lease sales, the Biden Ban’s OCSLA moratorium irreparably divests these vital funds from Plaintiff States. Louisiana alone stands to lose up to \$57 million from the cancellation of Lease Sales 257, 259, and 261. *See* Dismukes Decl. ¶22. Similarly, the MLA leasing moratorium deprives Plaintiff States of millions of dollars in revenue. *See* Considine Decl. ¶¶26-40. These injuries are irreparable because there is no conceivable path for Plaintiff States “to pierce the federal government’s usual sovereign immunity or contrive a remedial cause of action sufficient to recover from its budgetary harm.” *Texas v. United States*, 2021 WL 723856, at *50 (citing *Texas*, 809 F.3d at 186); *see also id.* (“Texas has ‘alleged a concrete threatened injury in the form of millions of dollars of losses,’ while the Government postulates harms with respect to Article II authority ‘that are less substantial’ and ‘vague.’”).

Second, the Biden Ban’s OCSLA leasing moratorium causes irreparable injury to the sovereign integrity of the State of Louisiana. Louisiana is losing large swaths of coastal land—nearly two thousand square miles and counting—due to follow-on effects from environmental catastrophes. *See* LCRPA, “Coastal Crisis” available at <https://bit.ly/3ewyqZ3>; *see also* USGS, Land Area Change in Coastal Louisiana (1932 to 2016), <https://bit.ly/38ySDcU> (“To put these numbers into perspective, this equates to long-term average loss rates of approximately an American football field’s worth of coastal wetlands within 34 minutes when losses are rapid to within 100 minutes at more recent, slower

¹³ *See* n.2, *supra*, (noting that Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming all recently received grants for important environmental projects from the Reclamation Fund.) Because the Fund has been supporting projects, including the Hoover Dam, for more than 120 years, all the Western United States suffer from draining or diminishing the royalty revenues that supply the funds for their ongoing projects.

rates.”). Proceeds from lease sales contribute substantial funds to coastal restoration and protection programs. *See* Dismukes Decl. ¶27 (“For example, \$50 million in GOMESA funds have been committed to construct a permanent gate structure that will protect portions of six parishes from storm surges and flooding.”); *see also* Zeringue Decl. ¶12 (“The CPRA’s only annual recurring source of revenue from the federal government comes from the [GOMESA], which created a standing revenue-sharing arrangements between the states of Texas, Louisiana, Mississippi and Alabama.”). And OCSLA leases themselves often provide essential materials for the restoration of Louisiana’s coastline. *See, e.g.*, “BOEM Announces Restoration Project for Louisiana’s Gulf Coast” (June 4, 2019), <https://bit.ly/3bFNC4p> (“BOEM has issued 58 leases to convey over 162 million cubic yards of OCS sand for projects to restore approximately 346 miles of the U.S. Atlantic and Gulf Coasts. Approximately 63 million cubic yards of OCS sand have been leased to restore Louisiana’s coast.”). The deprivation of funds caused by the Biden Ban’s OCSLA leasing moratorium directly and irreparably contributes to the loss of Louisiana’s coastline, coastal communities, and environmental habitat.¹⁴ *Cf. Massachusetts v. E.P.A.*, 549 U.S. at 519 (State’s “independent interest ‘in all the earth and air within its domain’” and “well-founded desire to preserve its sovereign territory” constitutes injury).

Third, the Biden Ban’s leasing moratoriums will significantly harm Plaintiff States’ economies and inflict economic harm on their citizens. *See Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607 (allowing State to defend its “interest in the health and well-being—both physical and economic—of its residents in general”). The leasing moratoriums will result in lost jobs and billions of dollars in lost revenue in Plaintiff States. *See* Considine Decl. ¶¶4, 26-40; Dismukes Decl. ¶¶18-24, 44. These facts establish irreparable harm to “both ... the parties and to the public.” *Hornbeck*, 696 F. Supp. 2d at 638-39. Indeed, just as in *Hornbeck*, the “effect on employment, jobs, [and] loss of domestic energy

¹⁴ *See* LCPRA, Strategic Plan FY 2020-2025, <https://bit.ly/3rGjH1D>.

supplies caused by the moratorium ... will clearly ripple throughout the economy in this region” and therefore constitutes irreparable harm. *Id.*; *see id.* at 638 (“[T]he Court is persuaded that it is only a matter of time before more business and jobs and livelihoods will be lost. The defendants trivialize such losses by characterizing them as merely a small percentage of the drilling rigs affected, but it does not follow that this will somehow reduce the convincing harm suffered.”).

D. An Injunction Would Not Harm Defendants or Disserve the Public Interest.

Finally, the public interest and balance of harms weigh in favor of granting a preliminary injunction. Simply put, Defendants “have no legitimate interest in the implementation of an unlawful” Moratorium. *Texas*, 2021 WL 723856, at *49. Instead, “the public is served when the law is followed.” *Id.* at *51 (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)); *see also League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (“There is generally no public interest in the perpetuation of unlawful agency action.”). And the public has a strong interest in the proper function of oil and gas leasing and development programs. *See, e.g., Hornbeck*, 696 F. Supp. 2d at 639 (“An invalid agency decision to suspend drilling of wells in depths of over 500 feet simply cannot justify the immeasurable effect on the plaintiffs, the local economy, the Gulf region, and the critical present-day aspect of the availability of domestic energy in this country.”). Accordingly, the public interest and balance of harms weigh heavily in Plaintiff States’ favor.

CONCLUSION

For the foregoing reasons, Plaintiff States respectfully request a preliminary injunction requiring Defendants to disregard Executive Order 14008’s Leasing Moratoriums and continue holding OCSLA and MLA oil and gas leasing sales as those statutes and the Five-Year Plan require.

Respectfully submitted,

Dated: March 31, 2021

/s/

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**Admission application forthcoming*

1 things, that order imposes a moratorium on all oil and natural gas leasing activities on federal public
 2 lands and offshore waters. Louisiana, Alabama, Alaska, Arkansas, Georgia, Mississippi, Missouri,
 3 Montana, Nebraska, Oklahoma, Texas, Utah, and West Virginia have filed a complaint challenging
 4 Executive Order 14008 as unlawful under various provisions of the Administrative Procedure Act.

5 7. In December 2020, I produced a report under a consulting agreement with the
 6 Wyoming Energy Authority that examines fiscal and economic impacts of a moratorium or a ban on
 7 federal onshore oil and natural gas production. As relevant here, my report examined (1) the harm to
 8 State economies and jobs by a leasing and drilling ban, and (2) the reduction in oil production,
 9 economic activity, and state revenues due to foregone drilling under federal oil and gas leases. If it is
 10 not vacated, Executive Order 14008 threatens those very harms for Wyoming, New Mexico, Colorado,
 11 Utah, North Dakota, Montana, and Alaska. The specifics of those harms are spelled out below.

12 HARM TO STATE ECONOMIES

13 8. Most oil and natural gas produced in the United States in the last decade has occurred
 14 using a production technology known as hydraulic fracturing and horizontal drilling. This technology
 15 has unlocked large deposits of oil and gas previously thought to be unrecoverable.

16 9. Oil and natural gas wells that use this technology produce at high rates just after initial
 17 production but face steep production declines thereafter. This steep production decline curve has
 18 raised the importance of drilling new wells to offset the production declines from previously completed
 19 wells. As a result, the ongoing process of drilling new wells results in significant investments into the
 20 economies of each of the States where these types of wells exist. But the leasing moratorium in
 21 Executive Order 14008 threatens to curtail this ongoing investment activity.

22 10. Under the leasing moratorium, the State of Wyoming would lose significant oil and gas
 23 investments in its economy. In 2021-25, Wyoming would suffer an average annual investment loss of
 24 \$2.3 billion; in 2025-30 an average annual investment loss of \$4.76 billion; in 2031-35, an average annual
 25 investment loss of \$6.9 billion; and in 2036-40, an average annual investment loss of \$8.77 billion.¹

26
 27 ¹ Dr. Timothy J. Considine, *The Fiscal and Economic Impacts of Federal Onshore Oil and Gas Lease Moratorium and Drilling Ban Policies*, Professor of Energy Economic with the School of Energy Resources at the University of Wyoming vi (Dec. 2020), available at <https://www.wyoenergy.org/wp-content/uploads/2020/12/Final-Report-Federal-Leasing-Drilling-Ban-Policies-121420.pdf>.
 28

11. Under the leasing moratorium, the State of New Mexico would lose significant oil and gas investments in its economy. In 2021-25, New Mexico would suffer an average annual investment loss of \$2.6 billion; in 2025-30, an average annual investment loss of \$3.59 billion; in 2031-35, an average annual investment loss of \$4.68 billion; and in 2036-40, an average annual investment loss of \$5.988 billion.²

12. Under the leasing moratorium, the State of Colorado would lose significant oil and gas investments in its economy. In 2021-25, Colorado would suffer an average annual investment loss of \$586 million; in 2025-30, an average annual investment loss of \$1.095 billion; in 2031-35, an average annual investment loss of \$1.5 billion; and in 2036-40, an average annual investment loss of \$1.87 billion.³

13. Under the leasing moratorium, the State of Utah would lose significant oil and gas investments in its economy. In 2021-25, Utah would suffer an average annual investment loss of \$248 million; in 2025-30, an average annual investment loss of \$406 million; in 2031-35, an average annual investment loss of \$547 million; in 2036-40, an average annual investment loss of \$698 million.⁴

14. Under the leasing moratorium, the State of North Dakota would lose significant oil and gas investments in its economy. In 2021-25, North Dakota would suffer an average annual investment loss of \$279 million; in 2025-30, an average annual investment loss of \$358 million; in 2031-35, an average annual investment loss of \$467 million; and in 2036-40, an average annual investment loss of \$601 million.⁵

15. Under the leasing moratorium, the State of Montana would lose significant oil and gas investments in its economy. In 2021-25, Montana would suffer an average annual investment loss of \$56 million; in 2025-30, an average annual investment loss of \$112 million; in 2031-35, an average annual investment loss of \$169 million; and in 2036-40, an average annual investment loss of \$224 million.⁶

16. Under the leasing moratorium, the State of Alaska would lose significant oil and gas

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

1 investments in its economy. In 2021-25, Alaska would suffer an average annual investment loss of \$412
2 million; in 2025-30, an average annual investment loss of \$1.5 billion; in 2031-35, an average annual
3 investment loss of \$6.9 billion; and in 2036-40, an average annual investment loss of \$13.4 billion.⁷

4 17. Under a leasing moratorium, the States of Wyoming, New Mexico, Colorado, Utah,
5 North Dakota, Montana, and Alaska would lose a combined average of 58,676 jobs annually for the
6 years 2021-25.⁸

7 18. Under a drilling ban, the State of Wyoming would lose significant oil and gas
8 investments in its economy. In 2021-25, Wyoming would suffer an average annual investment loss of
9 \$2.7 billion; in 2025-30, an average annual investment loss of \$4.9 billion; in 2031-35, an average annual
10 investment loss of \$7.07 billion; and in 2036-40, an average annual investment loss of \$8.95 billion.⁹

11 19. Under a drilling ban, the State of New Mexico would lose significant oil and gas
12 investments in its economy. In 2021-25, New Mexico would suffer an average annual investment loss
13 of \$3.1 billion; in 2025-30, an average annual investment loss of \$3.7 billion; in 2031-35, an average
14 annual investment loss of \$4.78 billion; and in 2036-40, an average annual investment loss of \$6.11
15 billion.¹⁰

16 20. Under a drilling ban, the State of Colorado would lose significant oil and gas
17 investments in its economy. In 2021-25, Colorado would suffer an average annual investment loss of
18 \$700 million; in 2025-30, an average annual investment loss of \$1.1 billion; in 2031-35, an average
19 annual investment loss of \$1.5 billion; and in 2036-40, an average annual investment loss of \$1.9
20 billion.¹¹

