



February 7, 2022

THE FEDERAL LAND LEASING PROGRAM AND THE POSSIBILITY OF PAUSING FOR CLIMATE CHANGE

BY: ABBY NOSER

On January 27, 2021, President Biden signed Executive Order No. 14008 that, among other things, created a pause on oil and gas leasing of federal lands.^[i] This Executive Order was aimed at taking steps towards President Biden's focus on fighting climate change and cutting greenhouse gas emissions in half by 2030.^[ii] This action led to several lawsuits, including one filed in Louisiana by thirteen states.^[iii]

In June 2021, the Judge granted the states' request for a preliminary injunction of the pause.[iv] The states challenged the Executive Order as violating the United States Constitution, the Administrative Procedure Act (APA), the Outer Continental Shelf Lands Act (OCSLA), and the Mineral Leasing Act (MLA).[v] The Court found the plaintiffs were entitled to the preliminary injunction because they had shown a substantial likelihood of success on the merits, and that they were suffering harm from the pause.[vi] OCSLA sets out a 4 step process in which the Secretary of the Interior "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." [vii] Each of those steps "must follow stringent administrative requirements" that allow the public "to provide input on those leases." [viii] The current lease sales are being governed by the 2017-2022 five-year plan and two leases scheduled for 2021, lease sale 257 in the Western and Central Planning Areas of the Gulf of Mexico and lease sale 258 in Cook Inlet, Alaska, were both cancelled or stopped by the Executive Order.[ix]

The defendants maintain that the pause was not a final agency action and it was committed to agency discretion by law, and therefore not reviewable by the court.[x] The trial court disagreed with this argument finding that the Executive Order paused all leases to do a comprehensive review, and did not merely direct the agency to cancel or suspend a lease because of problems with that specific one as they could have done under the OCSLA plan requirements.[xi] Further, the court stated defendants did not have the authority to make significant revisions to the OCSLA five-year plan without Congressional approval, and this pause essentially amounts to a revision of the plan.[xii]



The states have shown that they may suffer a substantial threat of irreparable injury if the injunction were not issued.[xiii] The states alleged that they would sustain damages possibly in the billions of dollars “due to reduced funding for bonuses, ground rent, royalties, and rentals,” as well as “loss of jobs in the oil and gas sector, higher gas prices, and losses by local municipalities and governments.”[xiv] Another possible result is having to purchase oil from foreign sources at higher prices.[xv] However, there is an argument that there are currently enough leases that have been granted but not yet begun drilling.[xvi] A study by the Conservation Economics Institute found that the national economic impacts of a pause on oil and gas leasing would be negligible as there is also private leasing that would not be affected.[xvii] The study did find there would be economic effects in the Intermountain West region. The economic effects are said to be minimal and short term. [xviii]

The Biden Administration has appealed this decision to grant the preliminary injunction to the 5th Circuit Court of Appeals.[xix] However, shortly after the preliminary injunction, the government ordered 80 million acres of federal waters of the Gulf of Mexico to be auctioned off for lease.[xx] This offshore land is estimated to “generate 21 million to 1.12 billion barrels of oil and from 55 billion to 4.42 trillion cubic feet of natural gas”, essentially locking in oil and gas production for years to come.[xxi] In turn, several environmental advocacy groups have sued the Biden Administration for not taking stronger action against the injunction and instead moving forward

with this record-breaking sale, as opposed to waiting on the comprehensive review to be conducted to analyze the effects of oil and gas lease sales and using the discretion of the agency.[xxii] The administration has insisted that they have their hands tied due to the preliminary injunction.[xxiii]

Ultimately, it is not likely there will be an outright pause of federal leasing soon. However, the Biden Administration will have the opportunity to create a new OCSLA five-year plan in which they have the ability to make changes, such as managing locations, processes, and price, which could lead to less leasing as they work towards cleaner energy and solving the climate crisis.[xxiv]

[i] Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

[ii] *Id.*; Ella Nilsen, *Why the Biden Administration is Reopening Oil and Gas Leasing in the Gulf of Mexico*, Cable News Network (Nov. 17, 2021, 6:01 AM), <https://www.cnn.com/2021/11/17/politics/biden-oil-gas-leasing-gulf-of-mexico-climate/index.html> [<https://perma.cc/RD2Y-CYVY>].

[iii] *Louisiana v. Biden*, 2021 U.S. Dist. LEXIS 112316, 8, 64 (W.D. La. 2021).

[iv] *Id.* at 66.

[v] *Id.* at 8.

[vi] *Id.* at 51.

[vii] *Id.* at 13.

[viii] *Id.*

[ix] *Id.* at 15; *supra* note i.

[x] *Id.* at 39.

[xi] *Id.*

[xii] *Id.* at 41.

[xiii] *Id.* at 60-63.

[xiv] *Id.* at 60-61.

[xv] *Id.* at 28.

[xvi] *Id.* at 61.

[xvii] Evan Hjerpe, Gwen Alrich, Pete Morton, Michelle Haefele, Leah Dunn, *Economic Effects of Pausing Oil and Gas Leasing on Federal Lands*, Conservation Econ. Inst. (Aug. 4, 2021), https://421f7795-9db7-4104-9a85-bd2dfc6dea3e.filesusr.com/ugd/5fc209_7856e482cb704aeeaf50e85d25109de7.pdf?index=true [https://perma.cc/92MB-89SE].

[xviii] *Id.* at 3-4.

[xix] Press Release, U.S. Department of the Interior, Interior Department Issues Statement on Oil and Gas Leasing Program (Aug. 16, 2021), <https://www.doi.gov/pressreleases/interior-department-issues-statement-oil-and-gas-leasing-program> [https://perma.cc/WYK8-LTYU].

[xx] Ella Nilsen, *supra* note ii.

[xxi] *Id.*

[xxii] *Id.*

[xxiii] *Id.*

[xxiv] Laura B. Comay, Cong. Research Serv., R44692, Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief (2021), <https://sgp.fas.org/crs/misc/R44692.pdf> [https://perma.cc/E6Z2-9APD].

♥ 0 Likes ↪ Share

COMMENTS (0)

Newest First

[Preview](#) [POST COMMENT...](#)

Newer Post

Cryptocurrency: the Good, the Bad, and the
Light at the End of the Tunnel (/full-
blog/hereshblog)

Older Post

The Fight Over Tribal Authority Under the
Clean Water Act (/full-blog/millsblog)

SEARCHABLE ARCHIVE (/PUBLICATION-ARCHIVE-1)

620 SOUTH LIMESTONE, LEXINGTON, KY, 40508, UNITED
STATES (859) 257-4747 ARTICLES.KJEANRL@GMAIL.COM (MAILTO:ARTICLES.KJEANRL@GMAIL.COM)