21 21. Under a drilling ban, the State of Utah would lose significant oil and gas investments
22 in its economy. In 2021-25, Utah would suffer an average annual investment loss of \$293 million; in
23 2025-30, an average annual investment loss of \$419 million; in 2031-35, an average annual investment
24 loss of \$560 million; and in 2036-40, an average annual investment loss of \$712 million.¹²

25
26 ⁷ *Id.*

⁸ *Id.* at 44.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

22. Under a drilling ban, the State of North Dakota would lose significant oil and gas investments in its economy. In 2021-25, North Dakota would suffer an average annual investment loss of \$336 million; in 2025-30, an average annual investment loss of \$370 million; in 2031-35, an average annual investment loss of \$477 million; and in 2036-40, an average annual investment loss of \$613 million.¹³

23. Under a drilling ban, the State of Montana would lose significant oil and gas investments in its economy. In 2021-25, Montana would suffer an average annual investment loss of \$66 million; in 2025-30, an average annual investment loss of \$115 million; in 2031-35, an average annual investment loss of \$173 million; and in 2036-40, an average annual investment loss of \$229 million.¹⁴

24. Under a drilling ban, the State of Alaska would lose significant oil and gas investments in its economy. In 2021-25, Alaska would suffer an average annual investment loss of \$456 million; in 2025-30, an average annual investment loss of \$1.57 billion; in 2031-35, an average annual investment loss of \$7.47 billion; and in 2036-40, an average annual investment loss of \$13.8 billion.¹⁵

25. Under a drilling ban, the States of Wyoming, New Mexico, Colorado, Utah, North Dakota, Montana, and Alaska would lose a combined average of 72,818 jobs annually for the years 2021-25.¹⁶

HARM TO STATE REVENUE

26. A leasing moratorium would significantly lower oil and gas production and thus significantly reduce the ad-valorem tax revenue, federal royalty payments, and lease-bonus payments the States receive from leasing on public lands.¹⁷

27. Under the leasing moratorium, in 2021-25 the State of Wyoming would lose an average of \$304 million annually in revenues; in 2025-30, \$722 million; in 2031-35, \$1.2 billion; and in 2036-40, \$1.77 billion.¹⁸

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 44.

¹⁷ *Id.* at viii.

¹⁸ *Id.* at viii.

1 28. Under the leasing moratorium, in 2021-25 the State of New Mexico would lose an
2 average of \$946 million annually in revenues; in 2025-30, \$1.76 billion; in 2031-35, \$2.6 billion; and in
3 2036-40, \$3.6 billion.¹⁹

4 29. Under the leasing moratorium, in 2021-25 the State of Colorado would lose an average
5 of \$59 million annually in revenues; in 2025-30, \$126 million; in 2031-35, \$200 million; and in 2036-
6 40, \$279 million.²⁰

7 30. Under the leasing moratorium, in 2021-25 the State of Utah would lose an average of
8 \$27 million annually in revenues; in 2025-30, \$59 million; in 2031-35, \$92 million; and in 2036-40, \$132
9 million.²¹

10 31. Under the leasing moratorium, in 2021-25 the State of North Dakota would lose an
11 average of \$136 million annually in revenues; in 2025-30, \$249 million; in 2031-35, \$358 million; and
12 in 2036-40, \$489 million.²²

13 32. Under the leasing moratorium, in 2021-25 the State of Montana would lose an average
14 of \$40 million annually in revenues; in 2025-30, \$93 million; in 2031-35, \$146 million; and in 2036-40,
15 \$203 million.²³

16 33. Under the leasing moratorium, in 2021-25 the State of Alaska would lose an average of
17 \$100 million annually in revenues; in 2025-30, \$454 million; in 2031-35, \$1.88 billion; and in 2036-40,
18 \$4.4 billion.²⁴

19 34. Under a drilling ban, in 2021-25 the State of Wyoming would lose an average of \$345
20 million annually in revenues; in 2025-30, \$746 million; in 2031-35, \$1.25 billion; and in 2036-40, \$1.8
21 billion.²⁵

22 35. Under a drilling ban, in 2021-25 the State of New Mexico would lose an average of \$1.2
23 billion annually in revenues; in 2025-30, \$1.87 billion; in 2031-35, \$2.7 billion; and in 2036-40, \$3.77
24

25 ¹⁹ *Id.* at viii.

26 ²⁰ *Id.* at viii.

27 ²¹ *Id.* at viii.

²² *Id.* at viii.

²³ *Id.* at viii.

²⁴ *Id.* at viii.

28 ²⁵ *Id.* at viii.

1 billion.²⁶

2 36. Under a drilling ban, in 2021-25 the State of Colorado would lose an average of \$73
3 million annually in revenues; in 2025-30, \$132 million; in 2031-35, \$205 million; and in 2036-40, \$285
4 million.²⁷

5 37. Under a drilling ban, in 2021-25 the State of Utah would lose an average of \$33 million
6 annually in revenues; in 2025-30, \$62 million; in 2031-35, \$95 million; and in 2036-40, \$135 million.²⁸

7 38. Under a drilling ban, in 2021-25 the State of North Dakota would lose an average of
8 \$175 million annually in revenues; in 2025-30, \$264 million; in 2031-35, \$369 million; and in 2036-40,
9 \$499 million.²⁹

10 39. Under a drilling ban, in 2021-25 the State of Montana would lose an average of \$42
11 million annually in revenues; in 2025-30, \$94 million; in 2031-35, \$148 million; and in 2036-40, \$205
12 million.³⁰

13 40. Under a drilling ban, in 2021-25 the State of Alaska would lose an average of \$106
14 million annually in revenues; in 2025-30, \$465 million; in 2031-35, \$1.97 billion; and in 2036-40, \$4.5
15 billion.³¹

16 SPILLOVER HARMS

17 41. A moratorium on leasing, and a constructive ban or significant delay on drilling permits,
18 may also have significant spillover effects on State and private lands.³²

19 42. First, State and private lands will be affected by a moratorium or a ban because tracts
20 of federal, State, and Tribal lands are interspersed in a checkerboard pattern, meaning a moratorium or
21 a ban on federal lands will inevitably affect the value of adjoining lands.³³

22 43. Second, federal bans and moratoriums could apply to private and State lands subject to
23 a communitization requirement if it is determined to be in the public interest.³⁴

24 ²⁶ *Id.* at viii.

25 ²⁷ *Id.* at viii.

26 ²⁸ *Id.* at viii.

27 ²⁹ *Id.* at viii.

28 ³⁰ *Id.* at viii.

³¹ *Id.* at viii.

³² *Id.* at x.

³³ *Id.*

³⁴ *Id.*

1 44. If these spillover harms do emerge, the fiscal and economic losses stemming from a
2 drilling ban and leasing moratorium would rise linearly with the shares of private and State lands tied
3 to economic regulation. In other words, a 10 percent spillover effect would increase fiscal and
4 economic losses by 10 percent.³⁵

5 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED
6 STATES OF AMERICA AND THE STATE OF LOUISIANA THAT THE FOREGOING IS
7 TRUE AND CORRECT.

8
9 Executed in Laramie, Wyoming this 30th day of March, 2021.

10
11 _____

12 TIMOTHY J. CONSIDINE
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28 _____
³⁵ *Id.*

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WORKING PAPERS

Considine, T.J., T. Righetti, B. Isom, N. Considine (2018) "Oil and gas investment on western federal lands: The role of markets, regulation, and politics," target submission, *Journal of Regulatory Economics*.
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“Center for Energy Economics and Public Policy,” School of Energy Resources, University of Wyoming, July 2012 – June 2014.

“Balancing Economic Benefits with Environmental Impacts of Shale Energy Development,” Manhattan Institute, with Robert Watson, December 2010-June 2011.

“The Economic Impacts of the Marcellus Shale in Pennsylvania,” Marcellus Shale Coalition, with Robert Watson and Seth Blumsack, The Pennsylvania State University, January – December 2011.

“Powering California: An Energy Forecasting Model,” The Communications Institute, principal investigator, June 2009-June 2010.

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“Center for Energy Economics and Public Policy,” School of Energy Resources, University of Wyoming, with David Finnoff, Robert Godby, Charles Mason, Owen Phillips, and Klass van’t Veld, January 2010 – December 2012.

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“Regional energy demand forecasting,” *AIG Trading*, June – Oct. 1997.

“Uncertainty and the price of crude oil reserves,” *The World Bank*, July 1994 – July 1995.

“Technology and environmental impacts of steel production in China,” *Department of Foreign Affairs and Trade, Australia*, June 1994 – June 1995.

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CONSULTING

Davis Graham & Stubbs LLP — Oil & Gas Regulation

Sidley Austin LLP & Chevron — Super Fund Cleanup Valuation

UR Energy & Energy Fuels — Uranium Import Quotas

Holland & Hart LLP — Coal leasing & Social Cost of Carbon

American Petroleum Institute — Energy Regulation on Federal Lands

Interstate Policy Alliance — Renewable energy portfolio standards

Squire, Patton, & Boggs — Litigation support

Wyoming Office of Consumer Advocate — Natural gas cost recovery

Range Resources, Appalachia LLC — Severance taxes

Cloud Peak Energy — Coal leasing policy on federal lands

Gerson Lehrman Group — Litigation support

Interstate Policy Alliance — Energy development on federal lands

NERD Gas — Natural gas-to-liquids market analysis

American Iron and Steel Institute — Economic impact analysis

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CONSULTING (cont.)

Washington & Jefferson College — Advising on energy index project
 Talisman Energy LLC — Economic & environment impacts of shale
 Analysis Group — Analysis of metallurgical coal & nonferrous metal markets
 American Petroleum Institute — Marcellus shale & taxation Issues
 Wyoming Mining Association — Economics of Powder River Basin Coal
 Marcellus Shale Coalition — Economic impacts of natural gas production
 The Communications Institute — Forecasting Arizona energy sector
 Peabody Energy — Local economic impacts of carbon regulation
 Fortuna Energy — Economic impacts of natural gas production
 Eco Energy Ltd.— Energy demand forecasting for Israel
 Federal Energy Regulatory Commission — Electricity pricing issues
 McKinsey & Company — Steel market analysis
 ICF Consulting/U.S. Department of Energy — Strategic petroleum reserve
 Pennsylvania Attorney General — Gasoline pricing and electricity mergers
 Freehill, Hollingdale, & Page — Merger analysis & contract issues
 Australian Industry Commission — Advanced materials
 Normandy Poseidon — Gold mine feasibility study

INVITED WORKSHOPS

“Oil Price Volatility,” *Council on Foreign Relations*, New York, May 2016.
 “The economic value of energy development on western federal lands,”
Sutherland Institute, Slat Lake City, Utah, June 2013.
 “Powering Arizona: Choices and trade-offs for electricity policy: A study
 assessing Arizona’s energy future,” Arizona State University, June 2008.
 “Evaluating forecasts of natural gas markets: Implications for modeling and
 policy analysis,” Stanford University, June 2007.
 “Reinventing the use of materials,” National Science Foundation, Princeton
 University, February 2002.
 “Industrial transformation,” International Human Dimensions Programme,
 Boston University, October 1998.
 Review Panel, National Science Foundation, Electric Power Networks
 Efficiency and Security Review Panel, April 2003

PROFESSIONAL SERVICE AND APPOINTMENTS

Member of the Board, Consumer Energy Education Foundation, 2014 – 2019.
 Review Panel, National Science Foundation, Electric Power Networks
 Efficiency and Security Review Panel, April 2003.

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PROFESSIONAL SERVICE AND APPOINTMENTS (cont.)

National Research Council, National Academies, Panel on bridging design and manufacturing, 2002 to 2004.

Science Advisory Board, U.S. Environmental Protection Agency, March 2001.

Green Engineering Theme Committee, *Environmental Consortium*, The Pennsylvania State University, September 2000.

Associate Editor, *Energy Economics*, September 2000.

National Science Foundation & Environmental Protection Agency, Technology for a Sustainable Environment Review Panel, December 1999.

Chair, Independent Review Panel, Life-Cycle Stressor Effects Assessment Framework, Steel Recycling Institute, January 1999.

TESTIMONY

“Revised Comments on proposed regulations to control ozone pollution,” Testimony, before the Air Quality Control Commission, State of Colorado, November 22, 2020

“Colorado GHG pollution roadmap public comments,” on behalf of Weld County and Western & Rural Local Governments Coalition to the Colorado Energy Office, November 12, 2020

“Economic impacts of proposed regulation 7 for engines and pre-production activities,” before the Air Quality Control Commission, State of Colorado, July 30, 2020

“Colorado GHG Pollution Reduction Roadmap,”

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“Deposition of Timothy J. Considine,” United States Department of Justice, *Chevron vs. United States*, December 6, 2019.

“Testimony on Oil and Gas Flowline Regulations,” Oil and Gas Conservation Commission of the State of Colorado, November 20, 2019.

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“Confidential direct testimony on behalf of the Wyoming Office of Consumer Advocate,” in the Matter of the Application of Questar Gas Company for Approval of the Canyon Creek Acquisition as a WXPRII Property, Docket No. 30010-145-GA-15, Hearing Nov. 18, 2015.

“Energy development on federal and non-federal lands in Wyoming,” Wyoming Legislature, February 2014.

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TESTIMONY

“Transfer of public lands – Evidence from the energy sector,” Task Force on the Transfer of Public Lands, Wyoming Legislature, September 2013.

“Impact of environmental regulations on natural gas drilling and rural job creation: The case of New York State.” U.S. House of Representatives Rural Solutions Working Group, Washington, DC, September 2010.

“Economic impacts of developing the Quebec Utica Shale,” Bureau des Audiences Publiques sur l'Environnement, St. Hyacinth, Quebec, October 2010

PRESENTATIONS

“Western Caucus Virtual Series - Biden's Executive Disorder: An Attack on American Energy,” Congressional Western Caucus, February 2021, <https://www.facebook.com/congressionalwesterncaucus/videos/bidens-executive-disorder-an-attack-on-american-energy-part-two/425179168542566/>

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“World energy outlook,” Opening Address, 2018 Global Energy and Environmental Issues Conference, December 2018.

“The market impacts of uranium import quotas,” New Directions in Commodities Research, University of Colorado Denver, August 2018.

“Revisiting the economic impacts of fracking in Pennsylvania,” North American Energy Economics Conference, Houston, Texas, November 2017.

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Considine (2017) “Revisiting the economic impacts of fracking in Pennsylvania,” Brown Bag Seminar Department of Economics, University of Wyoming, May

“Costs and benefits of unconventional oil & gas production,” Ph.D. Summit, Strata Institute, Logan, Utah, January 2017

“The effectiveness of home energy audits: A case study of Jackson, Wyoming,” School of Energy Resources Seminar Series, October 23, 2015.

“The costs of solar-centric renewable energy portfolio standards,” King Fahd University, Dhahran, Saudi Arabia, February 2014.

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“The power of primary fuels in North America,” King Fahd University, Dhahran, Saudi Arabia, February 2014.

Economic perspective on Wyoming oil & natural gas liquids development,” Energy Law Conference, University of Wyoming, November 2013.

“The power of North American oil, natural gas, coal, and uranium,” The Energy Council, Jackson, Wyoming, September 2013.

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“Marcellus and Utica Shale Plays: Status and prospects,” Mark West Corporate Board, Saratoga, Wyoming, July 2012.

“Consumer behavior and energy use: A case study of Jackson Wyoming,” City of Jackson and Jackson Sustainability Initiative, Wyoming, April 2012.

“Balancing economic benefits with environmental impacts of shale gas,” Ohio State University, webinar, February 2012.

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“Powering California: Choices and trade-offs,” University of Southern California, Los Angeles, CA, November 2011.

“Balancing economic benefits with environmental impacts of shale energy development,” Quebec Oil and Gas Association, Montreal, Quebec, October 2011.

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“Economic impacts of the Marcellus Shale,” Ohio Chamber of Commerce, Salt Creek, OH, September 2011.

Economic perspective on Wyoming oil & natural gas liquids development,” Energy Law Conference, University of Wyoming, November 2013

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“Economic opportunities of shale energy development,” Manhattan Institute, New York, NY, June 2011.

“PRB coal powering America,” Rocky Mountain Coal Mining Institute, Sheridan, WY, September 2010.

“Natural gas development and employment.” Natural Gas Caucus, U.S. Senate, Washington, DC, September 2010.

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PRESENTATIONS (cont.)

“Coal development and leasing policy issues,” Coal Caucus Briefing, U.S. House of Representatives, Washington, DC., July 2010.

“Natural gas development in New York State,” Panel Discussant, Manhattan Institute, New York, NY, February 2010.

“Powering California, An overview of trends in energy supply and demand,” California Manufacturers Association, South Lake Tahoe, CA, July 2009.

“The value of hurricane forecast information to energy producers in the Gulf of Mexico,” Resources for the Future, Washington, DC, October 2002.

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“The value of climate information to the energy sector,” Space Policy Institute, The George Washington University, Washington, DC, March 2002.

“Inventories and market power in the world crude oil market,” International Society of Inventory Research, Atlanta, GA, January 2002.

“Industrial ecology of steel,” invited presentation, Helsinki Symposium on Material Flows and Industrial Ecology, Helsinki, Finland, August 2000.

“Integrating life cycle assessment and economic analysis,” invited presentation, Bell Labs, Murray Hill, NJ, February 2000.

“Environmental issues in regional steel production and trade,” Minerals and Energy Forum, Pacific Economic Cooperation Council, Beijing, China, March 1994.

“Oil price volatility and U.S. macroeconomic performance,” Western Economic Association, Vancouver, British Columbia, July 1987.

“The macroeconomics of natural gas deregulation,” International Association of Energy Economists, Denver, Colorado, November 1982.

“Markup pricing in petroleum refining,” invited presentation, Society for Inventory Research, AAAS, Boston, MA, January 2000.

“The economics of propane,” invited, PA Propane Association, July 1998.

“The firm and the environment,” invited lecturer, two day workshop on environmental issues, University of Chile, Santiago, Chile, November 1998.

“Suboptimal capital in electric power generation,” invited, Advanced Workshop in Regulation and Competition, Network Industries in Transition, Vergennes, Vermont, May 1998.

“A monthly econometric analysis of natural gas markets,” International Symposium on Economic Modeling,” Washington DC, June 1994.

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

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

PLAINTIFFS,

v.

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

DEFENDANTS.

CIVIL ACTION NO. 2:21-cv-00778-TAD

**DECLARATION OF
PROFESSOR DAVID E. DISMUKES**

I, David E. Dismukes, declare as follows:

EDUCATION, EXPERIENCE, AND EXPERTISE

1. I serve as Professor, Executive Director, and Director of the Policy Analysis at the Center for Energy Studies, Louisiana State University and Agricultural and Mechanical College (“LSU”). I am also a full Professor in the Department of Environmental Sciences and Director of the Coastal Marine Institute in the College of the Coast and Environment at LSU. I also serve as a full member of the graduate research faculty at LSU where I supervise and serve on graduate student theses and dissertation committees.

2. I serve as a Senior Fellow at the Institute of Public Utilities at the Michigan State University (“MSU”) where I teach energy regulatory staff and other stakeholders about principles, trends, and issues in the electric and natural gas industries.

3. In addition to serving as a tenured LSU professor, I am also a Consulting Economist with the Acadian Consulting Group, LLC (“ACG”), a research and consulting firm that specializes in the analysis of regulatory, economic, financial, accounting, statistical, and public policy issues associated with regulated and energy industries. ACG is a Louisiana-registered partnership, formed in 1995, and is located in Baton Rouge, Louisiana.

4. I earned a Bachelor of Arts in History from the University of West Florida in 1987. I then earned a Master of Science in International Affairs in 1988, and a Master of Science in Economics

in 1992 from the Florida State University. Finally, I earned a Ph.D. in Economics in 1995, also from the Florida State University.

5. I have held academic appointments at LSU since 1995, including as a professor since 2006. I regularly teach courses at LSU on energy and the environment to undergraduate and graduate students.

6. My research at LSU includes the analysis of a wide range of issues related to energy and the environment in Louisiana. I am regularly called upon by the media, trade, civic, and professional associations to provide my opinion on energy and economic issues.

7. I have testified as an expert witness on energy issues on over 150 occasions. I have also testified before the U.S. Senate and the U.S. House of Representatives and several state legislatures.

8. I have authored several oil and gas industry “factbooks” that examine the detailed relationships of the offshore oil and gas industry in the Gulf of Mexico (“GOM”) to onshore support industries and infrastructure. These factbooks are published by the U.S. Department of the Interior, Bureau of Ocean Energy Management (“BOEM”).

9. I also co-author the “Gulf Coast Energy Outlook” or “GCEO” that examines the outlook for energy and the economy along the GOM. The GCEO is published annually by the LSU Center for Energy Studies.

10. I make this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction. This declaration is based on my personal knowledge, my review of cited materials, and my decades of experience in energy policy and analysis. I could and would competently testify to its contents if called to do so.

11. A true and accurate copy of my curriculum vitae, including my publications and testimony within the previous four years, is attached as Exhibit A.

12. My academic year (9 month) salary as an LSU faculty member is currently \$162,932.

13. I am also receiving compensation for the study and testimony in this case through Acadian Consulting Group, LLC, which is being compensated at a rate of \$300 per hour for my services and \$55-\$285 for the services of my assistants.

14. I am an expert in the analysis of economic, statistical, and public policy issues in energy

and regulated industries.

HARM FROM LEASING AND DRILLING MORATORIUM

15. Louisiana will be harmed by the moratorium on new federal oil and gas leasing and drilling permits under Executive Order 14008 and other executive actions challenged in the complaint, such as Secretarial Order 3395, due to: (1) the reduction in oil production, economic activity, and state revenues resulting from the cancellation of the BOEM GOM Oil and Gas Lease Sale 257 and the suspension of BOEM GOM Lease Sales planned lease sales 259 and 261; (2) the reduction in oil production, economic activity, and state revenues due to foregone drilling under existing federal oil and gas leases; and (3) the reduced production by, and investment in, Louisiana's refining and chemical manufacturing industries caused by higher oil and gas prices.

16. The harm arising from the OCSLA Moratorium will be concentrated in the GOM region and Louisiana in particular, reflecting the concentration of crude oil and gas production from federal leases. The GOM accounts for a sizable level of U.S. production from federal leases. In 2019, GOM production accounted for 63.5 percent of all crude oil and 21.5 of all natural gas production arising from federal leases.¹

17. The MLA Moratorium will also impact drilling in the Permian Basin, directly and immediately harming states like Louisiana and Texas in a number of different ways. First, labor in the oil and gas industry is highly mobile and Louisiana and Texas oil and gas workers are regularly employed in the Permian basin. A reduction in federal leasing in the Permian basin will lower oil and gas drilling and production employment opportunities for Louisiana and Texas oil and gas sector workers. Second, drilling reductions will ultimately result in lower production across all federal leases which in turn will increase the cost of crude oil and natural gas, holding other factors constant, thereby negatively impacting refining and petroleum-based chemical production activity in Louisiana and other places along the GOM and increasing costs across the United States.

HARM TO STATE REVENUES

18. The federal government earns revenues from oil and gas leases in the GOM from three sources: (1) the initial lease payments, known as bonus bids; (2) the royalties it collects on production

¹ U.S. Office of Nat. Resources Revenue, <https://bit.ly/2O29IKK>.

from oil and gas leases, and (3) rentals.

19. Under the Gulf of Mexico Energy Security Act (“GOMESA”), 37.5 percent of all federal revenues from GOM oil and gas leases are shared between the four Gulf-producing States: Alabama, Louisiana, Mississippi, and Texas. Throughout calendar year 2020, Louisiana received \$156 million, or 44 percent, of the \$353 million in GOMESA Funds disbursed.²

20. The drilling moratorium will immediately harm Alabama, Louisiana, Mississippi, and Texas by reducing production and royalties from federal oil and gas leases in the GOM, reversing the upward trend in production seen in recent years.³ This is in addition to state revenues from sales, income, and other taxes, which will also decline due to reductions in employment and economic activity supporting offshore oil and gas exploration and production and lower/less profitable refining and chemical manufacturing activities.

21. With the drilling moratorium, offshore GOM production will plateau and then decline in coming years as declining production from existing wells will no longer be offset by production from newly drilled wells. Declining production will result in similar declines in federal oil and gas royalties and Alabama, Louisiana, Mississippi, and Texas GOMESA funding.

22. The cancellation and suspension of GOM oil and gas lease sales will also reduce Alabama, Louisiana, Mississippi, and Texas GOMESA funding. The BOEM’s most recent GOM leasing sale, conducted in November 2020, generated over \$120 million in bids which could generate up to \$19 million in GOMESA funds for Louisiana, based on its share of funds in 2020.⁴ Based on this figure, the cancellation of Lease Sale 257 and suspension of Sales 259 and 261 will reduce Louisiana’s GOMESA funding by up to \$57 million.

23. Cancellation of Lease Sale 257 will imminently and directly harm all states located in the GOM region. In 2020, the Federal Office of Natural Resource Revenue (“ONRR”) disbursed nearly \$95.3 million in GOMESA revenue to the State of Texas and Texas Counties. Similarly, in 2020

² U.S. Office of Nat. Resources Revenue, “Gulf of Mexico Energy Security Act,” <https://bit.ly/3cNnynj>; BOEM, “Gulf of Mexico Energy Security Act,” <https://bit.ly/2PaEZ8Y>.

³ Production increased each year from 2013-2019 before declining in 2020 largely due to the disruption caused by hurricanes and tropical depressions. *See* U.S. Energy Information Administration (EIA), “Petroleum & Other Liquids,” <https://bit.ly/2Nx5qFs>; U.S. EIA, “Today in Energy” (Nov. 18, 2020), <https://bit.ly/3s2YWgA>.

⁴ BOEM, “Oil and Gas Lease Sale 256: Final Bid Recap” (Nov. 18, 2020), <https://bit.ly/2Pdypys>.

the ONRR disbursed more than \$50 million in total GOMESA revenue to the State of Alabama and Alabama counties, and more than \$51.9 million in total GOMESA revenue to the State of Mississippi and Mississippi counties.⁵ The cancellation of Lease Sale 257 thus will significantly reduce GOMESA disbursements in 2021.

24. Based on BOEM estimates, the three cancelled or suspended GOM lease sales will result in an output loss of at least of 631.5 million barrels of oil production and 1,641 BCF of natural gas.⁶ Assuming an average price of \$60 per barrel, federal oil and gas royalties would decline by over \$7 billion and Louisiana GOMESA funding would decline more than \$1 billion.⁷

HARM TO COASTAL RESTORATION

25. Louisiana is situated in a hurricane-prone area of the country with vulnerable coastal terrain. Over the past 84 years, Louisiana has lost over 2,000 square miles of coastal wetlands, and forecasts anticipate up to 2,250 additional square miles could be lost over the next 50 years.⁸

26. In order to address the threat this continuing loss poses to Louisiana's coastal ecology, Louisiana communities are undertaking an ambitious effort to respond as set out in the 2017 Coastal Master Plan. The plan presents a long-term program of construction, operation, and maintenance of 124 projects over 800 square miles.⁹

27. The moratorium on leasing and drilling and cancellation of Lease Sale 257 will imminently harm Louisiana's coastline by depriving the State of GOMESA funding for the Coastal Master Plan. GOMESA has been a major source of funding for projects included in the Coastal Master Plan. For example, \$50 million in GOMESA funds have been committed to construct a permanent gate structure that will protect portions of six parishes from storm surges and flooding.¹⁰

28. In Ascension Parish, GOMESA funds will pay \$65 million for a project that includes a

⁵ U.S. Office of Nat. Resources Revenue, "Gulf of Mexico Energy Security Act (GOMESA)," <https://bit.ly/3w4w0rb>.

⁶ BOEM, "2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program," November 2016, 5-10, <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-OCS-Oil-and-Gas-Leasing-PFP.pdf>.

⁷ Based on the federal royalty rate of 18.5 percent, GOMESA's 37.5 percent share of federal royalties and Louisiana's 44 percent share of GOMESA funding.

⁸ State of Louisiana, "Louisiana's Comprehensive Master Plan for a Sustainable Coast" ES-2-7 (effective June 2, 2017), <https://bit.ly/3tGMeo2>.

⁹ *Id.* at ES-14-15.

¹⁰ U.S. DOI, "Interior Disburses \$353 Million in GOMESA Revenues for Gulf State Coastal Conservation and Hurricane Protection Projects" (Mar. 30, 2020), <https://on.doi.gov/3cRMvOi>.

pump station to be constructed on the Mississippi River at Donaldsonville. That pump station will triple the capacity for fresh water entering Bayou Lafourche to combat saltwater intrusion and provide fresh drinking water to over 300,000 residents in Assumption, Ascension, Lafourche, and Terrebonne Parishes.¹¹

29. The moratorium on leasing and drilling will also negatively affect the State's economy and employment, limiting the State's ability to fund the Coastal Master Plan.

30. The Interior Department recently announced GOMESA distributions associated with fiscal year 2020 (October 2019 through September 2020). This included nearly \$110 million allocated to Louisiana state government and 19 coastal parishes in the State.¹² 2020 fiscal year GOMESA distributions to all Gulf states were as follows:

- Louisiana: \$110 million;
- Texas: \$67.4 million;
- Mississippi: \$36.5 million;
- Alabama: \$35 million.¹³

31. 80 percent of GOMESA distributions allocated to Louisiana state government, or approximately \$88 million of the GOMESA fiscal year 2020 distribution, will be used to help fund productions included in the State's Coastal Master Plan.¹⁴

32. Fiscal year 2020 GOMESA distributions are already approximately \$33.5 million lower than 2019 fiscal year distributions due to a drop in demand for oil and gas resulting from the COVID-19 pandemic.¹⁵ This resulted in a reduction to Louisiana's GOMESA distributions of approximately \$14 million.¹⁶

33. Continued land loss along Louisiana's coast threatens valuable and critical energy infrastructure (such as natural gas pipelines, natural gas processing, pipelines that distribute gasoline and jet fuel to mid-Atlantic markets, tank storage facilities, among other assets) that in turn, impact

¹¹ *Id.*

¹² Schleifstein, Mark (March 30, 2021); "Louisiana gets \$110 million in offshore oil revenue; here's how it will be divided," The New Orleans Advocate.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

U.S. and global energy markets and the U.S. economy.

HARM TO ECONOMIC ACTIVITY AND EMPLOYMENT

34. Louisiana's economy is dependent on oil and natural gas exploration and production not only because of its corresponding economic and employment activity but also because energy-based manufacturing industries located in the state rely on crude oil and natural gas, and their derivatives, as an input for these industrial processes.

35. A leasing and production moratorium will harm Louisiana's economy and workers. A moratorium will result in declining exploration and production activities on federal leases, reduced energy-based manufacturing, and ultimately reduced investment in the energy-based manufacturing equipment and facilities.

36. The GOM employs hundreds of thousands of workers, a large portion of which are concentrated in the coastal parishes of Louisiana. Drilling, production, and service sector oil and gas employees in Louisiana have been harmed and continue to be harmed by these executive actions.

37. Louisiana's energy-based manufacturing industries will also be negatively impacted by these actions since they are critical components of the region's overall manufacturing economy. Collectively, these industries make the following contributions:

- In 2019, energy-based manufacturing accounted for \$6.8 billion in wages, representing 48 percent of Louisiana manufacturing wages.¹⁷
- In 2019, energy-based manufacturing accounted for 15 percent of Louisiana's GDP for 75 percent of manufacturing.
- Louisiana energy-based manufacturing wages are higher than the already above-average level of manufacturing wages.

38. Refineries, chemical plants, and other energy-based manufacturers in Louisiana have invested in more capacity and capabilities to take advantage of increased—and increasingly cost-effective—U.S. crude oil production. Historically, a large amount of the GOM production has gone to these Louisiana industries for further refining and processing. Increasing regional crude oil

¹⁷ Energy-based manufacturing includes: petroleum and coal products; chemical; and plastics and rubber products manufacturing. Analysis of Bureau of Economic Analysis, and U.S. Department of Commerce.

production in the GOM has been a large source of crude oil for many Louisiana refineries. Natural gas produced in the GOM is processed by several large facilities located in Plaquemines and St. Bernard parishes in Southeast Louisiana and Calcasieu and Cameron Parishes in southwestern Louisiana.

39. Over the past several years, increasing production from hydrofracking has become important to Louisiana even though much of that production is out-of-state. The Permian Basin is the largest crude oil producing region of the U.S. and half of this production comes from wells on federal lands in the New Mexico portion of the basin.¹⁸ It has been estimated that the combined effect of the moratoriums on drilling and leasing will reduce Permian Basin production by 230,000-490,000 barrels in 2025.¹⁹ To maintain production levels, GOM refineries would have to obtain similar, but more costly, light and super-light crude from other regions such as West Africa and the Arabian Gulf.²⁰

40. Louisiana also has a growing energy export economy. Billions in investments have been made over the past several years to facilitate the movement of not only GOM production (crude oil and natural gas), but unconventional production from all over the U.S. including the Permian basin. These energy commodities are bound for export markets all over the world and within the United States. The moratorium harms United States ability to sustain anticipated commodity export levels. These exports leave liquified natural gas (“LNG”) facilities in southwestern Louisiana and the Louisiana Offshore Oil Port (“LOOP”) located in the central coastal portion of the state (near Port Fourchon).

41. Oil and gas workers tend to be very mobile, reflecting the nature of the work schedules. So the impact of reduced employment in oil and gas exploration and production offshore in the GOM and on federal lands in the Permian Basin will be felt throughout the region.

42. GOM offshore oil and gas support and services are concentrated in five Louisiana parishes: Iberia; Lafayette; Lafourche; St. Mary; and Terrebonne. Collectively, these parishes will be most affected by reductions in employment and economic activity due to reduced offshore oil and gas exploration and production.²¹

¹⁸ Garrett Golding & Kunal Patel, “Anticipated Federal Restrictions Would Slow Permian Basin Production,” Federal Reserve Bank of Dallas (Mar. 4, 2021), <https://bit.ly/3lx25Tk>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Joseph E. Aldy, *The Labor Market Impacts of the 2010 Deepwater Horizon Oil Spill and Offshore Oil Drilling Moratorium*,

43. In addition, reductions in U.S. natural gas production will reduce the opportunity for LNG exports, which will heavily impact LNG facilities in Southwestern Louisiana.

44. BOEM estimates that Louisiana accounted for 18 percent of economic output and 17 percent of employment generated by offshore GOM oil and gas activities, second only to Texas, which accounted for 40.5 percent of economic output and 38.8 percent of employment generated by offshore GOM oil and gas activities.²² Drilling and completing a single well in the deepwater of the GOM can cost \$120 million, or more, depending on well and water depth.²³ Based on the BOEM estimates, Louisiana will lose \$21.5 million in economic output and 114 jobs for each deepwater well not drilled as a result of the executive actions.

45. State and local government revenues will also suffer from a halt in leasing, drilling, and permitting activities. A reduction in drilling and drilling support activities will, other things being constant, reduce the profitability of local businesses, thereby reducing corporate and other income tax collections. Reduced employment opportunities will likely reduce personal income tax revenues collected from oil and gas workers. Reduced economic activity will reduce sales tax collections. Other public revenues will suffer as well from the decreased offshore activity. Additionally, the significant rise in energy prices caused by the moratorium will make it more difficult for State and local governments to purchase affordable energy in their sovereign and municipal capacities.

46. The impact of the drilling and leasing moratorium comes at a time when pandemic-related declines in demand for refined products have already put Louisiana and other GOM refineries at risk of closure.

47. The reduced supply of cost-competitive crude from the offshore GOM production and from federal oil and gas leases in New Mexico's portion of the Permian Basin will also reduce the incentive for refineries and chemical plants to continue operating in the near term and to make

Resources for the Future DP 14-27, at 9 (Aug. 2014), <https://bit.ly/3c0QXuQ>; "Estimating the Economic Effects of the Deepwater Drilling Moratorium on the Gulf Coast Economy," Inter-Agency Economic Report (Sept. 16, 2020), <https://bit.ly/3eU83fX>.

²² BOEM, "2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program," November 2016, 8-17, <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-OCS-Oil-and-Gas-Leasing-PFP.pdf>.

²³ U.S. Energy Information Administration, "Trends in U.S. Oil and Natural Gas Upstream Costs" 26 (Mar. 2016), <https://bit.ly/3m2AeLc>.

investments in increased capacity and improved capabilities for the future.

I declare under penalty of perjury under the laws of the United States of America and the State of Louisiana that the foregoing is true and correct.

Executed in Baton Rouge, Louisiana this 31th day of March, 2021.

A handwritten signature in black ink, reading "David E. Dismukes". The signature is written in a cursive style with a large, sweeping initial "D" and a long, horizontal flourish at the end.

DAVID E. DISMUKES, PH.D.

DAVID E. DISMUKES, PH.D.

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EDUCATION

Ph.D., Economics, Florida State University, 1995.
M.S., Economics, Florida State University, 1992.
M.S., International Affairs, Florida State University, 1988.
B.A., History, University of West Florida, 1987.
A.A., Liberal Arts, Pensacola State College, 1985.

Master's Thesis: *Nuclear Power Project Disallowances: A Discrete Choice Model of Regulatory Decisions*

Ph.D. Dissertation: *An Empirical Examination of Environmental Externalities and the Least-Cost Selection of Electric Generation Facilities*

ACADEMIC APPOINTMENTS

Louisiana State University, Baton Rouge, Louisiana

Center for Energy Studies

| | |
|--------------|---|
| 2014-Current | Executive Director |
| 2007-Current | Director, Division of Policy Analysis |
| 2006-Current | Professor |
| 2003-2014 | Associate Executive Director |
| 2001-2006 | Associate Professor |
| 1999-2001 | Research Fellow and Adjunct Assistant Professor |
| 1995-2000 | Assistant Professor |

College of the Coast and the Environment (Department of Environmental Studies)

| | |
|--------------|--|
| 2014-Current | Professor (Joint Appointment with CES) |
| 2010-Current | Director, Coastal Marine Institute |
| 2010-2014 | Adjunct Professor |

E.J. Ourso College of Business Administration (Department of Economics)

| | |
|--------------|-----------------------------|
| 2006-Current | Adjunct Professor |
| 2001-2006 | Adjunct Associate Professor |
| 1999-2000 | Adjunct Assistant Professor |

Michigan State University, East Lansing, Michigan

Institute of Public Utilities

2018-current Senior Fellow

Florida State University, Tallahassee, Florida

College of Social Sciences, Department of Economics

1995 Instructor

PROFESSIONAL EXPERIENCE

Acadian Consulting Group, Baton Rouge, Louisiana

2001-Current Consulting Economist/Principal

1995-1999 Consulting Economist/Principal

Econ One Research, Inc., Houston, Texas

1999-2001 Senior Economist

Florida Public Service Commission, Tallahassee, Florida

Division of Communications, Policy Analysis Section

1995 Planning & Research Economist

Division of Auditing & Financial Analysis, Forecasting Section

1993 Planning & Research Economist

1992-1993 Economist

Project for an Energy Efficient Florida/FlaSEIA, Tallahassee, Florida

1994 Energy Economist

Ben Johnson Associates, Inc., Tallahassee, Florida

1991-1992 Research Associate

1989-1991 Senior Research Analyst

1988-1989 Research Analyst

GOVERNMENT APPOINTMENTS

2020-Current Co-Chairperson, Energy Advisory Committee, World Trade Center
New Orleans, Louisiana.

2017-Current Member, National Petroleum Council.
U.S. Department of Energy.

2007-Current Louisiana Representative, Interstate Oil and Gas Compact
Commission; Energy Resources, Research & Technology
Committee.

2007-Current Louisiana Representative, University Advisory Board
Representative; Energy Council (Center for Energy,
Environmental and Legislative Research).

2005 Member, Task Force on Energy Sector Workforce and Economic
Development (HCR 322).

| | |
|-----------|---|
| 2003-2005 | Member, Energy and Basic Industries Task Force, Louisiana Economic Development Council |
| 2001-2003 | Member, Louisiana Comprehensive Energy Policy Commission. |

PUBLICATIONS: BOOKS AND MONOGRAPHS

1. *Power System Operations and Planning in a Competitive Market.* (2002). With Fred I. Denny. New York: CRC Press.
2. *Distributed Energy Resources: A Practical Guide for Service.* (2000). With Ritchie Priddy. London: Financial Times Energy.

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2. "Current Trends and Issues in Reforming State-level Solar Net Energy Metering Policies." (2020). *Journal of Energy Law and Resources.* Vol. VIII: 419-451.
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13. "An Empirical Analysis of Differences in Interstate Oil and Natural Gas Drilling Activity." (2012). With Mark J. Kaiser and Christopher J. Peters. *Exploration & Production: Oil and Gas Review*. 30(1): 18-22.
14. "The Value of Lost Production from the 2004-2005 Hurricane Seasons in the Gulf of Mexico." (2009). With Mark J. Kaiser and Yunke Yu. *Journal of Business Valuation and Economic Loss Analysis*. 4(2).
15. "Estimating the Impact of Royalty Relief on Oil and Gas Production on Marginal State Leases in the US." (2006). With Jeffrey M. Burke and Dmitry V. Mesyanzhinov. *Energy Policy* 34(12): 1389-1398.
16. "Using Competitive Bidding As A Means of Securing the Best of Competitive and Regulated Worlds." (2004). With Tom Ballinger and Elizabeth A. Downer. *NRRI Journal of Applied Regulation*. 2 (November): 69-85. (Received 2005 Best Paper Award by NRRI)
17. "Deregulation of Generating Assets and the Disposition of Excess Deferred Federal Income Taxes." (2004). With K.E. Hughes II. *International Energy Law and Taxation Review*. 10 (October): 206-212.
18. "Reflections on the U.S. Electric Power Production Industry: Precedent Decisions Vs. Market Pressures." (2003). With Robert F. Cope III and John W. Yeargain. *Journal of Legal, Ethical, and Regulatory Issues*. Volume 6, Number 1.
19. "A is for Access: A Definitional Tour Through Today's Energy Vocabulary." (2001) *Public Resources Law Digest*. 38: 2.
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21. "Modeling Regional Power Markets and Market Power." (2001). With Robert F. Cope. *Managerial and Decision Economics*. 22:411-429.
22. "A Data Envelopment Analysis of Levels and Sources of Coal Fired Electric Power Generation Inefficiency" (2000). With Williams O. Olatubi. *Utilities Policy*. 9 (2): 47-59.
23. "Cogeneration and Electric Power Industry Restructuring" (1999). With Andrew N. Kleit. *Resource and Energy Economics*. 21:153-166.
24. "Capacity and Economies of Scale in Electric Power Transmission" (1999). With Robert F. Cope and Dmitry Mesyanzhinov. *Utilities Policy* 7: 155-162.
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26. "A Comment on Cost Savings from Nuclear Regulatory Reform" (1997). *Southern Economic Journal*. 63:1108-1112.

27. "The Demand for Long Distance Telephone Communication: A Route-Specific Analysis of Short-Haul Service." (1996). *Studies in Economics and Finance* 17:33-45.

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2. "Consumer Perspectives on the Rate Design of the Future." (2020). National Association of State Utility Consumer Advocates ("NASUCA"). Annual Conference, November 10.
3. "Evaluation of Louisiana's Depleted Gas Reservoirs for Geological Carbon Sequestration." (2020). Louisiana Mid-Continent Oil and Gas Association ("LMOGA") Carbon Capture and Underground Storage ("CCUS") Committee Meeting. August 25.
4. "The 2020 Gulf Coast Energy Outlook: COVID-19 update." (2020). Baton Rouge Area Chamber of Commerce Business Webinar. COVID-19 and Global Supply Impacts on the Capital Region and Louisiana Economies. Baton Rouge, LA. June 3.
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12. "The urgency of PURPA reform in protecting ratepayers." (2019). Americans for Tax Reform, Fall 2019 Coalition Leaders Summit, November 14, 2019. New Orleans, LA.
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15. "Natural gas outlook: supply, demand and prices." (2019). National Association of State Utility Consumer Advocates, Natural Gas Committee Monthly Meeting. July 30, 2019.
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18. "Overview of Louisiana LNG issues and trends." (2019). Berlin: LNG, Energy Security, and Diversity Reporting Tour, LSU Center for Energy Studies. Baton Rouge, LA, May 9.
19. "Overview of Louisiana energy issues and outlook." (2019). Australian Media Visit, Greater New Orleans, Inc./Baton Rouge Area Foundation. Baton Rouge, LA, April 29.
20. "Gulf Coast Energy Outlook 2019: Regional trends and outlook." (2019). Women's Energy Network. Baton Rouge, LA, April 23.
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23. "Incentives, risk, and the changing nature of regulation." (2019). NASUCA Water Committee monthly meeting/webinar. March 13.
24. "Gulf Coast Energy Outlook 2019: Production, trade and infrastructure trends." (2019). 66th Annual Mineral Board Institute Meetings. Baton Rouge, LA, March 14.
25. "A golden age: energy outlook 2019." (2019). Engineering News Record Webinar. February 13.

26. Panelist. (2019). Baton Rouge Advocate, 2019 Economic Outlook Summit. Baton Rouge Advocate. January 8.
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28. "Gulf Coast Energy Outlook 2019." (2018). LSU Center for Energy Studies, Baton Rouge, LA, Fall 2018.
29. "How LNG is transforming Louisiana's energy economy." (2018). Louisiana State Bar Association, Public Utility Section. Baton Rouge, LA, November 30.
30. "Overview of Louisiana LNG issues and trends." (2018). Kean Miller Law Firm: Energy and Environmental Practice Group. Baton Rouge, LA, November 28.
31. "Infrastructure and capacity: challenges for development." (2018). Society of Utility and Regulatory Financial Analysts (SURFA) Annual Meeting, New Orleans, LA, April 20.
32. "Louisiana industrial cogeneration trends." (2018). Annual Louisiana Solid Waste Association Conference, Lafayette, LA, March 16.
33. "Gulf Coast industrial development: overview of trends and issues." (2018). Gulf Coast Power Association Meetings, New Orleans, LA, February 8.
34. "Energy outlook – reflection on market trends and Louisiana implications." (2017). IberiaBank Corporation Bank Board of Directors Meeting, New Orleans, LA. November 15.
35. "Integrated carbon capture and storage in the Louisiana chemical corridor." (2017). Industry Associates Advisory Council Meeting, Baton Rouge, LA. November 7.
36. "The outlook for natural gas and energy development on the Gulf Coast." (2017). Louisiana Chemical Association, Annual Meeting, New Orleans, LA. October 26.
37. "Critical energy infrastructure: the big picture on resiliency research." (2017). National Academies of Science, Engineering, and Medicine. New Orleans, LA. September 18.
38. "The changing nature of Gulf of Mexico energy infrastructure." (2017). 27th Gulf of Mexico Region Information Technology Meetings, New Orleans, LA, August 24.
39. "Capacity utilization, efficiency trends, and economic risks for modern CHP installations." (2017). Industrial Energy Technology Conference, New Orleans, LA. June 21.
40. "Crude oil and natural gas outlook: Where are we and where are we going?" (2017). CCREDC Economic Trends Panel. Corpus Christi, TX, June 15.
41. "Navigating through the energy landscape." (2017). Baton Rouge Rotary Luncheon. Baton Rouge, LA, May 24.
42. "The 2017-2018 Louisiana energy outlook." (2017). Junior Achievement of Greater New Orleans, JA BizTown Speaker Series. New Orleans, LA, May 12.
43. "The Gulf Coast energy economy: trends and outlook." (2017). Society for Municipal Analysts. New Orleans, LA, April 21.
44. "Gulf coast energy outlook." (2017). E.J. Ourso College of Business, Dean's Advisory Council, Energy Committee Meeting. Baton Rouge, LA, March 31.

45. "Recent trends in energy: overview and impact for the banking community." (2017). Oil and Gas Industry Update, Louisiana Bankers Association. Baton Rouge, LA, March 24.

EXPERT WITNESS, LEGISLATIVE, AND PUBLIC TESTIMONY; EXPERT REPORTS, RECOMMENDATIONS, AND AFFIDAVITS (2017-Current)

1. Expert Testimony. RPU-2020-0001. (2020). Before the Iowa Utilities Board. *In Re: Iowa-American Water Company*. On Behalf of the Office of Consumer Advocate. Issues: rate increase, test trackers, RSM accounting ratemaking construct.
2. Expert Testimony. BPU Docket Nos. QO19010040 and GO20090622. (2020). Before the New Jersey Board of Public Utilities. *In the Matter of the Petition of New Jersey Natural Gas Company for Approval of Energy Efficiency Programs and the Associated Cost Recovery Mechanisms Pursuant to the Clean Energy Act, N.J.S.A. 48:3-87.8 et seq. and 48:3-98.1 et seq.* On behalf of the Division of Rate Counsel. Issues: CBA requirements, capacity benefits, volatility benefits.
3. Expert Testimony. Docket No. 2020-125-E. (2020). Before the Public Service Commission of South Carolina. *In the Matter of: Application of Dominion Energy South Carolina, Incorporated for Adjustments of Rates and Charges (See Commission Order No. 2020-313)*. On Behalf of the South Carolina department of Consumer Affairs. Issues: cost of service, revenue allocation, rate design.
4. Answering Testimony. Before the United States of America Federal Energy Regulatory Commission. Docket No. RP20-614-000 and RP20-618-000. (2020). *Transcontinental Gas Pipe Line Company, LLC*. On Behalf of the North Carolina Utilities Commission. Issues: Tariff revisions, assessment of Transco claims.
5. Expert Testimony. Docket No. 16-036-FR. (2020). *Before the Arkansas Public Service Commission. In the Matter of the Formula Rate Plan Filings of Entergy Arkansas, Inc., Pursuant to APSC Docket No. 15-015-U. Direct and Surrebuttal.* On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: rate increases, investment and expenses trends, load forecast, historic year netting adjustment, reliability issues.
6. Expert Testimony. Docket No. 2019.12.101. (2020). Before the Public Service Commission of the State of Montana. *In the Matter of NorthWestern Energy's Application for Approval of Capacity Resource Acquisition.* On the Behalf of the Montana Consumer Counsel. Issues: sale of capital asset, evaluation benefits, ratepayer cost exposure, reserve fund.
7. Expert Testimony. Formal Case No. 1162. (2020). Before the Public Service Commission of the District of Columbia. *In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service.* On Behalf of the Office of the People's Counsel. Issues: rate increase, revenue adjustment, weather normalization, rate design, revenue distribution.
8. Expert Testimony. Docket No. E-01345A-19-0236. (2020). Before the Arizona Corporation Commission. *In the Matter of the Application of Arizona Public Service Company for Ratemaking Purposes to Fix a Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop such Return.* Direct and Surrebuttal. On Behalf of the Utilities Division of the Arizona Corporation Commission. Issues: Cost of Service, Revenue Distribution, Rate Design.

9. Expert Testimony. Docket No. 17-010-FR. (2020). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filings of Centerpoint Energy Resources Corp. D/B/A Centerpoint Energy Arkansas Gas Pursuant to APSC Docket No. 15-098-U*. On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: rate increase, leak replacement and reduction, netting adjustment, revenue deficiency, accounting policy changes.
10. Expert Testimony. Case No. U-20697. (2020). Before the Michigan Public Service Commission. *In the Matter of the Application of Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief*. On Behalf of the Michigan Department of Attorney General. Issues: cost of service, revenue distribution, rate design.
11. Expert Testimony. Docket No. 2019.09.058. (2020). Before the Public Service Commission of the State of Montana. *In the Matter of NorthWestern Energy's Annual PCCAM Filing and Application for Approval of Tariff Changes*. On the Behalf of the Montana Consumer Counsel. Issues: purchase power expenses, cost sharing, PCAAM power cost.
12. Expert Testimony. Formal Case No. 1156. (2020). Before the Public Service Commission of the District of Columbia. *In the matter of Potomac Electric Power Company for authority to implement a multiyear rate plan for electric distribution service in the district of Columbia*. Direct, Rebuttal, Surrebuttal, Supplemental, and Second Supplemental. On Behalf of the Office of the People's Counsel. Issues: revenue distribution, rate design, customer charge, performance metric policies, performance metric incentives.
13. Expert Testimony. Case No. U-20561. (2019). Before the Michigan Public Service Commission. *In the matter of the Application of DTE Electric Company for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority*. On Behalf of the Michigan Department of Attorney General. Issues: Cost of service, allocation of production plant, allocation of sub-transmission plant, revenue distribution.
14. Expert Testimony. Cause No. 45253. (2019). Before the Indiana Utility Regulatory Commission. *Petition of Duke Energy Indiana, LLC Pursuant to Ind. Code 8-1-2-42.7 and 8-1-2-61, for (1) Authority to Modify its Rates and Charges for Electric Utility Service through a Step-In of New Rates and Charges using a Forecasted Test Period; (2) Approval of New Schedules of Rates and Charges, General Rules and Regulations, and Riders; (3) Approval of a Federal Mandate Certificate Under Ind. Code 8-1-8.4-1; (4) Approval of Revised Electric Depreciation Rates Applicable to its Electric Plant in Service; (5) Approval of Necessary and Appropriate Accounting Deferral Relief; and (6) Approval of a Revenue Decoupling Mechanism for Certain Customers Classes*. On Behalf of the Indiana Office of Utility Consumer Counsel. Issues: Decoupling, revenue decoupling mechanism and design, commission policy, benchmarking analysis.
15. Expert Testimony. Docket 19-019-U. (2019). Before the Arkansas Public Service Commission. *In the Matter of the Petition of Entergy Arkansas, LLC for Approval of a Build-Own-Transfer Arrangement for a Renewable Resource and for all other Related Approvals*. On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: Solar investment, risk assessment, proposed rider.

16. Expert Testimony. Docket No. 16-036-FR. (2019). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filings of Entergy Arkansas, Inc., Pursuant to APSC Docket No. 15-015-U*. On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: rate design, reliability, and formula rate plan.
17. Expert Testimony. Docket No. 19-019-U. (2019). Before the Arkansas Public Service Commission. *In the Matter of the Petition of Entergy Arkansas, LLC for Approval of a Build-Own-Transfer Arrangement for a Renewable Resource and for all other Related Approvals*. On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: Solar project approval, ratepayer risk, cost allocation.
18. Expert Testimony. Docket No. 17-010-FR. (2019). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filings of Centerpoint Energy Resources Corp. D/B/A Centerpoint Energy Arkansas Gas Pursuant to APSC Docket No. 15-098-U*. On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: retail rates, leak analysis, revenue deficiency, investments.
19. Expert Testimony. Case No. U-20471. (2019). Before the Michigan Public Service Commission. *In the matter of the Application of DTE Electric Company for approval of its Integrated Resource Plan pursuant to MCL 460.6t, and for other relief*. On Behalf of the Michigan Department of Attorney General. Issues: load forecasting, least-cost system planning.
20. Expert Report. Docket No. 18-004422. (2019). Before the State of Florida Division of Administrative Hearings. *Peoples Gas System vs. South Sumter Gas Company, LLC and the City of Leesburg*. On Behalf of the City of Leesburg. Issues: retail rates, customer growth, sales trends and forecasts, policy, cost of service, socio-economic trends and forecasts.
21. Expert Testimony. Docket Nos. GO18101112 and EO18101113. (2019). Before the New Jersey Board of Public Utilities. *In the Matter of the Public Service Electric and Gas Company for Approval of its Clean Energy Future-Energy Efficiency ("CEF-EE") Program on a Regulated Basis*. On behalf of the Division of Rate Counsel. Issues: economic impact, cost benefit analysis, decoupling mechanisms.
22. Expert Testimony. Docket Nos. EO18060629 and GO18060630. (2019). Before the New Jersey Board of Public Utilities. *In the Matter of the Public Service Electric and Gas Company for Approval of the Second Energy Strong Program (Energy Strong II)*. On behalf of the Division of Rate Counsel. Issues: economic impact, cost benefit analysis, infrastructure replacement, cost recovery tracker mechanisms.
23. Expert Report. Docket No. 2011-AD-2. (2019). On Behalf of the Mississippi Public Service Commission. *Order Establishing Docket to Investigate the Development and Implementation of Net Metering Programs and Standards*. On Behalf of the Mississippi Public Utilities Staff. Issues: Net-metering, distributed generation.
24. Expert Testimony. Docket No. D2018.2.12. (2018). Before the Public Service Commission of the State of Montana. *In the Matter of NorthWestern Energy's Application for Authority to Increase Retail Electric Utility Service Rates and for Approval of Electric Service Schedules and Rules and Allocated Cost of Service and Rate Design*. On Behalf of the Montana Consumer Counsel. Issues: Net-metering, cost of service, revenue distribution, rate design.

25. Expert Testimony. Docket No. 19-SEPE-054-MER. (2018). Before the Kansas Corporation Commission. *In the Matter of the Joint Application of Sunflower Electric Power Corporation and Mid-Kansas Electric Company, Inc. for an Order Approving the Merger of Mid-Kansas Electric Company, Inc. into Sunflower Electric Power Corporation.* On the Behalf of the Kansas Electric Power Cooperative, Inc. Issues: merger impacts, rates, tariffs.
26. Expert Testimony. Docket No. 18-046-FR. (2018). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filings of Oklahoma Gas and Electric Company Pursuant to APSC Docket No. 16-052-U.* On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: formula rate plan, plant investment and expenses benchmarking analysis, reliability.
27. Expert Testimony. Docket No. 16-036-FR. (2018). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filings of Entergy Arkansas, Inc., Pursuant to APSC Docket No. 15-015-U.* On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: rate design, reliability, and formula rate plan.
28. Expert Testimony. Docket No. 2017-AD-0112. (2018). Before the Mississippi Public Service Commission. *In Re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project.* On Behalf of the Mississippi Public Utilities Staff. Issues: cost of service and rate design.
29. Expert Affidavit. Docket No. 87011-E. (2018). Before the 16th Judicial District Court Parish of St. Martin State of Louisiana. *Bayou Bridge Pipeline, LLC versus 38.00 Acres, More or Less, Located in St. Martin Parish; Barry Scott Carline, et al.* Issues: economic impacts.
30. Expert Testimony. Docket No. QO18080843. (2018). Before the New Jersey Board of Public Utilities. *In the Matter of the Petition of Nautilus Offshore Wind, LLC for the Approval of the State Waters Wind Project and Authorizing Offshore Wind Renewable Energy Certificates.* On behalf of the Division of Rate Counsel. Issues: regulatory policy and cost-benefit analyses.
31. Expert Testimony. Docket No. ER18010029 and GR18010030. (2018). Before the New Jersey Board of Public Utilities. *In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 16 Electric and B.P.U.N.J No. 16 Gas, and for Changes in Depreciation Rates, Pursuant to N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief.* On behalf of the Division of Rate Counsel. Issues: rate proposal, revenue decoupling, regulatory policy, cost benchmarking.
32. Expert Testimony. Docket No. T-34695. (2018). Before the Louisiana Public Service Commission. *In re: Application for a rate increase on service originating at Grand isle and termination at St. James for Crude Petroleum as currently outlined in LPSC Tariff No. 75.2.* On Behalf of Energy XXI GOM, LLC. Issues: cost of service, rate design, and alternative regulation.
33. Expert Testimony. Docket No. 17-071-U. (2018). Before the Arkansas Public Service Commission. *In the Matter of the Application of Black Hills Energy Arkansas, Inc. for Approval of a General Change in Rates and Tariffs.* On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: cost of service, rate design, billing determinates.

34. Expert Testimony. Docket No. 17-010-FR. (2018). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filing of CenterPoint Energy Resources Corp. D/B/A CenterPoint Energy Arkansas Gas Pursuant to APSC Docket No. 15-098-U*. On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: cost of service, rate design, alternative regulation, formula rate plan.
35. Expert Testimony. Case No. PU-17-398. (2018). Before the North Dakota Public Service Commission. *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in North Dakota*. On Behalf of the North Dakota Service Commission Advocacy Staff. Issues: cost of service, marginal cost of service, and rate design.
36. Expert Testimony. Docket No. 20170179-GU. (2018). Before the Florida Public Service Commission. *In re: Petition for rate increase and approval of depreciation study by Florida City Gas*. On Behalf of the Citizens of the State of Florida. Issues: policy issues concerning long-term gas capacity procurement.
37. Expert Testimony. Docket No. 18-KCPE-095-MER. (2018). Before the Kansas Corporation Commission. *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Westar Energy, Inc. for Approval of the Merger of Westar, Inc. and Great Plains Energy Incorporated*. On the Behalf of the Kansas Electric Power Cooperative, Inc. Issues: merger/acquisition policy, financial risk, and ring-fencing.
38. Expert Testimony. Docket No. GR17070776. (2018). Before the New Jersey Board of Public Utilities. *In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of the Gas System Modernization Program and Associated Cost Recovery Mechanism ("GSMP II")*. On behalf of the Division of Rate Counsel. Issues: economic impact, infrastructure replacement program rider, pipeline replacement, leak rate comparisons and cost benefit analysis.
39. Expert Affidavit. Case No. 18-489. (2018). Before the Civil District Court for the Parish of Orleans, State of Louisiana. *Bayou Bridge Pipeline, LLC versus The White Castle Lumber and Shingle Company Limited and Jeanerette Lumber & Shingle CO. L.L.C.* Issues: economic impact of crude oil pipeline development.
40. Expert Testimony. Docket No. 16-036-FR. (2017). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filings of Entergy Arkansas, Inc., Pursuant to APSC Docket No. 15-015-U*. On behalf of the Office of the Arkansas Attorney General Leslie Rutledge. Issue: cost of service, rate design, alternative regulation, formula rate plan.
41. Expert Testimony. Docket No. 2017-AD-0112. (2017). Before the Mississippi Public Service Commission. *In re: Encouraging Stipulation of Matters in Connection with the Kemper County IGCC Project*. On Behalf of the Mississippi Public Utilities Staff. Issues: financial analysis, rates and cost trends, economic impacts of proposal.

42. Expert Testimony. Case No. 2017-00179. (2017). Before the Public Service Commission, Commonwealth of Kentucky. *Electronic Application of Kentucky power Company For (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish a Regulatory Asset or Liability Related to the Big Sandy 1 Operation Rider; and (5) An Order Granting All Other Required Approvals and Relief.* On Behalf of the Office of the Kentucky Attorney General. Issues: rate design, revenue allocation, economic development.
43. Expert Testimony. Docket No. 17-010-FR. (2017). Before the Arkansas Public Service Commission. *In the Matter of the Formula Rate Plan Filing of CenterPoint Energy Resources Corp. D/B/A CenterPoint Energy Arkansas Gas Pursuant to APSC Docket No. 15-098-U.* On Behalf of the Arkansas Attorney General Leslie Rutledge. Issues: cost of service, rate design, alternative regulation, formula rate plan.
44. Expert Testimony. Formal Case No. 1142. (2017). Before the Public Service Commission of the District of Columbia. *In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.* On Behalf of the Office of the People's Counsel. Issues: merger/acquisition policy, financial risk, ring-fencing, and reliability.
45. Expert Testimony. D.P.U. 17-05. (2017). Before the Massachusetts Department of Public Utilities. *Petition of NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy for Approval of an Increase in Base Distribution Rates for Electric Service Pursuant to G.L. c. 164, § 94 and 220 C.M.R. § 5.00.* On Behalf of the Massachusetts Office of the Attorney General Office of Ratepayer Advocacy. Issues: performance-based ratemaking, multi-factor productivity estimation.
46. Deposition and Testimony. (2017) Before the Nebraska Section 70, Article 13 Arbitration Panel. *Northeast Nebraska Public Power District, City of South Sioux City Nebraska; City of Wayne, Nebraska; City of Valentine, Nebraska; City of Beatrice, Nebraska; City of Scribner, Nebraska; Village of Walthill, Nebraska, vs. Nebraska Public Power District.* On the Behalf of Baird Holm LLP for the Plaintiffs. Issues: rate discounts; cost of service; utility regulation, economic harm.
47. Expert Testimony. Docket No. 16-052-U. (2017). Before the Arkansas Public Service Commission. *In the Matter of the Application of the Oklahoma Gas and Electric Company for Approval of a General Change in Rates, Charges and Tariffs.* On the Behalf of the Office of Arkansas Attorney General Leslie Rutledge. Issues: cost of service, rate design, alternative regulation, formula rate plan.

REFEREE AND EDITORIAL APPOINTMENTS

Contributor, 2014-2018, *Wall Street Journal*, *Journal Reports*, *Energy*

Editorial Board Member, 2015-2017, *Utilities Policy*

Referee, 2014-Current, *Utilities Policy*

Referee, 2010-Current, *Economics of Energy & Environmental Policy*

Referee, 1995-Current, *Energy Journal*

Contributing Editor, 2000-2005, *Oil, Gas and Energy Quarterly*

Referee, 2005, *Energy Policy*

Referee, 2004, *Southern Economic Journal*

Referee, 2002, *Resource & Energy Economics*

Committee Member, IAEE/USAEE Student Paper Scholarship Award Committee, 2003

PROPOSAL TECHNICAL REVIEWER

California Energy Commission, Public Interest Energy Research (PIER) Program (1999).

PROFESSIONAL ASSOCIATIONS

American Economic Association, American Statistical Association, Southern Economic Association, Western Economic Association, International Association of Energy Economists ("IAEE"), United States Association of Energy Economics ("USAEE"), the National Association for Business Economics ("NABE"), and the Energy Bar Association (National and Louisiana Chapter; current Board member of LA chapter).

HONORS AND AWARDS

National Association of Regulatory Utility Commissioners (NARUC). Best Paper Award for papers published in the *Journal of Applied Regulation* (2004).

Baton Rouge Business Report, Selected as "Top 40 Under 40" (2003).

Omicron Delta Epsilon (1992-Current).

Interstate Oil and Gas Compact Commission (IOGCC) "Best Practice" Award for Research on the Economic Impact of Oil and Gas Activities on State Leases for the Louisiana Department of Natural Resources (2003).

Distinguished Research Award, Academy of Legal, Ethical and Regulatory Issues, Allied Academics (2002).

Florida Public Service Commission, Staff Excellence Award for Assistance in the Analysis of Local Exchange Competition Legislation (1995).

TEACHING EXPERIENCE

Energy and the Environment (Survey Course)

Principles of Microeconomic Theory

Principles of Macroeconomic Theory

Lecturer, Environmental Management and Permitting. Lecture in Natural Gas Industry, LNG and Markets.

Lecturer, Electric Power Industry Environmental Issues, Field Course on Energy and the Environment. (Dept. of Environmental Studies).

Lecturer, Electric Power Industry Trends, Principles Course in Power Engineering (Dept. of Electric Engineering).

Lecturer, LSU Honors College, Senior Course on “Society and the Coast.”

Continuing Education. Electric Power Industry Restructuring for Energy Professionals.

“The Gulf Coast Energy Situation: Outlook for Production and Consumption.” Educational Course and Lecture Prepared for the Foundation for American Communications and the Society for Professional Journalists, New Orleans, LA, December 2, 2004

“The Impact of Hurricane Katrina on Louisiana’s Energy Infrastructure and National Energy Markets.” Educational Course and Lecture Prepared for the Foundation for American Communications and the Society for Professional Journalists, Houston, TX, September 13, 2005.

“Forecasting for Regulators: Current Issues and Trends in the Use of Forecasts, Statistical, and Empirical Analyses in Energy Regulation.” Instructional Course for State Regulatory Commission Staff. Institute of Public Utilities, Kellogg Center, Michigan State University. July 8-9, 2010.

“Regulatory and Ratemaking Issues with Cost and Revenue Trackers.” Michigan State University, Institute of Public Utilities. Advanced Regulatory Studies Program. September 29, 2010.

“Demand Modeling and Forecasting for Regulators.” Michigan State University, Institute of Public Utilities. Advanced Regulatory Studies Program. September 30, 2010.

“Demand Modeling and Forecasting for Regulators.” Michigan State University, Institute of Public Utilities, Forecasting Workshop, Charleston, SC. March 7-9, 2011.

“Regulatory and Cost Recovery Approaches for Smart Grid Applications.” Michigan State University, Institute of Public Utilities, Smart Grid Workshop for Regulators. Charleston, SC. March 7-11, 2011.

“Regulatory and Ratemaking Issues Associated with Cost and Expense Adjustment Mechanisms.” Michigan State University, Institute of Public Utilities, Advanced Regulatory Studies Program. Lansing, Michigan. September 28, 2011.

“Utility Incentives, Decoupling, and Renewable Energy Programs.” Michigan State University, Institute of Public Utilities, Advanced Regulatory Studies Program. Lansing, Michigan. September 29, 2011.

“Regulatory and Cost Recovery Approaches for Smart Grid Applications.” Michigan State University, Institute of Public Utilities, Smart Grid Workshop for Regulators. Charleston, SC. March 6-8, 2012.

“Traditional and Incentive Ratemaking Workshop.” New Mexico Public Utilities Commission Staff. Santa Fe, NM October 18, 2012.

“Traditional and Incentive Ratemaking Workshop.” New Jersey Board of Public Utilities Staff. Newark, NJ. March 1, 2013.

“Natural Gas Issues and Recent Market Trends.” Michigan State University Institute of Public Utilities, GridSchool Regulatory Studies Program, East Lansing, Mich., March 29, 2017.

“Gas Supply Planning and Procurement: Regulatory Overview and issues.” Michigan State University Institute of Public Utilities, Basic Regulatory Studies Program, East Lansing, Mich., Aug 17, 2017.

“Natural Gas Supply Issues and Challenges.” Michigan State University Institute of Public Utilities, Basic Regulatory Studies Program, East Lansing, Mich., Aug 17, 2017.

“Incentives, Risk and Changes in the Nature of Regulation.” Michigan State University Institute of Public Utilities, Basic Regulatory Studies Program, East Lansing, Mich., Aug 18, 2017.

“Traditional and Alternative Forms of Regulation: Background and Overview.” Michigan State University Institute of Public Utilities, Advanced Regulatory Studies Program, East Lansing, Mich., October 2, 2017.

“Traditional and Alternative Forms of Regulation: Utility and policy motivations for risk and change.” Michigan State University Institute of Public Utilities, Advanced Regulatory Studies Program, East Lansing, Mich., October 2, 2017.

“Traditional and Alternative Forms of Regulation: Incentives and Formula Based Methods.” Michigan State University Institute of Public Utilities, Advanced Regulatory Studies Program, East Lansing, Mich., October 2, 2017.

THESIS/DISSERTATIONS COMMITTEES

Active:

1 Thesis Committee Memberships (Environmental Studies)

2 Ph.D. Dissertation Committee (Economics)

Completed:

8 Thesis Committee Memberships (Environmental Studies, Geography)

4 Doctoral Committee Memberships (Information Systems & Decision Sciences, Agricultural and Resource Economics, Economics, Education and Workforce Development).

2 Doctoral Examination Committee Membership (Information Systems & Decision Sciences, Education and Workforce Development)

1 Senior Honors Thesis (Journalism, Loyola University)

LSU SERVICE AND COMMITTEE MEMBERSHIPS

Committee Member, Energy Education Curriculum Committee. E.J. Ourso College of Business. LSU (2016-Current).

Chairman, LSU Energy Initiative/LSU Energy Council (2014-Current).

Co-Director & Steering Committee Member, LSU Coastal Marine Institute (2009-2014).

CES Promotion Committee, Division of Radiation Safety (2006).

Search Committee Chair (2006), Research Associate 4 Position.

Search Committee Member (2005), Research Associate 4 Position.

Search Committee Member (2005), CES Communications Manager.

LSU Graduate Research Faculty, Associate Member (1997-2004); Full Member (2004-2010); Affiliate Member with Full Directional Rights (2011-2014); Full Member (2014-current).

LSU Faculty Senate (2003-2006).

Conference Coordinator. (2005-Current) Center for Energy Studies Conference on Alternative Energy.

LSU CES/SCE Public Art Selection Committee (2003-2005).

Conference Coordinator. Center for Energy Studies Annual Energy Conference/Summit. (2003-Current).

Conference Coordinator. Center for Energy Studies Seminar Series on Electric Utility Restructuring and Wholesale Competition. (1996-2003).

Co-Chairman, Review Committee, Louisiana Port Construction and Development Priority Program Rules and Regulations, On Behalf of the LSU Ports and Waterways Institute. (1997).

LSU Main Campus Cogeneration/Turbine Project, (1999-2000).

LSU InterCollege Environmental Cooperative. (1999-2001).

LSU Faculty Senate Committee on Public Relations (1997-1999).

LSU Faculty Senate Committee on Student Retention and Recruitment (1999-2003).

PROFESSIONAL SERVICE

Board Member (2018). Energy Bar Association, Louisiana Chapter.

Program Committee Member (2017). Gulf Coast Power Association Conference. New Orleans, LA.

Program Committee Member (2016). Gulf Coast Power Association Conference. New Orleans, LA.

Program Committee Member (2015). Gulf Coast Power Association Workshop/Special Briefing. "Gulf Coast Disaster Readiness: A Past, Present and Future Look at Power and Industry Readiness in MISO South."

Advisor (2008). National Association of Regulatory Utility Commissioners ("NARUC"). Study Committee on the Impact of Executive Drilling Moratoria on Federal Lands.

Steering Committee Member, Louisiana Representative (2008-Current). Southeast Agriculture & Forestry Energy Resources Alliance. Southern Policies Growth Board.

Advisor (2007-Current). National Association of State Utility Consumer Advocates ("NASUCA"), Natural Gas Committee.

Program Committee Chairman (2007-2008). U.S. Association of Energy Economics ("USAEE") Annual Conference, New Orleans, LA

Finance Committee Chairman (2007-2008). USAEE Annual Conference, New Orleans, LA

Committee Member (2006), International Association for Energy Economics ("IAEE") Nominating Committee.

Founding President (2005-2007) Louisiana Chapter, USAEE.

Secretary (2001) Houston Chapter, USAEE.

Advisor, Louisiana LNG Buyers/Developers Summit, Office of the Governor/Louisiana Department of Economic Development/Louisiana Department of Natural Resources, and Greater New Orleans, Inc. (2004).

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

CIVIL ACTION NO. 22:21-cv-00778-TAD

I, Jerome Zeringue, declare as follows:

1. I am currently a member of the Louisiana State Legislature representing Lafourche and Terrebonne Parishes. I am the Chairman of the Appropriations Committee, and a former member of the Natural Resources Committee, both standing committees of the Louisiana House of Representatives. I am the former Executive Director of the Louisiana Coastal Protection Restoration Authority (LCPR) and was the Director of the Terrebonne Levee and Conservation District. I am a resident of Houma, Louisiana, in Terrebonne Parish.

3. I make this declaration in support of Plaintiffs' Motion for a Preliminary Injunction. This declaration is based on my personal knowledge, my review of and involvement in the development of cited materials, and my decades of experience in energy policy and analysis. I could and would competently testify to its contents if called to do so.

1 of the Louisiana Department of Natural Resources and the LCPRA, including the development and
2 implementation of and funding for the Louisiana Comprehensive Coastal Master Plan (“the Coastal
3 Master Plan”).

4 5. In my capacity as former Executive Director of the LCPRA, I oversaw the
5 development and implementation of the Coastal Master Plan, a comprehensive plan for coastal
6 restoration and land loss prevention.

7 6. In my capacity as a former director of the Terrebonne Levee and Conservation District,
8 as well as my current occupation, I am very familiar with the Louisiana’s coastal areas and coastal
9 protection needs, project planning, and project costs.

10 **BACKGROUND ON LOUISIANA’S COASTAL MASTER PLAN**

11 7. The Coastal Master Plan is the largest climate-adaption plan in the country for a
12 sustainable coast. It is funded principally by revenues derived from the most highly regulated and least
13 carbon-intensive oil and gas produced anywhere in the world—oil and gas produced from the Outer
14 Continental Shelf under the Outer Continental Shelf Lands Act.

15 8. Since 2007, the State’s coastal program has secured over \$20 billion and has
16 implemented projects in all 20 coastal parishes. Louisiana, through the LCPRA, has mobilized over
17 150 million cubic yards of material that has benefitted over 315 miles of levees, 60 miles of barrier
18 islands, and 46,000 acres of new land.

19 9. Louisiana’s successes and accomplishments in the coastal program are the result of
20 productive working relationships with an array of stakeholders including the federal government, local
21 governments, levee districts, landowners, the private sector, environmental agencies, and oil and gas
22 companies.

23 10. Louisiana has a balanced, collaborative approach that brings oil and gas industry
24 stakeholders to the table to develop solutions that will address the effects and causes of climate change.

25 11. The coastal program’s only consistent source of State funding on an annual basis is
26 from oil and gas production on State land and water bottoms. These funds range from about \$25
27 million annually to \$10 to \$15 million annually.

28 12. The CPRA’s only annual recurring source of revenue from the federal government

1 comes from the Gulf of Mexico Energy Security Act (GOMESA), which created standing revenue-
2 sharing arrangements between federal government and the States of Texas, Louisiana, Mississippi, and
3 Alabama.

4 13. GOMESA shares two primary resources of revenue: (1) bonus bids that come from
5 new lease sales in the Gulf of Mexico, and (2) royalties that come from oil and gas production in the
6 Gulf of Mexico.

7 14. The cancellation of Lease 257, which was originally scheduled for March 2021, causes
8 the State an immediate short-term loss in revenue from the bonus bids on the sale, as well as longer-
9 term revenue losses in rents and royalties.

10 **HARM TO THE COASTAL RESTORATION PLAN**

11 15. The President's Executive Order, the cancellation of Lease 257, the cancellation of
12 onshore Lease 258, and the delay of numerous other projects that were encompassed in approved
13 leasing programs destabilizes the oil and gas industry, impedes the State's ability to fund existing and
14 planned projects, and jeopardizes the State's ability to protect against and recover from coastal land
15 loss.

16 16. The cancellation of Lease 257 directly affects revenues under GOMESA tied to bonus
17 bids, since those revenues are related to new lease sales. Executive Order 14008 also affects future
18 revenue shared with the Gulf States from actual oil and gas production, rendering it impossible for the
19 State to plan and carry out large-scale, costly coastal restoration projects and critical habitat restoration
20 projects that GOMESA revenue-sharing was intended to continuously fund.

21 17. GOMESA revenues come to the Louisiana Coastal Trust Fund in one lump sum
22 annually and are used to cash flow the entire LCPR operation.

23 18. In addition, funds coming to the coastal program from the BP oil spill are grant based.
24 That means money has to be spent out of the State Coastal Trust Fund first and then reimbursed. So
25 the Trust needs to have cash available to fund these ongoing projects before contracts can be issued
26 to implement the projects that have been approved and funded from the BP oil spill settlements.
27 GOMESA revenue also provides revenue to front-fund these projects.

28 19. The currently approved Coastal Master Plan is based upon a projected \$389 million in

1 GOMESA expenditures over the next three fiscal years.

2 20. This funding is already earmarked for, among other important initiatives, flood
3 protection for these specific projects:

- 4 • \$80 million for the Bayou Chene Project in St. Mary Parish, which protects six
5 parishes—St. Mary, St. Martin, Assumption, Iberville, Terrebonne and
6 Lafourche.
- 7 • \$16.8 million for the Goose Bayou levee alignment.
- 8 • \$9 million for St. Tammany Parish levee.
- 9 • \$7 million for the west shore of Lake Ponchartrain, which protects river
10 parishes.
- 11 • \$9 million for two projects in Upper Barataria Bay, which includes St. Charles
12 and Lafourche Parishes.
- 13 • \$2 million for the East Bank Sediment Transport Corridor in St. Bernard
14 Parish.
- 15 • \$18.5 million for a flood gate in Lafourche Parish.
- 16 • \$2 million a beach improvement project at Port Fourchon.
- 17 • \$11.5 million for a critical pump station on Bayou Lafourche in Lafourche
18 Parish.

19 21. These projects protect people, property, marsh, critical habitat, businesses, and
20 livelihoods. Saltwater marsh and swampland that these projects help protect and restore provide
21 environmental benefits to the rest of the country and the world through natural carbon capture
22 mechanism.

23 22. If GOMESA funds vanish, Louisiana will essentially be left without a major source of
24 funding for a \$50 billion coastal recovery and restoration program.

25 I declare under penalty of perjury under the laws of the United States of America and the State
26 of Louisiana that the foregoing is true and correct.

27 Executed in Houma, Louisiana this 31st day of March, 2021.

28

JEROME ZERINGUE

**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.

CIVIL ACTION NO. 2:21-cv-778-TAD-KK

[Proposed] Preliminary Injunction

The Court has considered Plaintiff States' Motion for a Preliminary Injunction and the Memorandum and exhibits attached thereto, the applicable law, and Plaintiff States' Complaint. On the basis of these pleadings and papers, this Court hereby concludes that (1) Plaintiff States are substantially likely to prevail on the merits of their claim that Defendants are in violation of the Outer Continental Shelf Lands Act (OCSLA), Mineral Leasing Act (MLA), and Administrative Procedure Act (APA); (2) that, without a preliminary injunction, Plaintiff States will incur immediate and irreparable harm to their sovereign, quasi-sovereign, and proprietary interests; (3) that the harm to Plaintiff States outweighs the harm to any legitimate interest of Defendants caused by granting injunctive relief; and (4) that entry of this order will serve the public interest. Accordingly,

IT IS ORDERED that Defendants, in their official capacities; their servants, agents, and employees; and all persons in active concert or participation with them, who receive actual Notice of this Preliminary Injunction, and until a full trial on the merits is had, are hereby enjoined from enforcing the OCSLA and MLA Leasing Moratoriums, or promulgating or implementing any actions taken pursuant to the Leasing Moratoriums including, but not limited to, the Recission of Lease Sale 257, the postponement of Lease Sale 258, and the postponements of MLA quarterly lease sales;

IT IS FURTHER ORDERED that Defendants shall file with this Court and serve on Plaintiff States within ____ days from the date of entry of this Preliminary Injunction a report in writing setting forth in detail the manner in which Defendants have complied with the terms of this Preliminary Injunction; and

IT IS FURTHER ORDERED that this Order shall become effective immediately and shall expire at ____ o'clock a.m./p.m. on _____, unless it is further extended by order of this Court.

Signed this ____ day of _____, 2021

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE